

ENDANGERED SPECIES ACT REAUTHORIZATION

FIELD HEARINGS

BEFORE THE

SUBCOMMITTEE ON
DRINKING WATER, FISHERIES, AND WILDLIFE

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

JUNE 1, 1995—ROSEBURG, OR
JUNE 3, 1995—LEWISTON, ID
AUGUST 16, 1995—CASPER, WY

Printed for the use of the Committee on Environment and Public Works

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REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

THURSDAY, JUNE 1, 1995

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON DRINKING WATER, FISHERIES
AND WILDLIFE,
Douglas County Fairgrounds, Roseburg, OR.

The subcommittee met, pursuant to notice, at 9 a.m. at Douglas Hall, Douglas County Fairgrounds, Roseburg, OR, Hon. Dirk Kempthorne (chairman of the subcommittee) presiding.

Present: Senators Kempthorne and Chafee [ex officio].

Also present: Senator Packwood.

OPENING STATEMENT OF HON. DIRK KEMPTHORNE, U.S. SENATOR FROM THE STATE OF IDAHO

Senator KEMPTHORNE. Ladies and gentlemen, I will call this field hearing of the Endangered Species Act by the U.S. Senate to order, and I'd like to welcome all of you here this morning.

My name is Dirk Kempthorne. I'm Senator from your neighboring State of Idaho. I'm the chairman of the subcommittee that has jurisdiction over the Endangered Species Act and its reauthorization.

With me, of course, we have the chairman of the full Environment and Public Works Committee, Senator John Chafee from Rhode Island, and your own Senator, Senator Bob Packwood, who is the chairman of the Finance Committee, and it is upon his request and invitation that we come to Roseburg, OR, that we're here this morning. So we thank Senator Packwood for that invitation.

What I would like to do now is allow each member of this panel to make some opening comments, because I think it will allow you to have some idea as to where we individually might be headed as we undertake this reauthorization of the Endangered Species Act.

The fact that hundreds of you are here makes it very clear to all of us that the Endangered Species Act has significant impact for you. As I'm sure we'll hear today, that impact may be positive and it may be negative, but every one of you here feels strongly or you wouldn't be here to advocate either its continuation unchanged, modification or its outright elimination.

[Applause.]

And at this point, I really have to ask that all members of the audience refrain from any sort of sign of approval or disapproval from what any member of the panel may say or what our witnesses may say later, because we have a number of people we want to

hear from. The best thing that this panel can do is to be good listeners, but rather than consume time with showing of support either positive or negative, I must ask that we refrain from any sign.

I'm prepared to work together in a bipartisan effort on this task, and I don't approach this issue as a neutral observer. The Endangered Species Act needs change. My view is that too often the interpretation and the implementation of the Endangered Species Act has gone far beyond its original intent. The ESA should not be a tool that places entire communities at risk by threatening their economic survival. At the same time, we cannot turn our backs on the effort to save endangered species. That would be suicidal.

Now why do I say that? Well, some 120 plants have given us pharmaceuticals that have not only enhanced human life, but in different instances actually saved lives. I could not have told you by looking at a Pacific yew tree that it would provide the drug that may cure ovarian cancer, but I ask myself, what role does the ESA play in the preservation of the yew? The Pacific yew has never been listed under the ESA. If it had been, would we have found its life-saving component?

Science needs to assume its proper place in this debate by providing scientific information and options for policymakers. Until we use science to allow us to make the best public policy decisions, and until we take into the political arena and discuss the competing interests of, for example, health care, welfare, education, along with the environment, we'll never know where to place our priorities as a society in the big picture. That's where Congress has abdicated its responsibility. Congress tells Federal agencies to go out and make the Endangered Species Act work, but often the only tools that those agencies have are the blunt instruments of regulation. I think we need to provide incentives instead.

This issue has become so polarized that many politicians would just as soon not deal with this issue. If you suggest changing the ESA, you are quickly tagged as an anti-environmentalist. Advocate that the ESA must not be tampered with and you're tagged with being blind to how the Act is destroying jobs and families and communities. Step into this debate and you'll be damaged politically by someone. Well, so what's new? That's one of the dangers that goes with this job. The fact is that we're spending millions of dollars now and putting jobs at risk on endangered species with no clear policy, priorities, game plan or ability to measure results. So let's get real and let's get practical.

Should we make concerted efforts to save species? Absolutely. Can we bring every species to full recovery? Absolutely not. Can we prioritize which species we should make greater efforts toward? We must. Can we do this without undermining private property rights and putting whole communities at risk? Well, we had better, or the outcry against the Act may kill it.

So what's at stake? Our environment, and I do mean "our" and I do mean "environment." I envision an endangered species law that encourages all of us to willingly participate, a law that provides incentives and decisions to conserve rare and unique species. It's worth noting that while we have the chairman of the Finance Committee here, Senator Packwood, that one possible incentive would be adjusting the estate tax when there's a conservation ease-

ment to benefit an endangered species. That's an incentive to participate in endangered species management and keep property in the hands of the family members and their heirs that manage it. I envision an Endangered Species Act that treats property owners fairly and with consideration, and that minimizes the social and economics impacts of this law and the lives of citizens.

As Forest Service Chief Jack Ward Thomas said at a recent hearing, "eco" is the root word in economics and ecology. It comes from the Greek word "oikos" which means home, and the idea behind it is that it is an inclusive way to view an entire system, the people, the economics, the flow of energy.

This Act on its present course of heavy regulation and putting people and communities at risk won't work. To single out individual communities to carry the brunt of recovery when the entire national community is the beneficiary is wrong, but to say also that the extinction of a species is no big deal and just the luck of the draw for that species and that we won't lift a human finger to help is equally wrong. And the proponents of each of these two extreme positions probably deserve each other on some remote island where the only way for their survival is that they have to help one another.

So what's right? To reform the Endangered Species Act and to use good science to aid good public policy decisions with innovation, with incentive and where necessary, public financial resources to do what we as a human race, the stewards of this environment, can do to benefit not only other species but ourselves as well.

I try to refrain from calling one group environmentalists, because we'd all better be environmentalists because this is all we have. Is the term "pro-business environmentalist" an oxymoron? I don't think so, and it better not be, because without a healthy economy, you won't have the resources you need to conserve the rare species among us.

As Charles Mann and Mark Plummer said in their book *Noah's Choice*, "If we want truly to improve the lot of endangered species, we should stop shooting for the stars, because the arrows will fall back to our feet. By aiming a little closer we might shoot farther in the desired direction." So this hearing is to seek from you your attitude about the current Endangered Species Act. What do you like? What don't you like? What should be changed, and how specifically should that be done? And based upon your collective input, we'll go write a bill, and the key will be balance.

With that, I want to recognize for his comments now Senator John Chafee, the chairman of the Environment of Public Works Committee and to thank him for coming to Oregon.

For those of you who don't know John Chafee, you'll be interested to know that John Chafee left college to enlist in the Marine Corps to fight during World War II. He served with honor in the original invasion of Guadalcanal. When called again in 1951, he commanded a rifle company in Korea. In 1962 he was elected Governor of Rhode Island by 398 votes, then won his two subsequent re-elections by landslide margins, and then in 1969, President Nixon chose John Chafee to be his Secretary of the Navy. In 1978, John Chafee was elected to the Senate where I proudly serve with him.

With that, Senator John Chafee.
[Applause.]

**OPENING STATEMENT OF HON. JOHN H. CHAFEE,
U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. Thank you very much, Mr. Chairman. First, I'd like to congratulate you for the skill and vigor with which you are moving ahead with these hearings on the Endangered Species Act. I'd also like to take this opportunity to thank everyone who has come here today, those in the audience and those who are going to be witnesses, to participate in this hearing, the first on the reauthorization of the Endangered Species Act.

This is my first visit to this part of Oregon, and I'm delighted to see such a lovely section of your State.

I want to take a moment to express my great respect and friendship that I have for both of your U.S. Senators. I first met Senator Mark Hatfield when we were both Governors in the 1960's. I greatly admired him then and I greatly admire him today; as I say, that admiration is just as strong as it was in those years past.

Bob Packwood has been an extremely close friend of mine ever since I first arrived in the U.S. Senate. He and I have worked together for 17 years on the Senate Finance Committee, and the country is extremely fortunate to have him at the helm of that very important committee, the Finance Committee. His skill, his integrity and his leadership are critical to the committee as it tackles its major national issues.

Senator Kempthorne, who is the able chairman of this subcommittee, has chosen to start the process of reauthorization of the ESA by holding hearings in the west, and that's a decision I heartily endorse. While the ESA's reach is national in scope, we must pay special consideration to the impact of the ESA in communities like yours where the economy depends to a considerable extent on a natural resource base.

Indeed, it seems to me nowhere have citizens spoken more passionately on both sides of this issue than here in the Pacific Northwest. With the listing of the Northern Spotted Owl in 1990 and the listing of several runs of Columbia River salmon over the past few years, this area has probably felt the effects of the ESA more than any other.

The burden of the ESA, as Senator Kempthorne mentioned, does fall disproportionately on specific communities and individuals. As a matter of fairness that's of great concern to me, and I'm conscious of the difficulties that have been caused.

Now what do we hope to accomplish in these hearings? I think most would agree we should maintain the underlying goals of the 1973 Endangered Species Act that passed the Senate by a vote of 92 to nothing. What are the underlying goals of the ESA? They are, No. 1, to provide a means to conserve endangered and threatened species and their ecosystems, and, No. 2, to fulfill our obligations under treaties and international conservation agreements.

Moreover, the fundamental policy set forth by Congress under the ESA that "all Federal departments shall seek to conserve endangered species" still makes sense and should not be watered down or made discretionary.

The question is then, how do we reach these goals? I want to explore ways to meet the above goals in a less contentious manner than currently exists. I'm interested in such things as developing incentives to promote habitat conservation on private lands, something that Senator Kempthorne referred to. I'm interested in providing greater certainty and flexibility to property owners and allowing innovative management agreements between private and public entities, and eliminating disincentives and burdensome requirements that lead property owners to destroy potential habitat and encouraging up-front planning and multispecies conservation. And there are a host of other ideas, I'm sure, out there.

I hope that during today's hearing we will be presented with constructive solutions to the problems that exist under the current law. The question that I challenge all of our panelists to address is the following: How can we work together to resolve conflicts that have arisen under the Endangered Species Act, while at the same time maintaining a commitment to conserve America's rich and diverse heritage of fish, wildlife and plants?

Conservation of species is not a frivolous effort. Conservation is a worthy and indeed critical end unto itself. It's not worthy only when the species in question provides an immediate human benefit such as the Pacific yew, but should we not also care about grizzlies and California gray whales and even our national symbol, the American eagle? I think we would all agree that our society would suffer from the loss of these creatures.

As stewards of the earth, I believe it is our responsibility to maintain a world rich in biodiversity. Do we care what kind of a world we leave to our children? If the answer is yes, then we need strong laws to force ourselves to take the long-term view necessary for species conservation.

I'd like to close with a quote from a great hero of mine, Theodore Roosevelt, and this is what he said:

Of all the questions which can come before this Nation short of the actual preservation of its existence in a great war, there is none which compares in importance with the central task of leaving this land even a better land for our descendants than it is for us."

So I look forward to hearing our witnesses' testimony. Thank you very much.

Senator KEMPTHORNE. Senator Chafee, thank you.

[Applause.]

Now, of course, you don't need an Idahoan to introduce you to your Senator from Oregon, but let me just say that whether last year's debate on health care, this year's debate and success with achieving a balanced budget, one of the effective Senators on those issues has been your Senator from Oregon, Senator Bob Packwood, and during debate in the U.S. Senate when Senator Packwood takes part in that debate, I will tell you that people respect and they listen because of his intellect and his effectiveness in that role. So, ladies and gentlemen, your Senator, Senator Bob Packwood.

[Applause.]

**STATEMENT OF HON. BOB PACKWOOD,
U.S. SENATOR FROM THE STATE OF OREGON**

Senator PACKWOOD. First, let me thank both John Chafee, the chairman of the full committee, and Dirk Kempthorne, the chairman of the subcommittee, for choosing Roseburg as the first hearing in the Nation outside of Washington, DC for hearings on the Endangered Species Act. There is no State that has been more affected than Oregon. There's been no county that's been more affected than Douglas County, and Roseburg as its capital.

Second, let me congratulate the Roseburg News Review. Yesterday we had a meeting with their editorial board and their principal reporter on this subject, Jeff Mize, and they presented to us a series of articles on the Endangered Species Act which appeared in the News Review over the last several days. Jeff Mize has done a better job encapsulizing the pros and the cons than anything I've seen written in Oregon or nationwide. I would recommend it to all of you as a balanced intelligent presentation.

Third, Senator Hatfield cannot be here today, but he asked me to enter a letter into the record, and I want to read just one paragraph from it:

As the original sponsor of the 1972 legislation that went on to become the Endangered Species Act in 1973, I speak with some authority when I say that the Act has been implemented far beyond what any of us in Congress intended when it passed. Somewhere between the halls of Congress and government regulatory bureaucracy the intent of this Act was greatly changed. This change was precipitated by the abuse of the Act by certain environmental groups who were unable to attain their goals through act of Congress or administrative action.

And I'd ask that the rest of his letter be inserted into the record at his request.

[Applause.]

Well, I think Senator Kempthorne was right. You can applaud, boo and hiss, but if we do that all day long, this hearing will not finish, and I think we're better off to listen without too much demonstration.

Let me tell you what I think has happened. It's really nobody's fault, it's really history. When you look at the history of this country, you can almost divide it from 1800 to about 1960, and then onward, and from 1800 to 1960 this country was moving west. In 1800 we weren't west of the Appalachians.

And we moved west, and to our ancestors, the resources of this country seemed inexhaustible. And as you looked at the Great Plains, you thought, what a never-ending, extraordinary cornucopia of farmland that could never be overutilized, and when you got to the great rivers, you thought to yourself, no matter what we put in them or dumped in them, you could never, never diminish the quality of a river of this size. When you got to the forests and you looked at hundreds of miles of forests, you thought, there is no way that this could ever be used up. That's the way they saw it. They were not malicious rapists of the land or despoilers of the water; they just couldn't conceive of it being overutilized.

Some of us in this room are old enough to remember even into the 1960's electric utility advertisements about "use more electricity": Have an all electric home and an electric furnace, and the more you use, the less your per unit rate, and we'll never be able to use up all of the electricity we can produce, so use, use, use. And

these were not malicious companies or evil corporate robber barons. That was what we thought was true.

All of this started to change probably with the publication of Rachel Carson's book, *Silent Spring*, which was really limited in its discussion to agricultural pesticides, the dangers of the runoff, and from maybe 1962 or 1963 or 1964 onward, whenever her book was published to date, the attitude of 160 years of development and use, use, use and you can't possibly injure the landscape or the waters or the air, changed.

And the pendulum swung the other way until we finally came to the point where the attitude prevailed that, no matter what kind of environmental limitations were placed on the use of natural resources, you could not harm the economic development of the country. I think that the pendulum in the last 35 to 40 years has swung too far the other way. The only constant in history is change, and I think change is coming.

The Endangered Species Act, however, is a unique piece of legislation. For those of us in the West who were raised with multipurpose legislation, it's an anomaly. It is a single purpose act, and the single purpose is the species, and in the last analysis, nothing else counts.

The best article that's ever been written on this Act is a short article put out by the Library of Congress called "The Endangered Species Act: the Listing and Exemption Process." It's only 29 pages long. It was written 5 years ago and written principally by a woman named Lynne Corn who is the Library of Congress' specialist in environmental and natural resources policy.

Three years ago I sent her a letter asking some specific questions. She responded, and I'll read that response in just a moment, but just within the last 2 weeks I had my staff give Lynne Corn a call to make sure that the letter that she sent me was still operative and valid, and normally you don't introduce staff and I'm not going to ask her to stand, but the person that made that call is very familiar with this area. It's Penny Schiller on my staff, who might be known to some of you as Penny DeMoisy, whose father was Ralph DeMoisy, and she's a graduate of Roseburg High School and joined my staff in 1970 and knows this area and this issue backwards and forwards.

She called Lynne Corn and said, Lynne, the letter that you sent to the Senator 3 years ago, is it still operative, and she said, yes, and I'll just read the first paragraph. This is what I sent her in the question:

In your memo you raised [a question] on this subject. [You asked] is it true that the Endangered Species Act says that in determining critical habitat, no factors other than science may be considered if the failure to designate an area as critical habitat will result in the extinction of the species concerned?

Response:

Briefly speaking, as the agency begins to consider all relevant impacts of designating critical habitat, if it discovers—based on the best available scientific data—that failure to include any particular area would result in extinction, then it must disregard any economic or nonscientific analysis, and include the area.

Translated into lay English what that means is nothing else counts but the species if in determining critical habitat you come up with a plan that could result in the extinction of the species. That is a fair philosophical argument. Is the issue to be that under

no circumstances, no matter what the effect is on revenues to the school district or jobs, no matter what the effect when a mill town of 2,000 people has its mill of 300 close and you have an increase in homicide and suicide and child abuse and alcoholism, no matter what the effect, only the species counts; that's a philosophical position I can understand but not agree with.

That is the conclusion that the Endangered Species Act today compels you to reach. I think the Act ought to be changed so that people count as much. Thank you, Mr. Chairman.

[Applause.]

[The materials submitted for the record by Senator Packwood follow:]

STATEMENT OF HON. BOB PACKWOOD, U.S. SENATOR FROM THE STATE OF OREGON

I would like to speak philosophically if I could because I have often discovered that if we can come together on the philosophies, we will find a way to draft the legislation to get us to the conclusions that we agree to.

So let us look back historically, and I would just pick 1800 as an arbitrary year when the westward movement, west of the Appalachians, started. And from 1800 to the 1950's, we moved West. We tamed the frontier. We thought nothing of using, utilizing, and wasting resources because we could not conceive that we could ever pollute rivers or use up the trees or foul the air. It was beyond the comprehension of our ancestors, and indeed, they were taught that to clear the land and farm was good. And by clearing the land, of course, we meant cutting down the trees and pulling out the rocks and farming.

And that attitude continued. The ads in the late 1950's and early 1960's promoted using more electricity. Use as much as you can. We will never be able to use all of the electricity we can produce, so use it up as fast as you can. And the more you use, the less your unit rate, thus the all-electric home.

We never conceded, even 30 years ago, that there was going to be any danger to the environment. And that attitude which prevailed for 160 years, in retrospect, was wrong. But our ancestors are not to blame; they did not realize it was wrong.

If there was a moving change, a point at which society started to say, we did wrong in the past and should rectify that, it probably came with Rachel Carson's book, *The Silent Spring*. But from the time of *Silent Spring* on, and in about 1965, we began to say we are overutilizing our resources. We are fouling the air. We are polluting the water, and we began a reaction against the 160 years of the way we used the resources.

And from 1965 onward, we have gone on the assumption that there are almost no restrictions on the use of resources that can possibly be bad for civilization, just as we went for 160 years thinking there is nothing that can possibly be bad for our civilization in out utilizing all the resources. And the time has now come, Mr. Chairman, for a balance.

If we swung too far one way in our early history, we have swung too far the other way in our current history. And the main issue is the Endangered Species Act. There are others, but this Act is a unique Act, and especially for those of us in the West who grew up with the concept of multiple use, that land, properly shepherded, can be harvested and replanted, used to produce electricity, set aside for parks and wilderness and recreation and for fish and wildlife protection.

And while we always had arguments under multiple use management as to whether or not some particular use was getting a favored position or not, we managed to get along.

But then the Endangered Species Act came along, and I am going to quote from a wonderful CRS report to Congress, "Endangered Species Act, the Listing and Exemption Process", by Lynne Corn and Pamela Baldwin. I have talked with Lynne extensively, who is principally a biologist. I am going to quote from her report: "The Endangered Species Act is structured so that the basic decision to list a species as either threatened or endangered is to be based only on scientific information." That was in the original Act as we passed it.

If that was not specific enough, in 1982 we added the word "solely" and I am quoting from the booklet again, "The addition of the word 'solely' is intended to remove from the process of the listing or de-listing of species any factor not related to the biological status of the species."

What that means, Mr. Chairman, is nothing else counts. This is not a multiple use Act. This is single purpose Act, and it is paramount to all other uses of the land, public and private. And relatively few people are fully aware yet that the Endangered Species Act touches private land. We are aware of it in the West. But we are soon going to be aware of it all across this Nation. Nothing else counts.

Once a group files a petition and says we think the Owl is endangered or threatened, we think the salmon is endangered or threatened, the relevant Federal agency—the Fish and Wildlife Service in the case of the Owl, the National Marine Fisheries Service in the case of the salmon—is required to investigate the petition.

And I will use a lawyer's analogy. If the petition is like a complaint, if it states a cause of action—not necessarily approves it—but if it states a cause of action, then the relevant Federal agency has to go on with the series of investigations. And if at the end of it they discover that if we continue to undertake the actions that we have been undertaking in the past, a species is likely to be endangered or threatened, that agency is required, Mr. Chairman, to suggest, direct, and mandate changes in that action to protect the species.

And we have never thought to ourselves before is there any balance in this? Should there be any balance in this?

Senator Hatfield (R-OR) said it very well. We have always thought of this as site specific. Tellico Dam and the Snail Darter, Gray Rocks Dam and the Whooping Crane—but we never thought of the Endangered Species Act as an ecosystem bill, and if you read the debate when it was passed, I do not think the word "ecosystem" appears in the debate.

We did not foresee the consequences, and so we never measured jobs or the loss of them. We never measured alcoholism and child abuse and marital discord and suicides that accompany job losses. We didn't look at the impacts of these acts.

I have asked the question in Oregon a number of times of audiences—and this relates to the salmon, and we are going to see significant changes in river operations as well as out in the oceans, as a result of listing the different salmon species, changes that are going to stun many people in the Northwest—but I have often asked this question. Remember what the Endangered Species Act says. Nothing else counts. What would you do, I say to this audience, if in order to save the salmon the only conclusion that the National Marine Fisheries Service could come to in terms of a plan of action was to take out the dams on the Columbia River, that, by itself, limiting fishing would not save the salmon, that stopping irrigation alone would not save the salmon. Would you be willing to pay that price? And the answer is almost universally, no, I would not pay that price, which means that in the public's mind, they did not mean that this Act was really to be single purpose and nothing else counted. They never realized that Act could go that far.

Now, when it comes down to the issue of the Owl and Marbled Murrelet and jobs and communities and schools, Oregon, Washington, and Northern California have felt the impact first. But, it is going to come to the rest of the Nation, and we are going to have to weigh whether or not other factors, specifically people, count. And clear back at the time of the Tellico Dam and Gray Rocks Dam, we thought to ourselves, something else counts. And in 1978, we added the Endangered Species Committee to the Endangered Species Act. The Committee is euphemistically referred to as "The God Squad." Its membership is comprised of the Secretary of Agriculture, Secretary of the Army, Chairman of the Council of Economic Advisors, the Administrator of the Environmental Protection Agency, the Secretary of the Interior—and he or she acts as Chairman of the Committee—the Administrator of the National Oceanic and Atmospheric Administration, and then one individual from each of the affected States, and they collectively have one vote from the affected States. And for the Committee to take an action, five out of the seven have to agree.

And we directed them, by statute, to study the Snail Darter issue and the Tellico Dam. And we directed them by statute, the same statute, to study the issue of the Whooping Crane and the Gray Rocks Dam in Wyoming. And they did. The Committee came down on the side of the Snail Darter in Tellico and Congress just overruled them. Congress said, go ahead and finish the dam. The irony is we did not cause the Snail Darter to go extinct. It exists now in a variety of streams that flow into the reservoir behind the dam.

In Gray Rocks, the Endangered Species Committee did what you would hope it would do. The Committee said, I wonder if there is a rational solution to this problem, but the Fish and Wildlife Service is not allowed by statute to come up with any rational solution. All they could do is say this dam is going to flood some marshy grounds where the Whooping Crane lands and the Whooping Crane is already on the list and this may be the straw that breaks the camel's back. But the Endangered Species Committee said, well, let us take a look at it. It is principally an irrigation dam. What about if we charge the irrigators a little more money. We

will put up a trust fund. We will buy some land around the reservoir that would be created. We will mitigate and, we will create a new marshy ground. And all of the parties, including those that had brought the lawsuit, agreed, and the suit was dismissed. The trust fund was set up. They bought the land. The Whooping Crane now lands in the marshy ground alongside, and it has worked out the way you would hope it would work out.

But only the Endangered Species Committee has the power to make those kinds of decisions. The Fish and Wildlife Service does not. They can only consider biology. The National Marine Fisheries Service does not. They can only consider biology.

And Mr. Chairman, the only two times in the history of the Endangered Species Act that the Committee has ever convened are those two times when we legislatively jump-started it. We do have a recent instance in 1991 where the God Squad convened over a request to exempt 44 BLM timber sales in Oregon from the Endangered Species Act. This involved the timber harvesting/Spotted Owl crisis in the Northwest. This most recent action is the first time in history that a Federal agency has used its authority under the Endangered Species Act to convene the God Squad. But for the most part, it is almost impossible for this Committee to operate administratively the way the law is currently written.

I will read now from the Conference Report, when the Endangered Species Committee was added in 1978, the Conference Report directed the God Squad to consider, but not limit itself to, the following considerations:

- (1) Cost impact on consumers, business markets, Federal, State, and local governments;
- (2) The effect on productivity of wage earners, business, and government;
- (3) The effect on competition;
- (4) The effect on supplies of important materials, products, and services;
- (5) The effect on employment;
- (6) The effect on energy supplies and demand.

And I will conclude with the Conference Report's concluding remark, "The Endangered Species Committee was established to resolve conflicts that might arise between the Endangered Species Act's mandate to protect species and other legitimate national goals and priorities, such as providing energy, economic development, jobs, and other benefits to the American people." I want to emphasize again, under the present law, the Fish and Wildlife Service and the National Marine Fisheries Service cannot consider any of these factors. Now, I have no quarrel with those agencies which are heavily scientific, conservation agencies having their say and giving the best scientific judgment they can give, but it should not be the *only* judgment.

I hope we have not arrived at the place, Mr. Chairman, where science, pure science, alone—and it, too, can be wrong—is the only God and that nothing else counts.

In May 1991, four scientists were charged by two House Committees to make recommendations pertaining to the forests of the Pacific Northwest. The scientists, Jerry Franklin of the University of Washington, Norm Johnson of Oregon State University, Jack Ward Thomas of the Forest Service [now Chief of the Forest Service], and John Gordon of Yale University were asked to list, from low to high, the probabilities of saving the Owl under a range of actions. The scientists considered not just the Owl, but everything else that you might want to consider in the forest.

They were specifically asked, and wisely so, not to pick one of these alternatives. They were simply to give them to the Committees and say, here in our scientific judgment is what you would have to do to have a low level of probability of saving the Owl, a medium level of probability of saving the Owl, and a high level, but not a guarantee of saving the Owl, and how many jobs would it cost, and what would it be in lost wages.

They considered worse-case scenarios and best-case scenarios for saving the Owl. They said that if you want a high probability of saving the Owl and a high probability of preserving old growth and sensitive fish stocks and wildlife, then in their judgment, the tradeoff would be approximately 60,000 more jobs lost annually and a reduction in income of \$2.8 billion.

They announced this at a press conference. It was not at a hearing. At this press conference they were asked, is this a decision that scientists should make? And to the man, they said, oh, no. One of them used the words, that it is a political decision. Another one said that is a governmental decision. Another one said that is a policy decision. But it should not be decided on science alone.

All I am asking is that we move economic considerations up in the hierarchy of decisions so that factors in addition to science can be considered. That does not necessarily mean that the side I support, which very frankly would be jobs, and kids, and schools, would always win. They did not win when the God Squad made the

decision on the Snail Darter. The God Squad came down on the side of the Snail Darter. Congress then overruled that decision.

I think we have put our courts in an impossible position. I am less critical of the courts' decisions than many because I think the courts are probably correctly interpreting an unfortunate law. And the Congress cannot get out of this by hoping that somehow the courts are going to give a different interpretation and we will not have to act.

We may choose not to act. And we may choose to say science only is going to count and the devil take the hindmost as to jobs, income, and revenue to counties. But scientists were right about one thing. That this is a policy decision. Call it a political decision if you want. It is not a scientific decision and we should not ask scientists to make it. And we should not force on the Fish and Wildlife Service and the National Marine Fisheries Service that decision.

So that is the issue. Do we want to finally achieve a balance between the 160 years of moving west and utilizing resources rapaciously and the 25 to 30 years of imposing restrictions on those uses without regard to the consequences, without regard to the human impact associated with income and job losses? The Endangered Species Act, as it is currently written, is a freight train that rolls over every community in sight with no regard for anything but science. The social and economic structure of these communities do not have the ability to absorb the shock some would impose upon them virtually overnight. I prevail upon your Committee to reach a solution, to modify the Act so that the people of the Northwest can get on with their lives.

MARK O. HATFIELD
OREGON

United States Senate

WASHINGTON, DC 20510-3701

June 1, 1995

Hon. Dirk Kempthorne
Chairman
Subcommittee on Drinking Water, Fisheries and Wildlife
Committee on Environment
United States Senate
Washington, D.C. 20510

Dear Dirk:

Thank you for your willingness to hold a field hearing on the Endangered Species Act in Roseburg, Oregon. Nowhere else in the nation have the impacts of the ESA been more apparent or more devastating. The communities, working families and industries of the southern Oregon/Roseburg area have undergone a great deal of upheaval in a very short period of time. All due to the interpretation and implementation of a federal law.

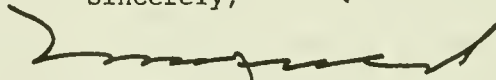
As the original sponsor of the 1972 legislation that went on to become the Endangered Species Act in 1973, I speak with some authority when I say that the Act has been implemented far beyond what any of us in Congress intended when it was passed. Somewhere between the halls of Congress and government regulatory bureaucracy, the intent of this Act was greatly changed. This change was precipitated by the abuse of the Act by certain environmental groups who were unable to achieve their land protection goals through Act of Congress or Administrative decision.

Rather than using the Endangered Species Act to halt the decline of a species on a site specific, species specific basis, as Congress intended, the Act has been used as a tool to preserve land across vast regions of our nation.

I hope that these hearings are the beginning of a thoughtful and realistic reexamination of the Endangered Species Act. We must retain the original, protective spirit of the Act while, at the same time, evolving beyond the polarized and paralyzed decision making processes now in place for addressing environmental issues.

Thank you again for taking the time to come to Oregon. Please let me know how I can be of assistance as you move forward with reauthorization of the ESA.

Sincerely,



Mark O. Hatfield
United States Senator

MOH:dr

HOME ADDRESS
BILL MARKHAM
P.O. Bdx 300
RIDDLE, OREGON 97469

DOUGLAS AND NORTH JOSEPHINE
COUNTIES



HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

MAY 30, 1995 *Bob*

SENATOR BOB PACKWOOD
SENATE COMMITTEE ENVIRONMENT
PUBLIC WORKS
SUBCOMMITTEE DRINKING WATER,
FISHERIES, WILDLIFE

DEAR SENATOR PACKWOOD:

ENCLOSED IS MY TESTIMONY FOR THIS HEARING. UNFORTUNATELY
THE ENDING OF THE LEGISLATIVE SESSION PRECLUDES ME FROM
ATTENDING THIS IMPORTANT MEETING.

PLEASE ENTER MY TESTIMONY IN THE OFFICIAL RECORD AND
GIVE COPIES TO THE OTHER TWO SENATORS.

THANK YOU FOR YOUR HELP IN THIS MATTER.

SINCERELY,

Bill

REPRESENTATIVE BILL MARKHAM



BILL MARKHAM

SPEAKER PRO TEMPORE
HOUSE OF REPRESENTATIVES

MAY, 1995

REMARKS OF REPRESENTATIVE BILL MARKHAM
SPEAKER PRO-TEMPORE
STATE OF OREGON LEGISLATURE
OF
THE SENATE ENVIRONMENT AND PUBLIC WORKS
SUB-COMMITTEE ON DRINKING WATER.
FISHERIES AND WILD LIFE

DOUGLAS, NORTH JOSEPHINE, AND N.W. JACKSON COUNTIES
DISTRICT 46

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BILL MARKHAM

SPEAKER PRO TEMPORE
HOUSE OF REPRESENTATIVES

It saddens me deeply to know that I have lived long enough to witness the systematic dismantling of prosperous and productive timber dependent communities like Roseburg, Oregon. Over the past six years, with our federal forest land in legal and environmental gridlock, timber communities in rural Oregon have fallen like rows of dominos.

Not long ago families, such as those standing before you today from surrounding communities like Glide, Riddle, Winston, Glendale, Drain, Canyonville and Myrtle Creek, were strong and together. They worked for generations in the woods and in the mills passing the trade down to the next generation. Not so today. Unemployment is up, mills have shut down, divorce and domestic violence have increased, homes are for sale and food bank use has soared. In fact, the ripple effect has been so great that all kinds of small businesses in and around timber communities have felt the pain, some have failed.

Much of this economic shakedown can be traced to the listing of the northern spotted owl. I want to underscore this next point: It is not the listing of the owl that has wreaked such havoc, rather it has been the implementation of the Endangered Species Act (ESA) itself.

There is little dispute that species in trouble should be protected and that their evaluation should be based on the merits of their biological status. However, I want to make it perfectly clear that nowhere in the act does common sense economic consideration of the impacts on people and their communities take place.

At best, well after the listing and in the establishment of a species' critical habitat, we eventually receive a weak knew sense of the social and economic impacts. In most instances, the federal government's economic review is wholly inadequate.

The fundamental flaw of the current act is that it does not consider people. In our won case, the northern spotted owl in the Pacific Northwest, people, their livelihoods, their values and their communities were not considered at all in the process.

Given all of that, it would be easy to vent frustration and be angry at basement bureaucrats and the faceless federal government. But, nothing good would come out of it.

In my view, it is time to put people back into the equation: to put people back into the act. Despite the oversimplification of this most complex issue by the media, which has so often

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portrayed this issue as people verses owls, jobs verses the environment or us verses them, I recognize the need for a well reasoned and balanced solution for the re-authorization of the ESA.

The solution must, and I underscore the word must, balance the needs of the people with those of their environment. People and communities like Roseburg most directly affected by these decisions must have a say in the process. Not just lip service, but a direct and concrete partnership with the decision makers.

As you know over the last few weeks Senators Gorton, Shelby and Johnston introduced the Endangered Species Act Reform amendments of 1995. While it may seem redundant, I would like to list the key changes to the ESA that are, in my opinion, just the start of meaningful and reasonable changes that would make a positive difference to timber communities like Roseburg, Riddle, Glendale, Drain, Myrtle Creek, Winston, Canyonville and many other communities.

1. Once the status of the species has been scientifically established by biologists, policy decisions are made by policy makers. Recovery plans and conservation in the current law are replaced with conservation objectives and conservation plans selected by the Secretary (a policy maker who must be held accountable for his or her actions.)

2. The ESA process is strengthened by the use of sound, peer reviewed science and requires continuous questioning and review of scientific assumptions.

3. Federal agencies are required to strictly comply with deadlines for federal action consultations instead of the current never ending process whereby federal timber purchasers and land owning companies are kept in the dark.

4. The Secretary has a range of alternatives for managing a listed species (conservation plans) that include consideration of biological risks, costs of implementation, social and economic costs. It would require the secretary to convene a "planning and assessment team" that has representatives of affected local communities, representatives from state government, biologists, economists and land-use specialists.

5. Provides new methods for private property owners seeking to accommodate listed species on their lands, but leaves compensation to be considered in separate private property rights legislation.

6. This bill includes virtually every policy announcement by the Clinton Administration as an improvement in ESA implementation including relief for small landowners (i.e. Secretary of Interior Bruce Babbitt's ten principles for making the ESA work better.)

As a final point, even the Clinton Administration acknowledges that the ESA is broken as evidenced by Secretary Babbitt's recent 10 principles for improving the ESA. What is being proposed by Senator Gorton is a well reasoned, rational solution to a very complex issue. It puts people back into the act. I urge your support for these changes and pledge to work with you as a state representative to ensure the survival of rural Oregon and the good people that live and work in Douglas County.

Senator KEMPTHORNE. Senator Packwood and Senator Chafee, thank you very much for your comments.

I would ask now that the first panel please come forward, and while they are coming forward and taking their chairs, I'd like to just give you an overview of how we will proceed now in this public hearing. We have 21 witnesses that will be testifying today. Every effort has been made that it be a balanced panel, and I believe from the reports I've seen in the press we've accomplished that to a large extent.

I will also mention that while not all members of the subcommittee could be with us today, we do have committee staff that is here, both Republican and Democrat, that will be monitoring and reporting back.

While you listen to the testimony that will be given today, you will hear speakers that you agree with, you will hear speakers you disagree with. Again, I must ask that there be no sign of approval or disapproval so that we can continue to move this forward, so that we can get the information on the record. I want to create an atmosphere where all views are respected whether we agree or disagree.

Each member of the panel is allocated 5 minutes to make their comments. There will be the lights that are there in front of you, and as you can see, you have the green, the yellow and the red. When you see the yellow light, I would just ask that you conclude your remarks. The red, of course, means that we'd like you to stop. At some point if I have to cut you off because you've gone beyond, please don't think I'm being rude, but I'm trying to conserve time for the other speakers that have to speak.

Following all of the 5-minute comments by members of the panel, we will then ask any member of this committee if they would like to ask questions. We'll have a round of questions and answers, and again, we will limit ourselves in that capacity to 5 minutes per individual.

Also, I know many of you wanted to speak. Unfortunately, as you know, time does not allow. So the record will remain open after we leave this hearing. There will be a box so that you can place written comments if you have them with you now, or you can send them in to us, but we do want to hear from you as to your suggestions.

So with that, I think that we are ready to begin. Let me tell you who the first panel consists of: the Honorable Rod Johnson, who is the Oregon State Senator from Salem, OR; Mr. James Brown; Mr. Rudy Rosen and Ann—and is it Hannes?

Ms. HANNES. Oh, Ann Hannes. I'm here substituting for Jim Brown.

Senator KEMPTHORNE. Oh, OK, fine. Thank you. The director of the Oregon Department of Fish and Wildlife, the Honorable Doug Robertson, who is the county commissioner of Roseburg, OR; and the Honorable Jerry Rust who is the Lane County commissioner, Eugene, OR.

With that, let me call upon Rod Johnson.

**STATEMENT OF ROD JOHNSON, OREGON STATE SENATOR,
SALEM, OR**

Mr. JOHNSON. Thank you, Mr. Chairman and members of the committee.

On behalf of the good people of this wonderful area who I represent in the Oregon Senate and as a fifth-generation Oregonian who was born and raised in Douglas County, welcome to Roseburg. Thank you for allowing me to testify. Simply having this hearing here is a sign that you are serious about changing the Endangered Species Act and are willing to listen to those of us on the ground, and we appreciate it very much.

One of my friends in the Oregon Senate is fond of saying that "The road to hell is paved with good intentions." Congress had good intentions in 1973; we've had hell in 1993. One of our most important qualities as human beings is the ability to learn from our mistakes. We know today much about the Endangered Species Act that Congress didn't know in 1973. The reason for this hearing is that it is time to use this knowledge, which we've paid so dearly to acquire, and fix our mistakes.

Since I'm representing the Oregon Legislature before you here today, I'm going to report on seven resolutions to Congress that the Legislature has passed this year relating to the endangered species problem. After our drafting, hearing, debating and voting on these resolutions, they represent official positions taken by the people of the State of Oregon.

For example, we passed HJM-2 asking you to use sound verifiable science in all environmental decisions, including decisions to list species and to establish recovery plans. We need to quit shutting down communities on voodoo science.

Another resolution we passed indicates our knowledge that the science involved in the spotted owl itself indicates that it is not endangered. HCR-4 urges you to take the spotted owl off the endangered species list. And it passed 20 to 10 in the Senate and 44 to 13 in the House.

We also passed SCR-1 which regards the transfer of control of Federal forest and grazing lands to State government; HJM-4 regarding the amendment of the Marine Mammal Protection Act to allow us to control the population of sea lions and seals to protect our salmon; HCR-14 requesting the title of Oregon O&C lands be transferred to the State of Oregon; and SCR-2 requesting that Congress take immediate action to insure timber communities survival.

Finally and most important, HCM-3 requests that you amend the Federal Endangered Species Act to give equal consideration to the human and economic impacts of a listing so that those considerations can be balanced against the need for the listing. This resolution passed 50 to 10 in the House and 22 to 8 in the Senate. Those, I submit, are very strong numbers.

The primary problem with the Endangered Species Act is that it contains little or no common sense, has no room for reason and is applied almost blindly as to the impacts on the human species. The intent of the Endangered Species Act was to make sure that we don't blindly protect the human species at the unnecessary expense of the other species. Well, it's time that we realized that the same

logic works in reverse as well. It's also about time it's recognized that species don't become threatened overnight, and they don't go extinct overnight. We have time to make good decisions. Then if we determine a species needs protection, we can take time to decide how to do it with minimum impact on people.

For example, we've learned a lot about managing forests for the characteristics that spotted owls need, so we can have jobs and owls. What a concept. And what a shame that we didn't take time to figure it out before we locked up our Federal forests. One of the tragedies in this whole ordeal is that the loggers and woodworkers of Oregon have been made out to be villains by the national press.

Let me tell you, people who are willing to get up at 3 a.m., ride in an old crummy truck for 2 hours, work their tails off and risk their lives all day in the woods are not bad people. They're doing an honest day's work to feed their families and provide Americans with two by fours and toilet paper. Their way of life, their culture and their futures are worth protecting just as much as the spotted owl.

The debate does not have to be bad people versus good animals. There is room for balance.

The final point I want to make is that the total lack of input from the State and local governments and to the Federal Endangered Species Act listing decisions, I think, is bordering on a crime. We are a State who invented the Bottle Bill, we cleaned up the Willamette River, we protected our coastline, and we enacted by far the strongest Forest Practices Act in America. Right here in Douglas County we have currently the Umpqua Basin Fisheries Restoration Institute. It represents an excellent example of a local public/private partnership approach to addressing resource issues.

We in Oregon are protecting our streams, our forests, and our beaches, and I guarantee you that we can protect the spotted owl and the marbled murrelet as well. If you do nothing else in the Endangered Species Act, amend it to require that the local people are made a major partner in the process. Let them vote through the involvement of their elected officials, share the power and responsibility. The people of Oregon are creative and strong and can achieve solutions that don't fit the blind cookie cutter approach in Washington, DC.

Let us get involved, not just as advisors, but as equal partners. Thank you very much.

Senator KEMPTHORNE. Senator, thank you very much.

And now let me call on Mr. Rudy Rosen, and apparently, Ann will be joining you with testimony.

**STATEMENT OF RUDY ROSEN, DIRECTOR, OREGON
DEPARTMENT OF FISH AND WILDLIFE, SALEM, OR**

Mr. ROSEN. We appreciate the opportunity to appear before you today.

Senator CHAFEE. Could you pull that mike a little closer, please?

Senator KEMPTHORNE. Rudy, you may need to pull both of those mikes closer to you. It's taped. The sound man hates it when I tell them to pull their microphone closer.

Mr. ROSEN. We appreciate the opportunity to appear before you today, and in truth the Act has helped in the recovery of some spe-

cies. An Oregon species at or near recovery include the bald eagle and peregrine falcon.

The administration of the Act as now crafted has created problems, both real and perceived. The Act also has garnered many advocates who agree its helped protect species, but a more pragmatic approach to administering the Act to preserve the Nation's biodiversity is needed.

Our proposed revisions to the Act generally follow the essential elements of amendments to the Endangered Species Act that was developed through the Western Governors Association. Gov. John Kitzhaber was an active participant in the drafting of the western Governors' proposal. That document is attached to our testimony, and this provides the details. Bill language will soon be available to the committee.

I want to highlight at least one on-the-ground success story, though, because there's so much cooperative work that's going on in Oregon to aid species. My example is the same one referred to by Senator Johnson earlier and comes from right here in the Umpqua River Basin.

The model cooperative restoration program formed in 1992 by the Douglas County Board of Commissioners called the Umpqua Basin Fisheries Restoration Initiative—and I provided some background information for the record to staff, and I hope that would be entered into the record. The objective here is to restore fish populations and habitat in 3,000 miles of stream and 3.2 million acres of watershed in the Umpqua River Basin. Over 1,000 miles of stream have already been worked on, and another 500 are scheduled for the work this year. The legislative changes can better facilitate such kinds of constructive activities that help species and avoid listings.

So what do Oregonians want? I believe they want an Endangered Species Act that protects species, but that also responds to the needs of the people. Three major goals are achievable and desired: first, to increase the roles of the State; second, streamline the Act; and third, increase the certainty and incentives for landowners.

First, the Congress should clarify, affirm and enhance the State/Federal partnership in administering the ESA. The States need to be full partners. The Act now preempts State management authority. We suggest a State/Federal rulemaking process to set standards and criteria within which the States and the Federal Government will share responsibility. Federal funding should be transferred to the States to support these efforts.

Second, the Congress should insure that goals of recovery in delisting are quantified and achievable, and the effect of the Act is better targeted to the level of need for species protection and to an overall objective in managing ecosystems, not just simply protecting individual species.

Some of the solutions include creating greater separation and effect of regulatory requirements between threatened and endangered, requiring biological recovery goals at the time of listing or within a set time period after listing, a sequential process for down listing to delisting, and the ESA should be amended to more effectively recognize ecosystem management.

And last, certainty, incentives, cooperative programs and assistance should be increased for private landowners. Again, details are attached to the comments.

Senator KEMPTHORNE. Ms. Hannes.

**STATEMENT OF ANN HANNES, ASSISTANT STATE FORESTER,
STATE OF OREGON**

Ms. HANNES. Thank you. My name is Ann Hannes, Assistant State Forester. State Forester Jim Brown sends his regrets that he was unable to attend today.

I think a theme that you're going to hear common throughout the day is that Oregonians care deeply about their forests and the environment. In fact, Oregon has been on the forefront of protecting and conserving its resources. The Forest Practices Act, for example, was passed in 1971. It was the first in the Nation, and it's still considered one of the most effective laws in the country for protecting forests.

I'd like to underscore what Mr. Rosen has said, that the recommended changes that we have center around three areas: one, strengthening the role of the State. For example, our Forest Practices Act could be considered a best management practice for wildlife similar to the Clean Water Act, and the State should also be given more authority in the lead on the listing and the recovery plan process.

The Act should be streamlined and improved. Specific listing goals should be put forward. There should be streamlining, expediting and cost share with the habitat conservation plan process.

And last, landowners really need to have certainty, and they need to be able to rely more on incentives in order to achieve our objectives. As long as State, private and tribal lands are necessary for the recovery of species, incentives are essential in order to gain that willing participation. Thank you very much.

Senator KEMPTHORNE. Mr. Rosen and Ms. Hannes, thank you very much.

Now, Commissioner Doug Robertson.

**STATEMENT OF DOUG ROBERTSON, DOUGLAS COUNTY
COMMISSIONER, ROSEBURG, OR**

Mr. ROBERTSON. Thank you. Good morning, Chairman Kempthorne, Members of the Committee, ladies and gentlemen. On behalf of the Douglas County Board of Commissioners and the 97,000 residents of Douglas County, welcome to ground zero. As you can see, we have provided some visual references to help you understand some of the reasons we are so impacted by the ESA and the implementation of the President's forest plan.

Please direct your attention to the smaller colored map. The bare map depicts Douglas County. The brown shaded areas depict the BLM, and the green show the Forest Service lands. The dark areas are federally controlled timberlands that have been legislatively withdrawn over the last couple of decades. These areas represent elk calving areas, archeologically sensitive areas, wilderness areas and so on: 264,000 acres in all.

Now let's apply the overlays that articulate the cumulative effects of the Clinton forest plan. When you combine the sensitive

watersheds, the blue overlay; the adaptive management areas, the orange; and the late successional or old growth set asides, the purple area, you begin to see a very restrictive pattern develop relative to the amount of Federal timberland available for management. Add to that the potential impact of the 4(d) rule in red, and you can see why people in Douglas County are concerned.

Let me point out that the 4(d) area represents 650,000 acres of private timberland. There are currently discussions ongoing about the implementation of the 4(d) rule in Oregon. This is how it was first proposed in the U.S. Fish and Wildlife scoping document in 1994. As you can see, between 85 and 90 percent of the county's prime timberland base controlled by the Federal Government is either greatly restricted or simply off limits.

Let's now focus our attention on the larger map. This map depicts the growth of the ESA since its passage by Congress in 1973. The first map simply shows the number of species that were grandfathered into the ESA when it was adopted, about 135 of them. The second map shows where we are today with nearly 1,000 listed plants and animals. These are categorized by States.

That, however, is only the beginning of the story. The Act itself is dynamic in the sense that candidates for listing are being constantly added. The reason that it is important to include candidate species is because the management agencies have virtually conferred listed status to candidate species numbering nearly 5,000, and that number grows monthly. It is clear to even the most casual observer that the management, administration and cost of the ESA in its current form has become at best a bureaucratic nightmare, and at worst a potential blueprint to shut down every commodity industry in this country. It is obvious that single species management simply will not work. It is also obvious that local and State impacts must become a carefully considered component before a species even reaches the candidate list.

One of the unfortunate results of the ESA is a national forest policy that locks up dead, dying, old, diseased timber and focuses our harvest on young, immature stands of trees just when they're putting on their most significant growth and value. That, members of the committee, is forestry in reverse. It's bad economically, it's bad environmentally, and it's bad public policy and must stop.

I cannot sufficiently emphasize the damage that has been done by the Federal agency's move to restrict and regulate activities of private property owners on their own land. That action alone has caused more distrust, frustration, uncertainty and environmental damage, at least in our area, than any other Federal action in the last decade. If in the view of the Federal Government it is in the public's best interest to curtail or restrict activities on private property, then the Federal Government must compensate private owners for the restrictions they impose.

Members of the committee, this country of ours did not become the envy of the world by imposing burdensome centralized bureaucratic regulations on every activity engaged in by its citizens. That's not what made us great. We don't have to reinvent government: all we have to do is rediscover and reapply the principles that are the very foundation of our success as a society and a Nation.

Our enormous human capacity for initiative and ingenuity, our recognition of the tremendous impacts of the free market and free enterprise forces, those are the principles we need to focus on in today's setting of complex issues, encouraging cooperation with incentives, capitalizing on models already in existence such as models for habitat enhancement by the Rocky Mountain Elk Foundation, Ducks Unlimited, Pheasants Forever, the Federal Conservation Reserve Program and many others.

In closing, let me just emphasize the position we have held consistently in this county and that is held by many of our colleagues throughout this region. As hard as we are all looking for solutions to this problem, there will be no solution until people, communities and working families are considered and become part of that solution. Thank you.

Senator KEMPTHORNE. Doug, thank you very much.

[Applause.]

Right now I would like to call upon Commissioner Jerry Rust.

**STATEMENT OF JERRY RUST, LANE COUNTY COMMISSIONER,
EUGENE, OR**

Mr. RUST. Good morning, Senator Kempthorne, Senator Chafee, Senator Packwood. Thanks for coming to Douglas County. My name is Jerry Rust. I live in Lane County, but I grew up in Douglas County, so I've spent virtually my whole life in the two most timber productive and timber dependent communities and counties in the United States.

I want to get right to the bottom line. I think that the Endangered Species Act is working, and I think that the listing of the spotted owl was one of the best things to ever happen to the State of Oregon, and I say that because we were marching toward liquidating one of the greatest rain forests in the United States, in fact, in the world. And the spotted owl, which I've never seen a spotted owl, is simply an indicator for about 150 other species that are dependent on these old, magnificent forests since there are between only 5 and 10 percent of those forests left.

Now, I wouldn't pretend there haven't been impacts, and I think that Congress is well aware of those, and I want to personally thank you on behalf of my constituents for the \$1.2 billion aid package that you sent to the Northwest that's been helping retrain workers and do economic development in communities that are hard hit. I also want to thank you for rescuing county governments that were so reliant on timber revenues.

Now we went to work to diversify our economy, and I can tell you that Lane County is in transition. And I would say that today our economy is far more diverse than in the 1980's. Lane County has used its road funds to build infrastructure to lure industry. We developed regional economic development strategies, we've put a tourism industry together that employs 4,500 people, and we've had really good results with our community college in retraining approximately 3,000 dislocated workers since 1989.

It's almost impossible to believe, but I saw headlines last week in the Register Guard that talked about potential labor shortages. So we've been enjoying the benefits of diversifying our economy, and I would say that communities that are in denial that we need

to get on with the transition are going to lag behind others that accept the inevitable transition and move forward with economic diversification.

Now I think there are some ways we can strengthen and improve the Endangered Species Act. I think it should move more swiftly and early, so that we can approach it from the ecosystem management rather than species by species approach. I think the option 9, Clinton forest plan is a good example of this. I think it should be implemented on private lands, but I also think there should be tax credits or other incentives for landowners who make management changes that benefit endangered species.

I have to say I don't know of one private timber owner that has actually been stopped cold by the Endangered Species Act from harvesting timber. There has been probably record harvests of timber on private land in the last few years.

The third improvement would be I think we should end government subsidies that harm or threaten endangered species; for example, overgrazing of cows on public lands, placing dams on fragile watersheds or offering below-cost timber sales that cause problems with endangered species.

Your committee has asked about the effects of the Endangered Species Act on Lane County. From what I can tell from the record, there was a worse situation in the 1980's when we lost 17 percent employment through the recession and the timber industry restructuring, and in 1990 since the owl was listed, since then, we've lost 15 percent unemployment in the forest products industry. Now that's significant, but it's not the catastrophic drop in employment that was predicted by many in the timber industry. The point I'm making is I think this region is in transition and can make it.

Second, county revenues. In 1982—and I've got a chart attached to my testimony there—our O&C receipts fell to \$8 million, and at that time we had about 1,800 full-time employees. In 1984 we bottomed out with 870 full-time employees. In 1995 we've gotten back to about 1,264 overall employees, and largely we've been able to manage with aggressive budgeting and also, again, thanks to Congress for what has amounted to an \$11 million general fund revenue replacing O&C funds that would have been lost because of the listing.

You've inquired about checkerboard management. I was a tree planter, planted all over the BLM lands in the State, and I'm very familiar with those. I disagree with the O&C Association that Oregon should inherit these lands. I think it's a blatant attempt to steal these lands from the public for the benefit of a few counties and the timber industry, and it's not local control but a Federal mandate which says you can have these lands but only if you cut them to the ground. It would require by Federal act a 500 million-board feet a year cut, and would suspend all their environmental laws. This is an act that does not deserve to be passed.

In general, Federal forest lands must serve broader purposes than timber extraction, especially with the tremendous clear cutting that is going on in private lands. So I would support option 9 as a legal balanced approach that should be implemented.

Finally, why are the native cutthroat disappearing? Why is the bull trout falling throughout the Northwest? There may be a num-

ber of reasons, but these resident fisheries have only one kind of activity going on in their watersheds and that is harvesting on public lands, overharvesting that warms the water; it takes the woody debris out and puts sedimentation in the streams.

Senator KEMPTHORNE. Jerry, I'm going to have to ask if you could complete this.

Mr. RUST. OK. I'll summarize my final statement by just saying I think that the Act by and large is doing what it needs to do, and I would thank you for coming here, and again, thank you for the assistance to the communities of the Northwest.

[Applause.]

Senator KEMPTHORNE. Folks, again, I'm going to have to again ask you to not have this sign of either support or disapproval on what is said. Again, we're going to get a lot more accomplished if you'll just hang in there with us, and after the hearing is over, why I know that there are activities outside where you can really raise the roof if you wish. And it's such a nice day, we should all be outside anyway.

Senator Johnson, I was interested in your suggestion that we substitute the term "sound variable science" with a current term which is "best available science." Do you have any suggestions on how we might achieve this verification of science in perhaps some kind of peer review or commission? How do we accomplish this?

Mr. JOHNSON. Well, I think peer review is kind of an automatic on that. The problem has been that decisions have been made under the best available science rule which by definition just means whatever happens to be the best at that moment, but it doesn't mean it's good science. It doesn't mean it's been out there long enough to be subjected to peer review or cross-examination, if you want to think about it, in this community, but it just happens to be the best, and so it could just be a theory, it could just be a guess, but if it's the best, then it's the best.

So the problem is if you list a species you can immediately have these impacts on communities and areas that it turns out maybe you shouldn't have had in the first place.

We had testimony in the hearings this year in Salem from the Audubon Society of Portland that they thought that science now wasn't near good enough to delist the owl. Well, they had to admit on kind of questioning that if the science is bad now, it certainly is a heck of a lot better than it was when the species was listed. So they had to admit that the species when it was listed, when the spotted owl was listed, was really bad. Really nobody knew anything and yet we listed it, and I'd like to change that so it doesn't happen again.

Senator KEMPTHORNE. But how do we organize peer review?

Mr. JOHNSON. Well, I'm not a scientist, but the word speaks for itself. Verifiable means that you don't just take something that hasn't been proven to have some basis in fact, and if there's mechanisms out there for organizing specific peer review, committees, for example, as part of the Endangered Species Act, that might be an appropriate thing to do, so if you have a situation come up, you can trigger this committee or whatever it might be and get them to engage in some kind of review.

Senator KEMPTHORNE. All right. I appreciate that.

Now, Mr. Rosen and Ms. Hannes, either or both of you, if you'd respond to this, but you referenced incentives. Would you please give me a few examples? What are the incentives that we can provide to private property owners that would make them want to help us with species recovery?

Mr. ROSEN. Well, Mr. Chairman, there are a number of incentives, and the testimony itself provides a list, but in administering the Act, I think all parties need to be included in contributing to the success of recovery, planning, habitat conservation planning and other actions, and sometimes just the mere act of inclusion is an incentive for an individual to become involved.

Where the Act may be creating significant economic or social impacts, the impacts ought to be evaluated, and that information needs to be available during the process, and where the impacts are expected to be great, Federal assistance and incentives should be made available. Positive incentives, voluntary procedures include several categories: tax reform, farm programs, regulatory simplicity and certainty, technical guidance and information.

Inheritance tax laws, for example, could be changed as an incentive for a property owner to enter into some form of a protective agreement. As you know, inheritance taxes are problematic for many of the landowners. This is just one of the areas, and one of the other things is that if an individual takes an action which at the present time is perceived to be of benefit to the species, then there's some concern that that landowner not be brought back later when maybe more information becomes available and they have to go in and do something in addition, so some regulatory certainties such that if an individual takes an action now that they won't be penalized for that action at some time in the future.

Senator KEMPTHORNE. All right, thank you.

Commissioner Robertson, you talked about the candidate species situation.

Mr. ROBERTSON. Yes.

Senator KEMPTHORNE. Would you address from an economic aspect also what the practice has been of banks, perhaps with ranches or farms, when there may be either the listing or the announcement of a candidate species on that particular farm or ranch? What happens with loans?

Mr. ROBERTSON. Senator, the discussion stops right there. If in fact you are planning an activity, whether it be farming, whether it be timbering, whatever it might happen to be that requires some conventional resources from the bank, one of the first things they look at are the potential restrictions relative to endangered species, candidate species, proposed species, sensitive species, indicator species, whatever it may be. It plays a heavy role in any decision that's made to forward financing for any kind of enterprise for obvious reasons.

In the middle of whatever the enterprise may be—and of course you have seen examples, as have we, where a particular species was discovered—the enterprise stops, and if you happen to be in the lending position, that's not very good news. So it has a dramatic impact.

Senator KEMPTHORNE. Thank you very much.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Rosen, Oregon has chosen not to go under the 4(d) rule. Could you explain why that is so? In other words, as I understand—I got a little confused here because Mr. Robertson had the overlay with the red on the 4(d), but as I understand it, Oregon has not chosen to go under 4(d). Am I correct or incorrect in that?

Mr. ROSEN. Senator Chafee, I'm going to defer to Assistant State Forester Ann Hannes.

Senator CHAFEE. Fine.

Ms. HANNES. Oregon chose not to go the route of the 4(d) which Washington and California did, because it wanted to craft its own option. Furthermore, there is some protection under the Forest Practices Act for spotted owls, but mainly it was because Oregon wanted to craft its own option and alternative other than that that was proposed by U.S. Fish and Wildlife.

Senator CHAFEE. Now, I was very interested in the points that Mr. Rosen raised about the possibilities that we might have for innovative solutions to the foresting and the problems that arise with the Act on private lands, and those are good points. I think those are things that are worthwhile: considering changes in the estate tax law, for example, the so-called safe harbor, in which they would say to a private landowner, you've got X number of acres; you set aside a portion of that for the endangered species, and then if the endangered species spreads to the rest, forget it, you're still protected. Are you familiar with that so-called safe harbor approach, Mr. Rosen?

Mr. ROSEN. No, Senator, although I refer you to the last page of the attachment that I provided with testimony. There's a lengthy list of incentives, and I do know that there are groups being formed to add to this list of potential incentives that the Congress may consider in the kinds of opportunities that may be available to enhance the effectiveness of the Act in a nonregulatory way.

Senator CHAFEE. You've got that in your testimony attached to it?

Mr. ROSEN. In the attachment, the last page, page 12 has a list of those including inheritance laws, mitigation credits, cost sharing, incentives under other Federal laws such as the Taylor Grazing Act, farm bill——

Senator CHAFEE. Oh, yes, good. OK, fine. Well, those are good suggestions, and that's just what we're looking for, but that doesn't help on the public land, though, of course, obviously.

Now, Mr. Robertson, Mr. Rust presented this description of what he's doing in his county. Are those actions that he's described possible in your county likewise, or are the situations quite different?

Mr. ROBERTSON. Senator Chafee, we have had an aggressive program to diversify our economy for the last 15 years. Just south of this location you will see a new installation of Ingram Book Company, the largest book distributors in the country. If you go a little bit north of this location, you'll see ALCAN Cable, Bayliner Boats. We've made a conscious and a very aggressive effort to diversify our economy.

The problem is that the way governments are funded, county governments in western Oregon, is that there has been a built-in dependence because of the Federal law that fund county govern-

ments. In Oregon, as you may be aware, we have a constitutionally passed amendment, Measure 5, that prohibits local government from replacing revenues lost, for instance, the O&C revenues that we are experiencing losses in right now.

So we have made a very aggressive effort to diversify with some success. We intend to continue on that, but what we do best in this area is grow timber, and to ignore that, to lock it up is simply not a responsible management alternative.

Senator CHAFEE. Is it fair to say that the problems that the timber industry in this area is encountering are not solely due to the Endangered Species Act? Is that fair, or is that just—

Mr. ROBERTSON. Yes. No, that's fair. There are a multitude of problems, among them, of course, the Endangered Species Act.

Senator CHAFEE. Right, but other problems have arisen likewise—

Mr. ROBERTSON. Oh, absolutely.

Senator CHAFEE. Changes in the harvesting techniques?

Mr. ROBERTSON. No question about it.

Senator CHAFEE. Fine. Thank you very much, Mr. Chairman.

Senator KEMPTHORNE. Mr. Chafee, thank you very much.

Senator Packwood.

Senator PACKWOOD. Thank you, Mr. Chairman.

Doug, let me pursue another question. You passed very quickly in your testimony over what I think you said, that is that we are now cutting young stands of timber just as they're putting on value and they're gaining their growth. Would we have done this before the implementation of the Clinton forest plan?

Mr. ROBERTSON. No, we wouldn't, Senator, and that's one of the points that we wanted to underscore. It's one of the points that Commissioner Rust made. We have seen record harvests on private property for two reasons. I mentioned the implementation of the 4(d) rule scoping document. It scared people to death out here, because when it was first introduced, it gave the impression that people who had timber, whether it was to put their children through school, whether it was to use in their retirement, may not be able to access. The result was an unprecedented harvest of young, immature timber.

Senator PACKWOOD. I want to make sure I understand your use of the word "access." Mr. ROBERTSON. Yes.

Senator PACKWOOD. Do you mean to say that these people, who had otherwise managed their land intelligently, are cutting quickly for fear that they may be prohibited from ever cutting if they don't do it now?

Mr. ROBERTSON. That's correct.

Senator PACKWOOD. And so it really comes down to a choice between practicing good land use management and reforestation, or getting the cut out now. If in 5 or 10 years from now, whether it's the 4(d) rule or whether it's something else, and I'm prohibited from cutting at all, I'll cut now. If my choice is between cut now and unwisely, or never cut, I may cut now and unwisely.

Mr. ROBERTSON. Unfortunately, Senator, that's a very accurate description of what many people, many landowners in this county and this region face, and that has to be fixed. As we mentioned,

it's not good environmentally, it's not good economically, and it's very poor public policy.

The other reason there is a tremendous emphasis on cutting private timber is because, as you can see, our county is simply a microcosm of what's going on throughout the region. The access to the management on the Federal lands has simply been shut down. What you see on the colored map represents mainly the response to one species. In our case, it doesn't take into account the sea run cutthroat, the Umpqua chub and the variety of species of coho and chinook salmon, the troubles of which generally are generated by climatic conditions in the ocean over which we have no control. When those species come along, this county, along with this region, will be virtually shut down in terms of timber production. That's not an acceptable option in our view.

Senator PACKWOOD. Commissioner Rust, you very briefly mentioned not placing dams in fragile watersheds. Give me your definition.

Mr. RUST. I think that dam down on the Rogue River that has shown to block—

Senator PACKWOOD. You mean Savage Rapids?

Mr. RUST. Right. That's an example of one. We took a dam out of the north fork at West Fir this year in order to allow wild fish passage.

My general point was that the Federal Government ought not to be making things that harm species that are endangered or threatened.

Senator PACKWOOD. In retrospect, should we or should we not have put the dams in the Columbia River?

Mr. RUST. I heard your remarks at the press conference. I think it's a big stretch, and I think the—

Senator PACKWOOD. What's a big stretch?

Mr. RUST. A big stretch to suggest that we ought to have the Endangered Species Act modified to the extent, because if we don't, the salmon will go extinct and therefore the Act will force the removal of the dam.

Senator PACKWOOD. My question was should we have put the dams in the Columbia River?

Mr. RUST. That's a good question. I think in retrospect if we had it all over to do again, maybe not, especially if we had solar and wind energy and some of the other exotic energy sources that are, you know, coming into the 21st century. I'm sure we wouldn't have made a tradeoff to the drastic extent that we did. I think we would have made far fewer dams had we known the effects that they're having on salmon runs today.

Senator PACKWOOD. Well, then let me ask you this, although you may be more optimistic than I am. As we're coming into solar and wind and other forms of energy, should we then consider taking the dams out on the Columbia River?

Mr. RUST. I think we should examine that idea, yes.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

Senator KEMPTHORNE. OK. I want to thank very much the panel for all of your input.

Commissioner Rust, I had another question, but rather than ask it, if you do not have included in your testimony that tax incentive

that you had discussed, I would love to see how that would that would work.

Mr. RUST. I would. Senator, there was one other point that came up, and it had to do with harvesting these rather immature trees, and I agree with much of what Commissioner Robertson has said, but there is one other reason why people are cutting those trees. They're getting record prices for those logs right now, all-time record prices for certain species, and I would submit that that's one of the driving forces. People like to make money and are cutting trees fast.

Senator KEMPTHORNE. Senator Chafee.

Senator CHAFEE. Mr. Chairman, just one question. Several of you—I know Mr. Rosen and Mr. Robertson both said that they wanted to increase the State's involvement, and that's a point I'm interested in, and I might contact you directly on that because that's an interesting suggestion. What should we do to get the States more involved, and obviously the States are closer to the people than we in Washington are, so thank you for the suggestion. I'll be back in touch with you. Thank you.

Senator KEMPTHORNE. All right.

Mr. JOHNSON. Mr. Chair, could I just add real quick that the other legislators who represent Douglas County, Senator Bob Kintigh, Representatives Bill Markham, Bill Fisher, and Jim Welsh, have specifically authorized me to talk for them today. They all wanted to be here, but we're in the last throes of trying to close our session, and they couldn't be here. I've submitted Bill Markham's testimony in writing for you also. Thank you.

Senator KEMPTHORNE. All right. We appreciate it all very much.

Mr. ROBERTSON. Thank you.

Senator KEMPTHORNE. Thank you.

Let me now call the second panel forward. We have Mr. Mark Simmons who is the Northwest Timberworkers Resource Council from Elgin, OR; Mr. Glen Spain, regional director of Pacific Coast Federation of Fishermen's Associations from Eugene; Mr. Jim Hallstrom, general manager of Zip-O-Log Mills, Inc., Eugene, OR; Ms. Liz Hamilton, the executive director of Northwest Sportfishing Industry Association, Oregon City; Mr. Paul Ehinger, Ehinger & Associates, Eugene, OR; and Mr. Ernie Niemi, ECO Northwest, Eugene, OR.

With that, let me call on Mr. Mark—is it Simmons?

Mr. SIMMONS. Yes.

Senator KEMPTHORNE. All right. Mark, if you would lead off.

STATEMENT OF MARK SIMMONS, NORTHWEST TIMBERWORKERS RESOURCE COUNCIL, ELGIN, OR

Mr. SIMMONS. Thank you for allowing me the opportunity to testify before you today, and I want to especially recognize Senator Bob Packwood from here in Oregon and his fine staff. We very much appreciate all your work in getting this hearing here today.

Senator PACKWOOD. Thank you.

Mr. SIMMONS. I work in Elgin, OR as a heavy equipment mechanic, and I'm a spokesman for the Northwest Timberworkers, on the board of directors of the local chamber of commerce for the

Grant/Union County, and I'm the president of Western Council of Industrial Workers, Local 2910.

The social and economic implications of the Endangered Species Act implementation are far more horrible and felt far more widely than we thought possible. When the Endangered Species Act was first adopted, it seemed like a good idea. Protecting endangered plants and animals from extinction is the moral thing to do, but as time has shown, it is being used as a club to punish the productive communities and citizens of rural Oregon.

In Northeast Oregon the world is falling apart around us. We have lost many sawmills in the past several years, four of these in the last 14 months. In Wallowa County with a population of 7,000 people, 253 of the best paying jobs, family wage jobs have been lost. The most recent of these was Rogge Wood Products in Wallowa where several of my friends were employed. It closed just last Friday. You should note that Rogge Wood Products tried for several years to gain the release of a timber sale they had purchased. That sale had enough volume on it to run their mill for over a year, but they were unsuccessful in gaining this release due to implications of Endangered Species Act management constraints.

In Joseph, where the Boise Cascade sawmill was closed and torn down, the Main Street area where the small tourist shops are appears to be doing quite well, but the businesses that rely upon year-round residents are really suffering. Jerry's Main Street Market in Joseph is the kind of community store where you stop in for lunch, some pop or beer on the way home or the things you need to pick up, and their customer count since the mill closure is down 300 per week, and they've recently had to lay off five more employees. Now that may not sound like a whole lot, but in rural Joseph, a town of only 1,000, five employees is very significant, on top of the mills going out.

The unemployment rate in Wallowa County was at 15.9 percent before the Rogge Mill shut down last Friday. In fact, the three Oregon counties with the highest unemployment rates in the State are Harney, Grant and Wallowa, all located in rural eastern Oregon. The high unemployment rates reported for each of these counties are all directly related to reductions in available timber due to the Forest Service's misguided attempt to implement the Endangered Species Act.

Some might think, well, fine, let's let these woods and mill workers find something else to do, but there aren't many options available to mill workers in rural eastern Oregon. In most cases there's not even any retraining available without relocating closer to a large metro or urban area.

Put yourself in the position of an eastern Oregon mill worker who has worked in the timber industry all his life. Suddenly you're thrown out of work, and you're strongly advised to seek retraining. If you can successfully complete the training, and statistics show that the overwhelming majority do not, and also survive financially during the process, you are then eligible to compete in the job market with 20-year-olds who are quicker and have their whole working careers ahead of them for jobs that do not pay nearly what you need to support yourself and your family. The average wage the

Boise Cascade mill in Joseph paid before it closed was \$13.68 an hour.

The situation in eastern Oregon is maddeningly frustrating. Not only are our people suffering, but our forests are suffering also. Senator Hatfield in an article in the April 10 Oregonian said that:

We are experiencing a forest health crisis of epic proportions. Three years ago 50 percent to 70 percent of the forests in eastern Oregon's Blue Mountains were considered dead or dying.

A forester once told me that every bug or disease that kills trees has a home in Northeast Oregon. Our forests are in need of management to restore them to a healthy, productive and vibrant State, but we have extreme difficulty implementing even the most carefully planned and well-intentioned restoration projects because of management constraints that are put in place by the Endangered Species Act. We have thousands of acres with literally billions of board feet of fire-killed trees that should be put to use, but because of the Endangered Species Act we are not able to salvage.

The bottom line is not only are we losing our economic livelihood, but we are also losing our forests. We are told that we can't manage within 300 feet of streams because the chinook salmon is endangered, yet over 87 percent, actually 87 percent of our suitable salmon habitat is unused because there are no fish returning to Northeast Oregon, to mountain streams there. We are told that we can't cut any trees over 18 inches in diameter, because those trees are considered old growth no matter how old the trees are because some species preserve it, but the conditions of our forests are such that fires we have been experiencing burn through the forests and kill all the trees, and that destroys the habitat.

What are we to do? Among working men and women "only in America" used to be something we said with great pride, but now it is something that we say in a matter of wondering or as a joke to wonder about the direction our country is headed and why there is so much controversy over how our natural resources are managed.

The forests, rivers and valleys are our life's blood, and we are connected to them and we care about what happens to them more than anyone else can or does. We are the law-abiding salt of the earth that makes this a great country. Don't allow our needs, the needs of the working people and our rightful place in this debate to be ignored any longer. Don't relegate us to retraining that doesn't work and is not wanted, to uncertainty, to food banks that struggle to meet demands and to shame when we can no longer provide for ourselves and our children. Thank you.

Senator KEMPTHORNE. All right, Mark. Thank you very much.

Mr. Glen Spain.

STATEMENT OF GLEN SPAIN, REGIONAL DIRECTOR, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, EUGENE, OR

Mr. SPAIN. Thank you, Senators and distinguished guests for the opportunity to be here. I also want to take a few seconds to thank the fishermen. We put out an alert, a bulletin to 1,300 commercial fishermen and fish businesses. A lot of those people are here today.

You are in the timber and the fish capital of this State. Fishing is the No. 2 forest-dependent business and industry in this State as well. In many coastal areas it exceeds timber in terms of jobs and economic impact. We are a regulated industry. I'm the regional director for the Northwest Office of Pacific Coast Federation of Fishermen's Associations. We are the commercial fishing industry. We're the people who put food on America's table, create jobs in our coastal and inland communities.

The issue for us with the ESA is jobs for the future. Our industry has lost over the past 20 years 72,000 family wage jobs because of salmon and habitat decline, since 1988, 47,000 of those jobs. That means our families are out of work because of lack of protection. Our coastal communities are in a deep economic and social depression because of lack of protection.

Last year every coastal county from San Francisco Bay northward to the Canadian border declared an economic disaster because of fishing declines. The States of California, Oregon, and Washington followed. The President of the United States followed with an economic disaster declaration.

We need the Endangered Species Act to bring those stock back. The ESA for us means—what is a survival, what is at risk for us is at least 72,000 family wage fishing jobs in the sport and commercial fishery combined. The ESA is not a job killer. It has been mismanaged in some respects, there are changes that we would certainly propose, but as a regulated industry, we are more regulated under the Endangered Species Act than the timber industry is. We face listings throughout this region. We face listings coast-wide in every area of this country. We are adapting.

We believe that is the biological and ultimately the economic bottom line that the Endangered Species Act protects. Without those species, without those stock, without those salmon runs and without protection of those runs, they will be extinct within the next 20 years in the lower 48. That means literally almost 100,000 jobs could be gone.

Now the ESA is not perfect. We have extensive recommendations in our testimony that you'll find, and we'll be more than happy to work with you and any members of your staff to work out a balance, but one thing that should not be in question is the need for the Act to protect our economy. The Act itself protects the biological bottom line. That biological capital, our natural capital, is the source of our industry, the source of many other industries and ultimately the source of all economic wealth. By depleting that, it's like taking a body part. Which body part are you willing to give up this year and next year and next year? Pretty soon you hit vital organs, and that's what we are faced with, with the decline.

The problem is not the ESA. The problem is the decline. We are destroying whole ecosystems because of mismanagement and negligence. We know better now. We need to get that knowledge into the public policy arena and make use of it.

This is not just a salmon problem. This is a nationwide problem for us. The commercial fishing industry and recreational fishing industry combined are \$111 billion of the economic strength of this Nation. Fully 80 percent of that is from species that are habitat sensitive, and that habitat is going downhill. More and more of

those species are either candidates or will soon be candidates for ESA protection.

We need to get to some very basic changes in the Act. One, ecosystem protection: clearly species-by-species work doesn't work. We need to have strict time limits on the recovery process. If it's going to create dislocation, let's get it over with. Certainly our industry takes that attitude. If we're going to be and we are regulated, let's get it over with and get to recovery. We need real recovery, not just maintenance on life support indefinitely at costs to the public taxpayers. We need science-driven decisions, not politically driven decisions. We need more landowner and private property incentives and ways to reduce and minimize that conflict.

Among other things we've suggested is a nonjudicial way of resolving those landowner and agency disputes that's speedy and doesn't require a huge investment, and most important, we need to make the Act more cost effective. We certainly would propose and that any measure in the Act to require the recovery plan to look at cost effectiveness, to have more public input from industries and people on the ground, because that's where the solutions really come from. Those are the people that need to buy into it.

And one of the primary things that, you know, we talk about basing it on good science, we have to fund the good science. You know, I have two quarters in my pocket. That is my annual per capita share of ESA recovery effort. Fifty cents per year per citizen is our investment in ESA recovery under the current budget. That is not sufficient.

So we will certainly work with your office, and I would urge you to consider that there are whole industries, major industries where ESA protects our bottom line. Thank you.

Senator KEMPTHORNE. All right. Glen, thank you very much.

Jim Hallstrom.

STATEMENT OF JIM HALLSTROM, GENERAL MANAGER, ZIP-O-LOG MILLS, INC., EUGENE, OR

Mr. HALLSTROM. Thank you, Mr. Chairman, for this opportunity to speak with you today. I'm Jim Hallstrom, president and general manager of Zip-O-Log Mills in Eugene, OR. We are one of many small family owned sawmills in the Pacific Northwest. We've been in operation for 50 years, and I'm a third generation owner/manager. I am here representing my 33 remaining employees and their families, a reduction from 118 employees I had less than 5 years ago.

We are living proof of a company going through the economic nightmare of trying to survive under the Endangered Species Act application, in specific, the listing of the Northern Spotted Owl. In the last few years we've laid off employees for the first time in our company's history. Our company, like many of the small sawmill businesses in this area, is almost 100 percent dependent on the public timber supply from the U.S. Forest Service and the Bureau of Land Management. Our timber supply comes primarily from the Willamette National Forest, which in the 1980's sold between 600 and 700 million board feet annually. The President's plan, option 9, calls for 136 million board feet annually from this forest, or only about 20 percent of historic levels.

The proposed timber sale plan for the first 6 months of the 1995 fiscal year was 3.8 million board feet, but the actual volume sold was .5 million board feet, or less than one half of 1 percent of the present plan option 9. Option 9 is not working. It would take our mill just less than 1 week to consume the volume that was sold during the first 6 months of this last fiscal year.

The dramatic cutback in the timber supplies as a result of the Endangered Species Act has caused the major cutbacks in our employment level. It included three different layoffs, one back in February 1991, one in July 1992 and the most recent one in November 1994 where I laid off 21 employees.

One of the employees discovered that going through the dislocated workers program allowed him to use previous plumbing experience to get accepted into a plumber apprentice program. He started out making \$4 per hour less than the job he left, but within a few months his past experience and test scores increased his wage \$2.50 per hour, and within one and a half years he should be making as much as he was working for me. And a few of the others laid off got jobs with other forest products firms, but these are the positive stories.

Some of our dislocated workers had a difficult time trying to figure out what to do with their lives. Some have taken 6 months unemployment benefits and will decide what to do later. One employee that was still working after the last layoff had an emotional breakdown, did not show up to work 1 day, and we later found out that he'd walked out on his family. The emotional strain incurred when faced with actual or potential unemployment creates very anxious and volatile times for all concerned.

In the past 2 months I've had three key employees, each of which had over 10 years experience with the company, succumb to uncertain futures and quit their jobs. In each case it was a very traumatic decision for both themselves and their families. Employees forced to relocate whether due to a layoff or a career change must uproot their families and leave friends and relatives behind. Most of our employees have spent many years in this community and would rather remain here.

I think part of what's been left out in the economic impact is all the businesses that supply parts and services to forest product industries, companies like myself. I took a survey and found out that most of these companies are small businesses of less than 50 employees. I did this survey back in 1991. I have enclosed the results of that in my report.

The forest products industry is a large and basic industry that has been in the Pacific Northwest for over 100 years, and it's not surprising to see a strong dependence of other businesses on it. Any substantial reduction in the potted owl, and the subsequent implementation of associated ESA requirements has not only caused major damage to the forest products industry but will bring about catastrophic damage to a large sector of the remaining economy represented by these support businesses.

I'd like to give one example of a company where the president wrote me a personal letter where he indicated that he had 41 employees back in August 1990. He laid off six people in December because of a logging slowdown. He laid off nine more so far this

year for the same reason, and today—this was back in 1991—we're looking at four more going all because of logging shutdowns. This company had been in business for 64 years and never laid anybody off. That's just one example.

I think another factor that has not been talked about much is the secondary manufacturing industry. This industry has been promoted for saving grace for the jobs of forest products industries in general, and I think what's happened—

Senator KEMPTHORNE. Jim, I'm going to have to ask if you could begin to complete.

Mr. HALLSTROM. OK, I'll wrap it up.

Senator KEMPTHORNE. Thank you.

Mr. HALLSTROM. Basically, I think Catherine Maynard said it best up at the forest conference: We've learned to make more from less, so we can make something from nothing. And I guess a couple of specific recommendations, I guess, for changing the ESA: the listing decisions should be based on verifiable science which has been already said. The other thing is limit appeals process, and I think the other thing is I'd like—I don't have as fancy visual aids as the previous panel, but I'd like to use this deflated basketball and indicate to you this represents the current condition of our company and many companies like ours in this area. They're deflated to 50 percent or even maybe 30 percent of their historic employment level.

What is it going to take to get back to a normal level? You can start by fixing the ESA. The ball is in your court, Mr. Chairman, fix the ESA or we will become another spot on Mr. Ehinger's mill closure map.

Senator KEMPTHORNE. OK. Jim, thank you very much.

Liz Hamilton.

**STATEMENT OF LIZ HAMILTON, EXECUTIVE DIRECTOR,
NORTHWEST SPORTFISHING INDUSTRY ASSOCIATION, OR-
EGON CITY, OR**

Ms. HAMILTON. Good morning, Chairman Kempthorne and Senator Chafee and Senator Packwood, and welcome to beautiful Oregon. We're glad to have you here and thank you for the opportunity today.

Senator KEMPTHORNE. Thank you.

Ms. HAMILTON. My name is Liz Hamilton. I have the good fortune of serving as executive director for the Northwest Sportfishing Industry Association. We represent hundreds of businesses and thousands of jobs in the Pacific Northwest and beyond. From warms to downrivers, and from major retailers to the ma and pa on the corners, the men, the women and the businesses that I work with are dependent on and dedicated to helping salmon resources.

In addition, our organization serves as an umbrella for several sportfishing clubs and other trade groups. Our industry generates nearly \$3 billion to the overall health of the Oregon and Washington economy. NSIA businesses have a vital interest in the recovery and the restoration of the Pacific Northwest salmon runs.

For us, salmon means business, our businesses. Therefore, the Northwest Sportfishing Industry Association supports an Endangered Species Act which protects and conserves this critical re-

source. To produce the salmon recovery that our businesses need and the public so strongly supports, all the players must be at the table and make a contribution. The ESA mandates this and salmon will not recover without it.

As recently as 1991, the Recreational Salmon and Steelhead Fisheries provided this region with measurable benefits: over 43,000 jobs spread out the region; \$1.3 billion in total economic output; \$16,187,000 to State and local sales taxes; \$16 million to other State taxes and \$76 million to the Federal Treasury. Our families, our businesses and our jobs are as diverse and geographically dispersed as the salmon that we rely upon. These jobs are distributed in every community throughout the Northwest.

An example I wanted to bring today was the Columbia Watershed. It once harbored the largest salmon runs in the entire world. What we in the sportfishing industry want you to understand is this: the Upper Columbia chinook population are on the same downward trend as the endangered species in the Snake River following quickly behind them.

In order to comprehend the magnitude of these reductions, consider this. In the mid to late 1980's we had 2.5 million returning adults to this system. Now we have less than a million. I would ask how many of you could run your businesses on a 60 percent reduced opportunity, on a 60 percent reduced supply. In the last 10 years this region has lost nearly 50,000 jobs in the recreational salmon and steelhead fishing industry, and a billion dollars in personal income. These figures represent more than dollars lost to individual businessmen: these are employees laid off, they are dollars not paid in taxes, dollars not spent in our communities and pain to human beings.

Unfortunately, our industry could not afford to send our few remaining employees here today as other industries could. I wish we could. We in the sportfishing industry have been heavily regulated by the Endangered Species Act. We have accepted these restrictions when they become part of a meaningful recovery effort where each of the industries who have had a hand in the salmon's demise have a role in its recovery. However, recognize this: In the Snake River, the endangered fish, all fishing accounts for less than 5 percent of these fish mortalities. An end to harvest will only delay their extinction.

What the bald eagle is to this Nation, the salmon is to the Pacific Northwest. When the bald eagle became endangered, we did not as a Nation decide we don't need to save the bald eagle in the lower 48, we have plenty of them in Alaska. That would be unthinkable.

As I prepared to speak before you today, I found myself thinking about the salmon as our symbol in the Northwest, and of the recent public opinion poll showing strong support for saving salmon even at increased taxes, power rates and personal sacrifices. Given the incredible amount of determination, guts, dedication and spirit that our earliest settlers to this region displayed, it is easy to see why we have chosen the salmon to be the symbol of our American spirit. We are enterprising, we are hardworking, and we accomplish our goals in the face of insurmountable odds. How like the Snake River salmon that travels over 900 miles from the ocean back here to home, this American spirit is.

You are the leaders in this greatest of all Nations. Other notable leaders passed the Endangered Species Act in order to maintain a balance between man's need for progress and all creatures including our needs for a healthy environment and a balance between a sustainable future and short-term profits. But when we look at the balance, remember from the Old Testament when the torrential rains came and the animals came two by two to Noah's Ark, Noah did not use an economic scale to measure their values. The animals were all received and recognized as being a part of the balance.

The citizens in the Northwest once again are at a crossroads, and once again they have spoken out and chosen to go against the odds and against the naysayers. The people of the West will not listen to those who would turn us aside from our goals by saying it costs too much or there is not enough time or we just have to let the salmon go. The ancestors of our pioneers do not accept these falsehoods and they have spoken, for if we can put a man on the moon, we can save salmon.

Thank you for the opportunity to speak today.

We have some suggested changes in the Act, but I've put them in the written testimony.

Senator KEMPTHORNE. All right. Liz, thank you very much.

Ms. HAMILTON. Thank you.

Senator KEMPTHORNE. Mr. Paul Ehinger.

STATEMENT OF PAUL EHINGER, EHINGER & ASSOCIATES, EUGENE, OR

Mr. EHINGER. Good morning, Mr. Chairman, Senator Chafee, Senator Packwood. I'm glad to be here. I would like to first give you a disclaimer in the list of panelists. I am not an economist. I am simply a fellow that's worked in the forest industry for the last 49 years and a person who has watched the passing scene in the last 8 to 10 years with a great deal of stress. I'm at the present time an independent consultant, although I do serve on the board of an independently owned plywood company in Eugene and also the board of a privately owned company in Laclede, ID, and so I'm in daily contact with what's going on.

It's important that you're here in Roseburg, but it's more important that you understand why Roseburg. Roseburg is an area where the mills historically prior to the onslaught of the spotted owl took 60 percent of the material came from Federal forests. They didn't come from private forests, they came from Federal forests, and when the whole area, when Federal forests are involved, when somebody burps in Washington, DC., it affects them out here, and that's what we've had. We've had a giant hangover in Washington, DC that's got us in real trouble.

In 1988-1989, 2.5 billion feet of Federal timber were regularly harvested in the six southwestern counties of Oregon, which run from Eugene, which is about 100 miles north of here, to 100 miles south of here to the California border. Today, the government under the plan, the option 9 plan, is selling 50 million feet the last 3 years on the average, 2 percent. So when you only are getting 2 percent of what was a 60 percent requirement, it doesn't take a genius to see what's happening to the industry.

This is going on throughout the West and other places, but in the six counties in southwestern Oregon, we produced 9 percent of the lumber produced in the United States, the softwood lumber. We produced 18 percent of the softwood panels produced in the United States. That is down to 12 percent for panel, 7 percent for lumber. Still, this six-county area produces more plywood than any other State in the United States, and it produces more lumber than any State except California and Washington.

It's big business, the economy lives on it, and when you spread out to the other parts of the State, it may be lesser volume, but very often it is more dependent because of a dominance of the small towns of the forest products industry.

I would like to comment on one comment that Senator Kempthorne made. He said the government shouldn't turn its back on the people out here. I can tell you that the people in this industry feel the government has turned its back and has kept it turned for an extended period of time. I would ask you to just look at page 3 of my report that you have in front of you, and there is a picture of 175 communities in the five western States that have lost a mill, one or more mills in their communities, and 242 mills are represented in that 175 towns.

It's nice to talk about diversification of economy, the high-tech and the other things, but in the first part of this year, mills closed in Burns, they closed in Hines, they closed in Lakeview, and they closed in Fredonia, AZ, and if any of you watched TV yesterday morning, you saw the story of Fredonia. High-tech diversified companies don't go there.

The cost has been horrendous for these States, these small towns, and it's continuing, because in Idaho in the panhandle, the difference between harvest of Federal timber and sell was 210 million was harvested last year, only 20 million was sold. You're going to lose five more mills up in that panhandle just because of the failure of government timber unless there is a reversal and modification. Those things follow as sure as night follows day.

One other factor—and I have details on the whole spotted owl region, but I would like to point what the consumer has paid for this 3-year folly, as I call it. The price of lumber and plywood has cost the consumer of this country \$20 billion over the 3-year period in what I call excess price, which exceeded the normal inflation by a substantial amount. We've had 25 percent inflation on lumber, we've had 18 percent inflation on plywood over the 3-year period, albeit the market has come down. The cost has been high, the cost has been unnecessary, and we could have transitioned. If it was necessary, we could have transitioned to where we would have to go, wherever that may be.

At the present time in the spotted owl area, only 170 million feet was sold last year. The plan promises a billion. The Clinton people promised 2 billion the first year and 3 in two. As Mr. Hallstrom said, it's not working. Thank you.

Senator KEMPTHORNE. All right. Paul, thank you very much.

Ernie Niemi.

STATEMENT OF ERNIE NIEMI, ECO NORTHWEST,
EUGENE, OR

Mr. NIEMI. Thank you, Senator. As with everybody else in this room, I very sincerely appreciate your coming to Oregon today.

In your opening statement you directly identified the central issue: How can we protect species and have a healthy economy? As you continue your deliberations over the coming months. I hope you will bear in mind the following. Oregon has a healthy economy. Since 1989, for example, it has added 160,000 new jobs. There are many reasons, of course, why the State's economy is healthy, but with respect to the Endangered Species Act per se, it is clear Oregon's economy is healthy not in spite of the Endangered Species Act, but because of the Endangered Species Act.

There are multiple mechanisms by which this occurs. Let me address two of them. One is that the Endangered Species Act has helped to stop practices such as wasteful logging and road building in old growth forests that generates a tremendous amount of sediment in the streams. The Endangered Species Act has helped to stop that generation of sediment.

So why is that important? It's important because it imposes costs on households, on taxpayers and on businesses. By helping to reduce those costs, the Endangered Species Act in effect has reduced a tax that has been imposed on others in this State, and by reducing that tax, it has helped stimulate economic growth throughout the State. As it has reduced those costs, it also helps to stop the impact on jobs in the recreational fishing industry, the commercial fishing industry and other industries, as you've heard from other witnesses.

The second mechanism by which the Endangered Species Act has helped bolster the economy of Oregon occurs in conjunction with a tremendous investment of time, money and energy that this State has made since middle 1980's as it has tried to look at the transition taking place in the State's economy and develop strategies for achieving sustained growth in jobs and incomes.

As the State has gone through this process it has recognized that the State's traditional industries that are of concern in much of the debate over the Endangered Species Act, such as the timber industry, those industries simply cannot, they will not generate sustained growth in jobs and incomes in the future. Quite the contrary: they will generate a decline in jobs, they will generate a decline in income. That's not to say they're bad industries at all, that's just the reality of them.

To the contrary, there are other parts of this economy that are quite dependent on having a healthy natural environment. The Endangered Species Act has helped to reinforce the State's efforts to accomplish, to maintain, to restore a healthy environment. By reinforcing the State's efforts, the efforts of communities throughout the State, the Endangered Species Act has helped diversify the State's economy, it has helped generate new jobs, it has helped attract people to this State, it has helped generate higher incomes.

What this means then is that a reduction or a reversal, a repeal of what the Endangered Species Act has accomplished in this State threatens serious damage to the economy of this State, and I hope

that as you proceed in your deliberations you take that risk into account. Thank you.

Senator KEMPTHORNE. All right. Ernie, thank you very much.

Mr. Simmons, I appreciate your testimony and the comments that you made. Now I think you referenced different mills that are still open, and in order to sustain those mills, why we're harvesting on private property. How long can we sustain that, and are we now, in fact, over harvesting on private lands in order to sustain those mills?

Mr. SIMMONS. I would like to mention a mill that closed in Joseph, RY Timber, just this past winter. It's going to reopen by a group of private investors that have come in, and it's a situation where you hope somebody can but feel sorry for them if they do, because the bottom line is Federal timber availability. If we do not have any more Federal timber available, the mills aren't going to last, and that goes for all the mills in Northeast Oregon.

There is some over cutting going on on private lands right now. People are afraid that regulations are going to preclude them from any future harvesting, and the fact is it's being done. Some over cutting is occurring on private lands, but people are running scared.

The conditions on Federal lands just are not sustainable, and if we can't do any management there, well, eventually there will be nothing there either, because it will just burn up and it will all be gone.

Senator KEMPTHORNE. Mr. Hallstrom, I appreciate the survey that you provided us a copy of. When we talk about jobs—and we've heard from different panelists this morning that there may have been a net gain of jobs, there may have been a net loss—we do know there has been change in job types. I think Mark referenced the average wage was \$13.68. You went from 118 employees down to 33 currently? Those who have been displaced that have found new employment, can you tell me, what sort of wages are they earning? Is it a loss of wage, although they are employed?

Mr. HALLSTROM. In a lot of cases it has been a loss in wage, because they've gone to work in the service industry, and as we all know, the service industry does not pay the same wage levels as the manufacturing industry. In our particular operation, the wage level averaged between \$11 and \$12 per hour, and basically they're just having a hard time replacing that type of family wage job in other sectors of the economy.

Senator KEMPTHORNE. Jim, also, it's been suggested that because of forest practices, because of the logging and the roads that are put in that it leads to the erosion which then goes to the rivers and then it destroys the fish habitat. Would you please respond to that?

Mr. HALLSTROM. I think this is all things that have been taken out of a book that was written in 1940 or 1950. Those types of forest practices are not going on now. We've got the strongest forest practices act of any State in the union, and everyone who is involved in the industry and everyone that supervises the industry from a regulatory standpoint makes sure that we are not damaging the environment. We can go out, we can get commodity outputs out of the forests and also preserve habitat for wildlife and plants. It can be done. It is being done today as we speak.

Senator KEMPTHORNE. All right. Mr. Niemi, let me follow up then with the comments that you had made. You feel that the ESA is absolutely necessary in order to prevent certain forest practices. Your comments on the Oregon natural resource agencies: Do you feel that they're doing a good job, or do you feel that you need to have the Federal Government tell Oregonians how to practice in the Oregon forests?

Mr. NIEMI. First of all, let me just clarify. I'm not saying that the Endangered Species Act is the only way to accomplish some of these objectives reducing the wasteful practices of protecting species. There may be other ways to crack that, I don't know, and that's clearly the task that you've assumed.

In terms of is there a Federal role, I think there is a Federal role in situations where the ecosystem and the regional economy affected by ecosystem decisions crosses States lines. I think that's clearly the case in the Pacific Northwest. Whether it is the Upper Columbia River Basin, that certainly covers four States, Washington, Oregon, Idaho, Montana; it even extends into Utah and Wyoming and the like. I think there certainly is a role there, because they are Federal resources; one State alone cannot make these decisions.

Senator KEMPTHORNE. OK, all right. Ernie, thank you very much.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Ms. Hamilton and Mr. Spain, both of you, we have the Endangered Species Act now, and yet the salmon is declining drastically. Maybe it isn't working. We are undergoing these tremendous declines that you mentioned, Mr. Spain, in the loss of jobs, the loss of the fisheries, the loss in the salmon. What more can we do than we're doing?

Mr. SPAIN. If I could answer that first. I think the reason that the ESA was triggered late, almost too late, is threefold. No. 1, poor funding to get the science required to make the decision, No. 1. We need to fund better science if we're going to have science driven decisions.

No. 2, I think that there was fragmentation among jurisdictions, among States, who was responsible. In the Columbia River alone, my last count was 45 different governmental agencies had some piece of the puzzle, so that was a difficulty right there.

And I think the third reason is that we have been looking at it species by species, and as you know, each salmon run can be considered genetically distinct. Salmon runs fit into their stream like a key fits into a lock, and so that creates a biological puzzle of great magnitude. What we need there is an ecosystem approach.

And furthermore, the ESA is not intended to prevent species from declining. It's intended to prevent them from extinction. We need an act that prevents them from declining to begin with and keeps them off the listing of a slide downhill to end with, and I think that those are things that we ought to be looking at is prevention rather than cure when the options, when the management options, are so limited and the crisis is so intense.

Senator CHAFEE. Well, I think that is a good suggestion. That comes with the suggestion others have made about protecting the

ecosystems and so forth, but you heard Mr. Hallstrom's statements that the lumber along the river banks is not permitted here in Oregon, and what do you say to all that?

Mr. SPAIN. Well, let me answer that. I've served on the board of forestry advisory committees and the boards of forestry in California and in Oregon. I helped craft and negotiate the current stream rules, riparian protection rules in this State. They are better than they were. They are also hopelessly inadequate in certain respects. Those are now under study. There are ongoing monitoring programs, and they will be improved, and compared to Federal protections, they're one-third to one-fifteenth the Federal protection just in the riparian buffer zone alone. There are much greater protections in Federal forests and Federal lands of salmon runs. That's part of what option 9 was intending to accomplish. Option 9 was not an owl plan; it was a salmon plan more than anything else.

Senator CHAFEE. Mr. Hallstrom—

Mr. SPAIN. These are not the strongest forest practices in the country. They are in fact among the weakest.

Senator CHAFEE. You mean here?

Mr. SPAIN. In this State, yes.

Senator CHAFEE. Mr. Ehinger, the decline in the number of mills is distressing, and the figures you pointed out were alarming, but I was looking at a paper here that talked about the mill closings. In 1968 Oregon had 300 sawmills; by 1988 it had 165. In other words, there's been a tremendous decline, and these statistics show likewise for Washington. I don't have Idaho here, but take for Washington, the number of mills fell from 182 in 1978 to 118 in 1988. Has there not been just a drastic decline, setting aside the ESA totally?

Mr. EHINGER. There has been a decline in the number of mills for obvious reasons as mills modernize and things change.

Senator CHAFEE. I mean, is this an accurate statement? Could I just ask you this? Increased harvest levels have failed to increase jobs proportionately. Increased mechanization and harvesting, transporting and milling has lowered the labor required for producing lumber. From 1981 to 1989, while harvest levels increased by 44 percent in Oregon and Washington, there was no increase in employment. Does that sound logical?

Mr. EHINGER. When you take short spans, you get anomalies, but let me tell you something. In Oregon, and the same is basically true in Washington, the volume or the number of jobs is directly related to the per thousand or million board feet cut, and for the last 40 years, where there have been ups and downs, the number of jobs per million board feet cut has been 8.5 to 9. It goes up sometimes to 10, it comes down to 7, but it stays in that area.

When you cut the volume of timber, you cut the jobs. So for every million board feet of timber you cut, you cut 8 jobs out of the wood products economy. I've got it tracked for 45 years.

Senator CHAFEE. Thank you, Mr. Chairman.

Senator KEMPTHORNE. All right. Senator Chafee, thank you.

Senator Packwood.

Senator PACKWOOD. Ms. Hamilton, on page 4 of your testimony you say at least 80 percent and in some species up to 95 percent of all the human caused mortalities of these fish are the hydro-

electric dams. Mr. Spain, you have a similar figure. I think you said 95 percent, am I correct?

Mr. SPAIN. Yes, those come from State agencies.

Senator PACKWOOD. Yes, but you agree with them?

Mr. SPAIN. Well, we basically get the same figures from the same State agencies. Their scientists can verify those figures, yes.

Senator PACKWOOD. But, well, do you agree with them?

Mr. SPAIN. Do I agree with them?

Senator PACKWOOD. Yes.

Mr. SPAIN. That's what the science shows, and I try to base my decisions on the facts and the science involved. Yes, I do agree with them.

Senator PACKWOOD. And Ms. Hamilton.

Ms. HAMILTON. We rely upon these public servants here in our State for those figures, yes.

Senator PACKWOOD. OK. Now, the National Marine Fisheries Service commissioned an independent group of scientists to come up with a solution, and the Bevan group comes up with basically barging, and did not identify spill as a workable solution. Do I state that correctly?

Ms. HAMILTON. That is the stand of the Bevan team, yes.

Senator PACKWOOD. Yes. A scientific decision.

Ms. HAMILTON. Well, you know, in reference to the Bevan Plan that came out last year, that plan has been subject to scathing peer review here in the region.

Senator PACKWOOD. I understand that. This is a scientific decision you don't like.

[Applause.]

Ms. HAMILTON. I will tell you that the public servants in this region that we trust and depend upon and confer with daily because our businesses depend on the decisions that they make, do not agree with it either. The Bevan Plan was thoroughly, thoroughly reviewed in the region, and—

Senator PACKWOOD. Well, you agree with the scientific decisions that agree with your conclusions.

Ms. HAMILTON. I agree with the public service science; I have trouble with the science that money buys. Yes, that's an accurate statement.

[Applause.]

Senator PACKWOOD. And you are accusing public servants—

Senator KEMPTHORNE. Excuse me.

Senator PACKWOOD [continuing]. In the National Marine Fisheries Service of having bought a fraudulent scientific opinion?

Ms. HAMILTON. These—

Senator PACKWOOD. I mean, these are public servants that asked for this.

Ms. HAMILTON. The Bevan team's plan is not what's on the table right now on the Columbia River.

Senator PACKWOOD. No, I understand that.

Ms. HAMILTON. OK. So that plan is not what we're currently discussing. In fact, they don't agree with the existing plan that's on the table right now, from the correspondence I've seen.

Senator PACKWOOD. And are you convinced that increased spill will solve your problem?

Ms. HAMILTON. We're very confident, yes, that increased spill is what fish need to get safely past the dams and travel in river rather than in trucks, yes.

Senator PACKWOOD. And if we try it and it does not work, will you quit complaining?

Ms. HAMILTON. Well, you know, when the barging program first started 20 years ago, we all recognized that the dam system was lethal to smolts, so when we first put fish ladders in, we thought, hallelujah, our problems are solved, adults are going to get upriver, and didn't recognize that the major mortalities were downriver. So when the barging program first started, there were many in our industry who thought this is great, this will bring our adults back, and if it did, I wouldn't be here today. If barging worked——

Senator PACKWOOD. You'd be fishing.

Ms. HAMILTON [continuing]. I'd be fishing. You bet you. Especially on a beautiful day like today.

Senator PACKWOOD. I'd be willing to bet you a dime to a dollar—and I have no scientific basis for this—that the spill will not work as you hope.

Ms. HAMILTON. Let's go fishing on it in about 4 to 6 years. It would be my pleasure to take you.

Mr. SPAIN. Senator, can I take a crack at that one?

Senator PACKWOOD. Yes.

Mr. SPAIN. What we have, I think, is a misconception about science. Science is not often the finished product. There are various studies including the Munday Report, which, as you know, is another study commissioned by NMFS that concluded that barging did not have a scientific basis. We have two competing reports. Those are being peer reviewed. They are being looked at in the NMFS recovery plan. There were hearings just last night in Portland. We're trying to find the best answer, all of us; we're grasping for what we know, we are spending a level of science every day. So I think it would be unfair to say that what we thought we knew 20 years ago is the same as we know now.

Senator PACKWOOD. And is what we know now the final word, or will we know something better 20 years from now?

Mr. SPAIN. Well, if we don't learn from our mistakes, we're doomed. I think we all must do that. We must have two things: we must have action, and we must have monitoring, so that we learn from our mistakes, and that was one of the things built into the NMFS recovery plan. We have our problems with the plan as well.

Senator PACKWOOD. So long as we all agree that science is imperfect, and the Lord knows it is, a primary example being the science that told us that if we built the Tellico Dam the snail darter would become extinct. We built the dam because Congress by Act overruled the scientists, and now the snail darter exists in all these little streams that flow into the reservoir behind the dam.

Mr. SPAIN. Well, let me say this. If we base our policy on good science, knowing that science is imperfect and needs to be improved as we go and the policies need to be adjusted, I think we're better than if we base our policies on opinion, on pressure politics and on suppositions and anecdotes.

Senator PACKWOOD. With that I agree. I just want to come back to your original statement. Both you and Ms. Hamilton agree that

the dams are someplace between a minimum of 80 and 95 percent of the problem.

Mr. SPAIN. Let us say that the agencies, the agencies in this State and the State of Washington and the tribes, have come to that conclusion on the basis of their best biological assessment over several years. Yes, we agree that——

Senator PACKWOOD. You agree——

Mr. SPAIN. We agree with that figure. We have no reason to dispute it. I have some science background too, sir. If I'm convinced on the basis of the best available science that that's wrong, I will change my opinion.

Senator PACKWOOD. Well, I have no scientific background, but if the dams are a minimum of 80 to 95 percent of the problem, whether that are spills or barging around the dams, what you are saying is that we're not going to solve the problem by nondam fixes. Whether limitations are imposed on fishing or agricultural runoffs or anything else, the real problem is the dams.

Mr. SPAIN. That's correct. If we're going to reach a solution, we have to solve the problem itself and not just the symptoms.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator KEMPTHORNE. Senator Packwood, the comments that I would make as I listened to your line of questions, but in Idaho we have a number of resource based communities that we're told they too must diversify and not be so reliant upon the natural resource base. Some of those then turned toward recreation and fishing only to find then that those that began to move in that direction, then the reservoirs would be drained in order to accomplish a spill or a flush, and so that effort failed.

Then at a hearing that I had in Washington, DC., and asked the Corps of Engineers, the National Marine Fisheries Service, on the spill that you conducted last year in Idaho, was that based on science or was that an experiment? Well, it was an experiment, and unfortunately, it killed a number of the very species that they were trying to save because of the gas bubble disease, as well as other species that were innocent.

Ms. HAMILTON. In terms of spill being an experiment, I have to step in on that one. In the mid-Columbia we have five facilities that that is the only method that they have used for years, and we have relatively healthy salmon stocks in the mid-Columbia. So spill is not an experiment; it is a safe method. Already from the last year program, the one salt jacks are up 550 percent from last year. So we're seeing some positive results already.

In terms of those resident warm water fish that you're mentioning, because my industry is warms to downrivers, I share those concerns, and I've been discussing them with some of the chief biologists in Oregon and Idaho, and their claims are that as we adjust to different river levels that these warm water fish are the most successful plastic reproducers out there, and that even if we wanted to eradicate them, we won't be able to. So while we might see a 1- or 2-year class adjustment, they will rebound and be blessedly plentiful.

Senator KEMPTHORNE. And I appreciate what you say about perhaps the spill here, but I will tell you that the spills that were conducted in your neighboring State killed a number of the very spe-

cies that were trying to be protected, and it was the concentration of the gas bubble disease.

Ms. HAMILTON. Well, you know, just this year we had—I think it was on May 7 we had 71 fish that died in the net pen from nitrogen supersaturation, but by that same date we had killed 10,000 in barging collection facilities, and I wish we would have the same uproar over 10,000 wild smolts that died over the 71 hatchery fish that were in net pens.

[Applause.]

It just seems so out of proportion, the uproar, so—those were your fish that died in those barging collections. I mean, you've really got the short end of the stick in the returns of steelhead. I mean, salmon, I don't know that we're looking at salmon fishing in Idaho for some time to come, but the steelhead seem to be on the same track.

Senator KEMPTHORNE. Let me ask you, Ms. Hamilton, if I may, and I appreciated your testimony. With regard to standard setting and the establishment of the goals for recovery, should the standard be full recovery regardless of cost, full recovery, period, in all cases?

Ms. HAMILTON. From our industry perspective, we have nothing left to pony up for recovery. Our pockets are empty. We have made every sacrifice, and we'd like to share that sacrifice, but if society is going to invest in recovery, which the polls show strong support for that, then we need a return on that investment that is full recovery, because if just get survival, then they're subject to whims of nature, arrogance of man, mismanagement, and if we're going to have an investment, let's get a return on that investment, and that would be full recovery.

Senator KEMPTHORNE. Let me ask Senator Chafee or Senator Packwood, any other question of members of this panel?

Senator PACKWOOD. No.

Senator CHAFEE. No. I must say this whole salmon thing is a maze, and I look forward to looking over the testimony we've received from Ms. Hamilton and Mr. Spain and others, and I want to thank everybody in the panel. They were a very good panel.

Ms. HAMILTON. Thank you.

Mr. SPAIN. Thank you.

Senator KEMPTHORNE. Yes, you're an excellent panel, and, Mark?

Mr. SIMMONS. Yes.

Senator KEMPTHORNE. Can you give it a 60 seconds.

Mr. SIMMONS. OK. I would like to refer you to a study by Dr. Vic Kazinsky that says that the problem with the salmon is about a third overfishing, a third seals and sea lions, and a third the dams.

Senator PACKWOOD. Is this a scientific study?

Mr. SIMMONS. Yes, very much a scientific study. And we have—

Senator PACKWOOD. And it is only a third the dams?

Mr. SIMMONS. That's right. A third the dams. We have in Northeast Oregon Five Points Creek that is being considered for wild and scenic designation. It was recently written up in the Grand Observer by a local environmentalist as a pristine habitat. At one time that creek had a railroad track clear up the bottom of it. If it could have been destroyed, it would have been destroyed.

Now, I'm not a scientist, and I don't know why all the salmon aren't coming back, but we do have a lot of steelhead to fish, but I do know about hunting, and if I only had 10 elk left, I wouldn't expect to be able to kill eight or nine of them every year.

Senator KEMPTHORNE. I'm going to have to cut it off there. Again, to members of the panel that may wish to respond in rebuttal, or anybody else from the audience, if you hear something that you think needs further clarification or that you just totally disagree with, please take the opportunity through written comment to set the record straight.

So with that, I thank this panel for your excellent testimony.

I would like to now call forward the third panel. We have Mr. Bob Doppelt who is the executive director of the Pacific Rivers Council from Eugene; Mr. Mike Wiedeman from the Oregon Lands Coalition, Enterprise; Mr. Mark Hubbard, the conservation director of the Oregon Natural Resources Council from Eugene; Mr. Allyn Ford, executive vice-president, Roseburg Forest Products in Roseburg; Mr. Bill Arsenault, Small Woodlands Association from Elkton; Ms. Penny Lind from Roseburg; Mr. Curt Smitch, the assistant regional director, U.S. Fish and Wildlife Services in Olympia, WA.

With that, Mr. Doppelt.

STATEMENT OF BOB DOPPELT, EXECUTIVE DIRECTOR, PACIFIC RIVERS COUNCIL, EUGENE, OR

Mr. DOPPELT. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to testify today and also appreciate you all coming to Oregon.

I want to make six points about the Endangered Species Act and its relationship to the economic health of the Pacific Northwest.

First, we've heard a little bit about the Northwest is in the midst of an unprecedented loss of our once flourishing native fishery. At least 314 stocks of anadromous sea run salmon are at risk of extinction, including coastal coho salmon and steelhead salmon from the Canadian border to south of San Francisco, but it's much more than just anadromous fish. Most of our native resident fish, the fish that don't migrate to the sea such as bull trout and west coast cutthroat trout, are also at risk of extinction. These losses have created widespread ecological problems and economic hardship, as we've heard. The Endangered Species Act has not caused these problems and changing the Endangered Species Act will not make these problems go away.

There have been a number of attempts, mostly voluntary and mostly aimed at reducing the fish catch to recover native fish, but each has failed. We have decided that the Endangered Species Act is the only tool that can help prevent total loss and help rebuild our native fish run and the economic benefits they produce.

The National Research Council has released a top level report last week that I'm sure you all saw that makes it very clear that we must protect biodiversity, because our whole society depends on biodiversity, and in fact, aquatic biodiversity is disappearing nationwide much faster than terrestrial biodiversity, land-based biodiversity.

Second, this hearing is really not about the Endangered Species Act. It's about the failure of our society and our government to sustain and care for the lands, forests, rivers, and fisheries with all citizens and future generations in mind. The ESA is but a tool of last resort.

The real issue that we should be discussing is how to prevent invoking the ESA in the first place, and one of the ways to do that is to insure that our government applies the existing laws when they should be applied effectively, and had Federal land agencies done that years ago, many of the species that are now listed on the Federal lands could possibly been avoided in terms of listing.

And the other way to do that is to in fact enact an endangered ecosystem act that protects ecosystems by protecting the best remaining habitat, linking it with restoration activities, reconnecting them, and that basically gets us away from the last resort steps and to a very proactive step. If we enacted that kind of act, the Endangered Species Act would not be a problem. It would just be the last resort again.

Third, the loss of salmon is but one example, but the real issues surrounding unsustainable development in environmental protections are always about trading off jobs versus jobs, not jobs versus the environment, and we've heard that today about the unsustainable forestry and grazing activities and their impacts on commercial fishery.

But it goes well beyond that. Ernie Niemi from ECO Northwest I think said it very well. Unsustainable activities in one segment of our economy such as the timber industry or grazing affects municipal water users, industrial water users, lowland farmers who face higher spring flows and late season flows. It causes increased city and county costs for road maintenance and construction. It increases utility costs for reservoir dredging and on and on. The ESA is not about jobs versus the environment. It's about saving jobs and creating jobs that depend on healthy ecosystems.

Fourth, environmental protections and the Endangered Species Act in specific have not created widespread economic chaos. In fact, quite the opposite is true. For example, as we've heard before, despite the public land protection for the Northern Spotted Owl and for salmon, the regional economy is booming. There is no regional economic crisis. This should not be surprising given that 99 percent of the projects that undergo consultations with the Endangered Species Act go forward without interference, and that's a GAO figure. This fact disputes the notion that environmental concerns take precedent over economic issues.

Fifth, environmental protections and the ESA in specific have not caused world poverty and distress. It is true that there are localized impacts on specific communities and on specific businesses. Our organization does not want to deny that, and we fully support helping these communities through job training and education and many other steps to make the transition to new jobs and to more sustainable use of the land. We do not want people kicked off the land. We think the land just needs to be used sustainably.

However, the painful changes affecting rural communities and rural people across the Northwest are primarily driven by macro economic forces, not environmental pressures. Change in the ESA

will not change these macro economic forces, nor will they resolve the economic problems in most of these rural communities.

Senator KEMPTHORNE. And, Bob, if you could conclude this.

Mr. DOPPELT. Yes, thank you. Finally, the Pacific Rivers Council fully endorses the Endangered Species Act, and does believe, as the National Research Council report stated, that some improvements should be made. We have listed a number of specific improvements that we think can be made, including incentives for private land-owners that I would be happy to talk about later. Thank you.

Senator CHAFEE. Are those listed in your testimony?

Mr. DOPPELT. Yes. Look at page 18.

Senator KEMPTHORNE. Mr. Wiedeman, please. Thank you.

STATEMENT OF MIKE WIEDEMAN, OREGON LANDS COALITION, ENTERPRISE, OR

Mr. WIEDEMAN. Thank you. I'm going to be referencing this document that I gave each one of you today. It's a localized salmon recovery plan that we developed in Wallowa County. I gave it to one of the staff. There it is.

My name is Mike Wiedeman. I'm a contract logger by trade. I'm here today on behalf of the Oregon Lands Coalition. It's an honor to come before you today and give testimony regarding one of the most important pieces of legislation of the 20th century, but I'm also honored to have the privilege of representing Oregon Lands Coalition and the 108,000 members from the 69 groups that make up the coalition.

Oregon Lands Coalition represents the heart and soul of Oregon. Our membership embodies the very foundation of America. We produce the fuel that runs the engines that has made America the envy of the planet. Our membership is as diverse as Oregon, from labor unions to sportsmen's groups to the Oregon Farm Bureau. The common thread running through all the organizations are the importance of the protection of private property rights and the knowledge that we must be able to benefit from natural resources today without jeopardizing the ability of future generations to benefit from those same resources.

Oregon Lands Coalition supports the Endangered Species Act. The concept of protecting diverse species that inhabit the United States is important to our members. However, the arbitrary regulations and the inconsistent application of the Act are destroying the very fiber that binds America together.

We must recognize that people are a part of nature as well as spotted owls and salmon. If we are to have healthy and diverse populations of creatures, then we must have healthy and diverse populations in communities. We cannot afford to destroy rural communities for the sake of species diversity. We must reach common ground. In order to do that we must include local stakeholders in the solutions. The citizens that live, work and recreate in critical habitat care about sustaining the diversity that we all strive for.

Most of our members either own or work in small businesses involved in ranching, mining, farming or wood products. Every day we are forced with make or break decisions involving our livelihood. How can we make these important decisions when the rules keep changing? Every time we turn around, some judge is making

a ruling or some quasi-environmental group is filing a lawsuit that directly affects our lives and the way that we do business. How can we plan for the future when we don't even know what tomorrow might bring?

I could spend the entire day telling the horror stories that I have heard from our members regarding the Endangered Species Act, but instead I hope to use my time constructively.

To illustrate the positive attitude that we bring to this process, I would like to give you an example of one of the efforts that we are very proud of. This example is key because it addresses one of the most crucial deficiencies of the Endangered Species Act, the deliberate exclusion of local stakeholders. This is the story of one community that couldn't afford to wait for the ESA process to deliver a solution.

The Wallowa County/Nez Perce Tribe salmon recovery plan is a cooperative effort by all stake holders in Wallowa County to develop a local plan that would enhance the habitat and insure the recovery of the Snake River salmon. After 2 years and thousands of hours of volunteer work, the plan was published, subject to peer review by academia and the affected agencies and deemed ready for implementation, but we have been unable to move forward with the plan, because at every time turn the bureaucrats in Washington, DC have placed obstacles in our path or worse, totally ignored our inquiries and attempts to move forward.

You've asked us to strive for consensus. We have done that, and yet the ESA itself is preventing us from moving forward. Now we are asking for your help in moving ahead with the project. We believe the Wallowa County/Nez Perce Salmon recovery plan can be a model for species recovery.

In addition to that, I've included 12 changes that the Oregon Lands Coalition would like to see in the Endangered Species Act. Thank you very much.

Senator KEMPTHORNE. Good. All right, Mike, thank you very much.

Mark Hubbard.

STATEMENT OF MARK HUBBARD, CONSERVATION DIRECTOR, OREGON NATURAL RESOURCES COUNCIL, EUGENE, OR

Mr. HUBBARD. Thank you. I wish to thank the subcommittee for the opportunity to testify. My name is Mark Hubbard, and I'm the conservation director of ONRC, the Oregon Natural Resources Council. ONRC has extensively invoked the Federal Endangered Species Act to protect salmon and other species. While ONRC brought the first administrative appeal of a Forest Service timber sale raising the issue of the fate of the Northern Spotted Owl in 1978, we were not the first to raise the issue. A biologist warned a group of government and industry biologists in 1972 about the danger to the spotted owl caused by logging old growth forests.

Scientists first began studying the spotted owl in 1966, yet it took them until 1990 until it was formally protected under the Endangered Species Act. The time it took between when the threat to the species was identified and when significant correctives actions were begun was far too long. This must change if we are going to achieve the goals of conserving and restoring the web of life. We

must be concerned with the entire web of life, not just the charismatic megafauna, if for no other reason than the fact that biodiversity saves lives.

I do want to talk today about an obscure little tree that is scattered through the western forests of Oregon, but that reaches its highest density in Douglas County, a tree that was until recently considered worthless, a weed. The Pacific yew depends upon ancient forests. As these forests were cut down and replaced with a monoculture of young Douglas fir, no provision was made for the Pacific yew. It was on its way toward ecological extinction and would eventually have qualified for protection under the Endangered Species Act, but along came the spotted owl. Saving ancient forest habitat for the owl also helped conserve the Pacific yew.

Scientists discovered only recently that this obscure little weed tree contained taxol, a compound we are finding beneficial in fighting ovarian and other human cancers. Taxol was first isolated in the Pacific yew. Today the human need for taxol is being met primarily by partial syntheses from other yew species, but the scientist who isolated the taxol molecule noted that it is so complex that only a tree could have originally thought of it.

If the logging of our old growth forests had continued unabated, we might never have known of taxol. To those who say we don't need to conserve every species, I ask, how can we humans know which species is to be sacrificed? The attention in recent years has been on the spotted owl, but protection for that bird also helps protect other lifesaving and life giving species, some of which we don't even know about yet.

I do want to talk about some specific recommendations to improve the Endangered Species Act that I feel can make it more effective. First, enact an endangered ecosystem act. Keep the ESA; it is equivalent to an emergency room at the hospital, but the Congress also needs to address preventative medicine to minimize emergency room use.

The National Academy of Scientists should be charged with developing a conceptual conservation and restoration plan for the Nation's ecosystems. Its recommendations should be incorporated into an endangered ecosystem act designed to address entire ecosystems earlier rather than just individual species later.

Work on incentives to achieve conservation. Besides regulation to achieve the purposes of the Act, provide incentives to private landowners to conserve species habitat. Tax credits may be an effective way to do this. Another effective way would be to address some of the subsidies that encourage activities that presently harm endangered species. Withdraw them if possible, saving the U.S. Treasury and species, if not conditioned existing subsidies on conserving the habitat of diminishing species, and address issues of economic fairness in the Endangered Species Act.

We are in a time of accelerating economic diversification in the Northwest. Issues of economic justice must be addressed directly by insuring that none are left behind as the economy moves forward. As the Congress restrikes the balance in the ESA, it is necessary not to achieve this balance by weighing some species against some people; rather the balance can and must be struck by helping those

people negatively affected by the ESA, not by hurting the species that need the ESA's protection.

In reauthorizing the Endangered Species Act, the most crucial balance to be struck is not between competing interests of the present occupants of this Nation, but rather between the present generation and those to come. We are not so poor that we must drive species into extinction, nor so rich that we can afford to.

Senator KEMPTHORNE. All right, Mark, thank you very much.

Allyn Ford.

**STATEMENT OF ALLYN FORD, EXECUTIVE VICE PRESIDENT,
ROSEBURG FOREST PRODUCTS, ROSEBURG, OR**

Mr. FORD. Thank you, Mr. Chairman. My name is Allyn Ford, executive vice president of Roseburg Forest Products, a family owned wood products company located in Roseburg, OR. Roseburg Forest is one of the largest wood products manufacturers in the State with over 3,000 people employed at six different geographic locations. The company was established by my father approximately 60 years ago and has continued to be a very dynamic force both within the industry and our local community. Our success has been based on the availability of government timber, both BLM and Forest Service, which has represented 70 percent of our historical wood base.

Based on a sustained and reliable supply of old growth timber, we have established ourselves as the premier manufacturer of high value panel products, and presently produce 60 percent of the sanded and 75 percent of the plywood siding manufactured and sold in the Western United States. Since 1980 we have invested over \$150 million in order to keep our facilities at peak proficiency. Some of our plants are among the largest in the Nation, and are world class both in terms of efficiency and capacity.

As applied to the spotted owl in Douglas County, the implementation of the Act has resulted in a string of disasters. When the application for listing was made in 1983, there were 2,500 known spotted owl pairs. The species was thought to be solely dependent on old growth timber for survival, and there was a scientific prediction of imminent extinction within a 25-year period. Here we are 8 years later: 4,500 pairs have been identified, the species now known to adapt to a wide range of timber types, and there's a growing debate as to the degree of threat to the birds.

As the body of information has grown and the threat of extinction has been reduced, mills have closed, and the lives of thousands have been turned upside down. If that hasn't been enough, we are seeing the same cycle take place in the case of the marbled murrelet whose listing has effectively eliminated any harvest of mature second growth timber in the Oregon coastal area. With the 1993 listing of the murrelet, we are now seeing a similar trend take place with the inventory within 18 months which has increased from 6,500 to 10,000 birds, and the restriction of harvest activity is increasing at a similar rate.

If this wasn't enough, Douglas County is now facing an additional listing of the cutthroat trout which has effectively stopped any planned harvesting on 50 percent of the Umpqua National For-

est. Put simply, the more we know, the more birds we find, the broader the habitat becomes, and the law becomes more restrictive.

Once the listing process is triggered, it is almost impossible to modify its course. The people in Douglas County have attempted to provide input in alleviating some of the more onerous restrictions by the Fish and Wildlife Service. We have provided comment at the time of listing, the definition of critical habitat and the proposed 4(d) rule. In addition, the county appealed for an exclusion under the 4(c) clause, actively supported the convening of the God Squad and developed a comprehensive research plan, the Douglas Project, for application to the unique local conditions of our area. While most reasonable people would interpret that the impact of the listing on our area has been extreme, our pleas have effectively been ignored.

The application of the Act to private lands has been similarly arbitrary. Our company owns approximately 150,000 acres of forest land which is concentrated in Douglas County. Over the years we have practiced intensive forest management utilizing such capital-intensive programs as thinning, fertilization and genetic selection. Growing trees in this area is a long-term commitment with a cycle of approximately 60 years.

The biggest threat to these young stands is not fire, insects, disease, but rather government interference and regulation. If the Fish and Wildlife Service has its way in implementing the proposed system of large special emphasis areas—that's the red part of the map you see on your right—we are facing the potential loss of harvest on almost 60 percent of our lands over the next 30-year period. In addition to losing control on these lands, the expropriation of our land has tremendous impact on our financial base. Many companies, including ourselves, utilize the forest asset as a method of collateralizing borrowing in order to finance our manufacturing operations. If the proposed 4(d) Rule is implemented by the Fish and Wildlife Service, we would be limited in our ability to maintain a healthy capital investment.

In spite of our efforts, we have seen a continued collapse in our industry. Over the last 7 years employment has dropped by approximately 30 percent. With the existing trends, we will see at least an additional 20 percent drop within the next 2 years. As policy and lawmakers, you should ask yourselves whether this pain and human suffering has really been necessary. The question is not whether we are dealing with an obsolete industry, since our plants are efficient and the product is broadly demanded both domestically and internationally. Our people are skilled, well paid and established in what was originally healthy rural communities.

I would like to make some recommendations. I am sure you agree that what has happened in Douglas County is something you do not want to see duplicated throughout the rest of the country. We need to make some changes. First, the current Endangered Species Act cannot be fine-tuned to address its major problems. A new mindset is needed.

Second, a huge dose of reality is needed in preparing plans to protect species. We cannot use as a starting point an animal's historic range of the pre-settler era in North America as a habitat goal. What seems to be forgotten is there are 240 plus million peo-

ple in our country, miles of roads and freeways and millions of homes and buildings. These are facts. They are there and have to be taken into account.

Third, and I really want to emphasize this, man can help. We do not need to stand aside. We can do many things ranging from breeding programs to habitat improvements. Waiting for Mother Nature to take its course is a lofty goal, but why wait, when so many good things can be done?

Fourth, the administrative aspects of the new law need to be simple and straightforward. The court should not be allowed to dictate day-to-day land management actions.

Fifth, people in communities are part of the process. We have to work together. Private property rights have to be protected, our State and local governments have to have a meaningful role, and a person's well-being has to be taken into account.

Last, we have to talk to each other, not at each other. We have to have a law that is understood and supported by those who will bear the brunt of the implementation. In my opinion, that will be the key test of any legislation that is proposed.

I want to thank you for your commitment in coming to Roseburg and providing me with the opportunity to testify to this subcommittee. I appreciate your effort in spending the time to deal with this complex, emotional issue, and will be willing to provide any information or answer any questions you have. Thank you very much.

Senator KEMPTHORNE. Allyn, thank you. We appreciate it.

Bill Arsenault.

STATEMENT OF BILL ARSENAULT, SMALL WOODLANDS ASSOCIATION, ELKTON, OR

Mr. ARSENAULT. I too want to thank the subcommittee for coming to Roseburg. I know you've traveled a long way, but this is a very important issue to us, and I hope we can get our message to you.

My name is Bill Arsenault. My wife Joan and I own a ranch near Elkton in Douglas County here which we purchased in 1971. I worked 15 years in the wood products industry paying off the ranch, and I retired in 1992. I now work full time on the ranch.

Our ranch operations involve forestry and pasturing feeder cattle. Outside of the ranch I have been active in the forestry affairs. I'm president of the Douglas Small Woodlands Association here in Douglas County, and a vice-president of the Oregon Small Woodlands Association. I am also a master woodland manager.

The Oregon Small Woodlands Association supports the well-meaning intent of the Endangered Species Act, but we feel that the enforcement of the Act has been top down, and as at times been adversarial and to a great degree counterproductive.

I'm going to jump to the end of my written testimony on some specific changes and then elaborate on them as I can.

The following changes are recommended. There must be sound verifiable science in order to list the species. Currently only best available science is the criteria, and this criteria unfortunately includes no science. As part of that, we must require a peer review of listing proposals by independent outside experts. One of the problems, for instance, which we are having to deal with now with

the spotted owl and the 4(d) scoping notice which proposed the regulations that you see over here in red, is that after a year and a half of following this on technical sessions, etc., it seems to be that most of the basis for the listing in the first place has turned out to be not valid.

The suggestion of an independent review could bring out additional data, suggest additional investigation and objectively analyze submitted data. We might all have more respect and faith in this process if we had an independent review.

I think we have examples here in Oregon where we have accomplished that on other issues. We must require that all Federal resources be utilized in protecting and recovering enlisted species before any private land is regulated. Currently under option 9, habitat and owls will be taken on Federal lands, and private lands will be used to mitigate.

Bureau of Land Management plans to cut almost 50,000 acres of owl habitat in Oregon under its resource management plan, and we are told that private lands need to be regulated to compensate for that.

Now we certainly have concern for our industrial friends and their dependence on Federal timber, but we think it's reprehensible that private lands are traded for Federal lands. This puts private lands on the trading block at the whim of the regulators.

Local stakeholders must be part of the process in developing recovery plans. Top down dictates must stop. We learned that a two-inch long paragraph in the Endangered Species Act, which is 20 pages and three columns per page document, gave the Secretary of the Interior the power to take people's livelihood away, take their retirement away, bankrupt them, make criminals of them for doing nothing more than what they have been doing for decades, if not generations, on their own private land.

Upon issuance of the scoping notice by the U.S. Fish and Wildlife Service in December 1993, non-Federal landowners in Oregon rallied together, including the Governor's Office and the State Department of Forestry, and asked them to come to the table and discuss what they were trying to accomplish and why it was needed, with the idea that the landowners were in much better position to carry out the task and hopefully with far less onerous consequences. It should be remembered at this point that most of us had never heard of 4(d), and the scoping notice fell on us like a bomb.

As part of this effort, we approached our Oregon congressional delegation for help, specifically asking that they ask that the rule-making process be suspended in Oregon, and that the Department of Interior make a much greater effort to work with landowners and develop a 4(d) rule more acceptable to us. Our delegation gave us this unanimous support, including Senator Packwood, for which we are ever grateful.

We believe that the cooperative effort now going on in Oregon would not have happened and landowners would not have anything to say concerning their future had not our delegation acted on our behalf, but it took political pressure to get the Fish and Wildlife Service to talk to us. This should be a requirement in any future issues.

I see my red light. The last one is that private property, if it must be used in recovery, incentives and voluntary programs should be developed first. Regulation must be used only as a last resort, and landowners then must be compensated for their losses.

Highway departments pay for rights-of-way. Power companies pay for rights-of-way. Only the environmental movement confiscates private property without just compensation. Thank you.

Senator KEMPTHORNE. All right, Bill. Thanks very much.
Penny Lind.

STATEMENT OF PENNY LIND, ROSEBURG, OR

Ms. LIND. Thank you. My name is Penny Lind, and I've been asked to give public comment on the Endangered Species Act in reference to private property.

I'm from Roseburg, OR. My husband John and I live on 206 acres of forested property on the edge of Looking Glass Valley, a part of the Umpqua Watershed. We are bordered on two sides by government property, and on two sides by private property. We have many friends and family members that live in the local area, including three children and one granddaughter. We came to Roseburg from Michigan and have lived on our property for 26 years.

Senators I speak to you today in hopes that this hearing will heighten communications and responsibility to the communities across the Nation in favor of reauthorizing the Endangered Species Act, not weakening it. As members of this committee, I understand you are charged with the responsibility to help our Nation establish this process that will determine the outcome for habitat, including the human community and the plants and the animals. I hope to fulfill my responsibility to the committee by answering the following questions.

As a private property owner, why do I support the Endangered Species Act? The single answer is that nationally similar situations requiring the Act in 1973 still exist in 1995, and will continue to exist in the years ahead. In 1973 the Endangered Species Act was put into law due to accelerating loss of our wild animals and plants.

The U.S. Fish and Wildlife Service determined the following threats were responsible in order of importance: (1) habitat destruction; (2) exploitation for commercial or other purposes; (3) disease; (4) predation; (5) inadequate conservation laws; (6) pollution; (7) introduction of non-native species; and (8) a combination of any of those seven above. Habitat destruction remains the primary cause of loss of plant and animal species.

So what does all this mean to private property owners? That's a lot to digest while you're raising your family, enjoying your home and doing your job and planning your life in general.

Like many citizens, I have to turn to scientists, economists and legislators to help me understand the details of what all this means. In addition, like many citizens, I turn to my emotions to help me make choices, and the emotions that stir the actions of many private property owners when they hear the Endangered Species Act is fear and anger: fear and anger that they will lose

their property, fear and anger that habitat and species will be lost, both intertwining in all ways in communities across our country.

Our communities made a commitment in 1973 to share the responsibility of implementing the Endangered Species Act by allocating funding, modifying activities when warranted and setting up a real safety net for threatened species. The successes that have been reached are proof of the effectiveness of the Endangered Species Act. If the U.S. Fish and Wildlife have experienced failures with recovery of species, those are the lessons to research when considering changes in the Endangered Species Act, and not the convenience of industry and communities.

I recommend that the committee call for a strong Endangered Species Act. I would like to see public agencies, industry and individual property owners work together to avoid the need of enforcing the Act by halting activities of destruction and developing habitat conservation plans.

The Endangered Species Act is that, the Endangered Species Act, not the species act. It's not meant to be a front-runner for salvation of all species, bug by bug. It's the safety net or the last-ditch effort put into action with many checks and balances. If local, State or other Federal laws are either not in place, not implemented or not enforced, a species decline does bring this net into play.

The Northwest has been a regional battleground for the Endangered Species Act. Many resources have been committed to understanding how to balance our threatened species recovery or continued decline.

If the efforts of our communities to gain footholds where warranted, threatened or endangered species become the burden of the private property owner, the anger and fear will be due to failure, failure of the communities to be responsible. Private property owners shouldn't be punished for sound forest management, nor should they be rewarded for destroying their water, their soil or their viewshed or their heritage for generations ahead. I need to be personally responsible by reaching out for new knowledge, listening and accepting new ideas. I would like everyone here to commit to that responsibility also.

Thank you for allowing me this opportunity to volunteer. I invite you to tour Oregon while you're here to see firsthand the importance of the decisions you are making. Thank you.

Senator KEMPTHORNE. Yes. Penny, thank you very much.

Curt Smitch.

STATEMENT OF CURT SMITCH, ASSISTANT REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, OLYMPIA, WA

Mr. SMITCH. Thank you, Mr. Chairman, Senator Chafee, Senator Packwood. I appreciate very much the opportunity to come before your committee today to talk about an issue that has been stated here today as one of the most important issues before the Congress of the United States, and I want to also thank the committee for what to me is a very thoughtful hearing on a very difficult issue.

Mr. Chairman, if it's appropriate, I would like to just spend my time, rather than reading through my prepared remarks which I've submitted to the committee, to go over just this little addendum to

discuss what we are doing here in the Pacific Northwest to deal with these issues that are before the committee today.

My area of responsibility for the Fish and Wildlife Service in this region is the President's forest plan, and that includes both the Federal and non-Federal component and also a primary purpose on the habitat conservation plans underway in our forested lands.

The handout that I gave to the committee, attachment 1, shows the various cooperative agreements that are underway in this region with the Fish and Wildlife Service and the National Marine Fisheries Service, primarily focusing on section 10 of the Endangered Species Act, the habitat conservation plan component, as well as conservation agreements and cooperative agreements under section 7.

As you can see, Mr. Chairman, we have approximately 35 to 40 of these various agreements underway in this region. All told, it accounts for under negotiation at this time nearly 5.5 million acres of forest lands in Washington and Oregon. I want to stress that these are agreements where the applicants have come to us and asked if there is a better way of doing business than a species-by-species listing, and I want to say that I agree with the folks here today that have said that a species-by-species approach does not work for the Endangered Species Act. It's not good economics, and it's not good biology.

What we have underway are discussions and negotiations on multispecies and habitat conservation plans. I've also inserted in my handout here Secretary Babbitt's notes apprising policy, which is to summarize, a deal is a deal, and the majority of these agreements have been on the HCPs, have been for 50 to 100 years. The incentive for the landowners here, Mr. Chairman, is the certainty that they get with the habitat conservation plans, particularly with the Secretary's assurances policy.

I want to also point out to you that these range from several hundreds of acres, several thousands of acres, to millions of acres in scope. My point here is that I believe that this part of the Act, section 10, is very flexible. The other thing that is very important to us in the Fish and Wildlife Service and that is, I believe, important to the Act is this is an opportunity to sit down face to face with the landowner or the applicant and discuss his or her needs, as well as the needs of the fish and wildlife and the water and the forest lands that are also equally important to all of us. It's in the truest sense a negotiation. It also must go through public review and scientific review.

Therefore, when we give a person an incidental take permit, which as you the members know, that's what section 10 allows, which is to say if you have a habitat conservation plan, if you have a threatened or endangered species on your property, you can get an incidental take permit to go about your business without fear of restriction from the Endangered Species Act.

Because it is a negotiation, we won't have agreement unless we meet the needs of the landowner. They can leave at any time they feel that they can't make a deal that's in their best interest, and I'm happy to say up here, Mr. Chairman, that we have several folks who have returned for a second bite of the apple. Some may call them masochists; I think they're people that are at the table

doing the right thing for the long haul for the next generation and to provide themselves some certainty in the marketplace.

Under the cooperative agreement, conservation agreements, Mr. Chairman, these are where we used section 7, where we feel, particularly for small landowners, it is not in their best interest to go through a habitat conservation plan, and you'll see under there, user typically small and where the Federal Government through the Fish and Wildlife Service here can provide an incidental take without going through a habitat conservation planning process.

The last, our take avoidance plans, these are instances where we've gone out on the ground with the landowner. They have quality habitat. They're doing the right thing. They have listed species, but if they operate the way they're carrying out their activities, they're not going to take a species, and in those cases we have simply provided them with a take avoidance plan. Those have ranged from five to 10 years, of which we check with them periodically to see that the intent of the plan is working. Again, these have typically been small, although one of these has been for a larger landowner.

The last thing I would like to say, Mr. Chairman, is I'd just point to the letter that's also attached here which indicates that the signature of all the Federal agencies involved in implementation of the President's forest plan, Forest Service, BLM, Fish and Wildlife Service, National Game and Fishery Service, have a process underway which streamlines the section 7 consultation process so that informal consultations will be done within 30 days, formal consultations done within 60 days, in order to meet both of the goals of the plan which is to protect the environment, the natural resources and the Nation's forests, but at the same time to get the harvest out.

We believe that we're now really in the second year, if you will, really the first full year of the forest plan, and we really didn't know if we had a forest plan until December 1994, when the courts upheld the plan. We believe the processes are underway to address the slowdowns that have legitimately been pointed at in the process. We think that's underway.

With that, Mr. Chairman, I'd be happy to answer any questions.

Senator KEMPTHORNE. All right. Curt, thank you very much.

Let me begin my questions with Bob Doppelt. Bob, Mark Hubbard used the term with regard to the Endangered Species Act as "the emergency room at the hospital," a pretty graphic description. That means we're into dire situations, critical. With that sort of description and you say that we must use the ESA as a last resort, is it any wonder to you that you have a number of people that are frustrated and frightened by the Endangered Species Act as it currently applies when it is described as the emergency room at the hospital?

Mr. DOPPELT. Well, I think that one of the reasons people are frightened is because they haven't been told early on by government and other elected officials that there are problems out there, and if they knew this 10 and 20 years ago and knew this in a way that was really effectively presented, maybe they wouldn't be so surprised when down the road the listings occur.

Senator KEMPTHORNE. Then, Bob, based on that, don't you think we have gotten away from the original intent of the Endangered Species Act which was probably to do just what you said instead of creating what is now this emergency room attitude?

Mr. DOPPELT. Actually I think that the Endangered Species Act is working just as it was intended. When species are on their last legs, that's when the Act is supposed to be invoked. What we have failed to do is enforce the other laws like the National Forest Management Act and other sources of law that would have showed us that we had problems early on. That's the failure. It's not the ESA that's at fault.

Senator KEMPTHORNE. Mr. Wiedeman, I'll be going through, of course, your list of proposals, but with regard to State and local roles of the responsibilities under the Endangered Species Act, can you be specific about how we might accomplish that goal, because I think it's on target.

Mr. WIEDEMAN. Well, what we view as an important role is county government, the folks that live in the affected areas know best how to solve the problems that are broached by the Endangered Species Act.

One of the things that we did in the Wallowa County Sediment Plan involved county government, the Nez Perce Tribe, all the affected Federal agencies, the environmental community, the ranchers and those kind of folks to come up with a solution to this national problem of the listing of the salmon. One thing that we found was that we could reach common ground very easily. We all wanted to restore the health of the forest, we all wanted to restore the health of the salmon, and all we had to do was devise a way to do that, and it was a long process, but it worked.

Senator KEMPTHORNE. Mr. Wiedeman, are you suggesting that not all wisdom resides in Washington, DC?

[Laughter.]

Mr. WIEDEMAN. A small part of the wisdom may reside in Washington, DC., but I think you're correct in that assumption.

Senator KEMPTHORNE. OK, good, thank you.

Mr. Hubbard, you used the yew tree as an example that's growing in some of the forests here. If the yew tree had been listed as endangered, is there any provision of the Act that would have allowed us to extract taxol?

Mr. HUBBARD. Well, I think that it's possible that that would have happened. I mean, under ESA what we talked about is recovery of the species and habitat, and there probably would have been some different rules in place, but—

Senator KEMPTHORNE. But currently I don't believe there are—based on current reading.

Mr. HUBBARD. Well, in the case of the yew tree, of course, it has not been listed, and there is a separate act dealing with conservation, and the important thing about that act is it doesn't deal specifically with the genetic diversity within the species. Instead of having yew trees all little seedlings, that act said we need to conserve the species in its genetic diversity in different areas and different elevations, and that's an important concept to any species conservation.

I think the important thing though is that we shouldn't be trying to move to Congress trying to deal on a species-by-species basis, with one, you know, single species and a law for that, and another single species and a law for that. We should be leaning the other way toward ecosystems.

Senator KEMPTHORNE. OK. Mr. Ford, I believe you referenced that yours is a family operation.

Mr. FORD. Yes.

Senator KEMPTHORNE. Can you tell me, is it worth pursuing changes to the inheritance tax, the estate tax that could provide incentives to landowners so that you can then have some assurances that you can keep the land in your family, you can pass it on from heir to heir, but there would be an incentive to grant conservation easements, for example. Is that worth us pursuing?

Mr. FORD. Well, certainly it's part of the whole. Obviously, the problem we're dealing with is the community and the company, the family company—we have immediate problems right now, but certainly the concept of inheritance is very critical. Forestry is a long-term investment. We're talking 60 to 100 years, and it's a commitment on the part of the person to manage their lands, one, according to what you call their economics, but second, you know, the whole being of people have a real warm feeling about land, and we do too.

But looking at the tax code, there's certain things that can be done, but it's not going to be the total answer. It's certainly a step in the right direction.

Senator KEMPTHORNE. All right, good. Thank you very much.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Ms. Lind and Mr. Arsenault, you heard Mr. Smitch talk about the agreements that the Fish and Wildlife has reached with the private landholders. What do you say to that? Do you find those intriguing, or have you been approached, or have you thought about it? Mr. Arsenault, why don't you address that?

Mr. ARSENAULT. Yes. We've had conversations. We are working with U.S. Fish and Wildlife Service on what we call the Oregon Plan, but, first, what we're after is what are we being exempted from? In other words, what we want first is better science, better data, and we are moving along that path. We are collecting data on how much habitat is out there. We are working on defining what is habitat; in other words, what does the owl need, and then we want from the Fish and Wildlife Service what they feel they need. We want a reanalysis based on Option 9 as to how much Federal contribution there is, how much the major HCPs are, and then how much the Oregon Forest Practices Act. Then I think we can say what kind of incentives or what kind of plans will accomplish if there is indeed a gap. We don't even know now that there's a gap, so—

Senator CHAFEE. Well, what do you mean by a gap?

Mr. ARSENAULT. A gap between what the scientists feel is necessary for the survival of the owl and what is actually out on the land now. We could come up with the conclusion that current practices are sufficient given all the contributions of Federal land. U.S.

Fish and Wildlife does not know that answer yet. I realize I've avoided the——

Senator CHAFEE. But I thought one of the problems that you had is that in the indefiniteness, the vagueness—and I think you mentioned some of those in your statement, and I thought that from what Mr. Smitch was talking about that they give you some definiteness in the arrangements, and I think he indicated that you've got how many years, Mr. Smitch?

Mr. SMITCH. Most of the HCPs have been between 50 and 100 years.

Senator CHAFEE. Ms. Lind, have you looked into those arrangements?

Ms. LIND. Just speaking on the individual site basis which would be on our own personal property.

Senator CHAFEE. Yes, just on yours alone.

Ms. LIND. Actually we did pursue that in just a verbal way with a local Federal agency, and I think there is a major breakdown in communications there that is definitely there in approaching the interim district manager with that possibility. He said, wow, that's a good idea, you know, but he didn't even personally have a thought to go to at that time, and that was very recent. So I'm thinking that communications and education definitely need to be the front-runner there. We as private property owners approached them with that possibility, and they needed to have somewhere to go with it.

Senator CHAFEE. What do you say to all that, Mr. Smitch? In other words, I think in all these problems there is a communication difficulty, there's an education difficulty, but in other words, it seems to me as we wrestle with this that I can see the solutions or possibles anyway with the private landowners, the inducements that we can extend to them, and maybe they ought to be extended further as has been mentioned here in the conversation with Mr. Ford, the possibility of doing something about the inheritance tax for those who do encumber their land with agreements and so forth, easements. But apparently, you're having some success.

Mr. SMITCH. Yes, Senator Chafee. I think it shows that, as many people said here today, sitting down face to face is the best way to resolve these very difficult and value-laden issues. I will say to Ms. Lind, if it was the Fish and Wildlife Service she approached on this basis, then I'd like to have the name of that person who didn't know anything about this. We have set up a special team——

Senator CHAFEE. There goes somebody's career.

[Laughter.]

Mr. SMITCH. We have set up a special team in the Northwest here to deal with these kind of cooperative agreements. I will say it didn't start until January 1994. We're running to catch up. I think you're seeing that as people have become aware of it and we've done a better job of communicating, that she's correct, we have not in the past done that.

Senator CHAFEE. Well, I want to introduce you to Mrs. Lind on your right.

Mr. SMITCH. Yes, I'm going to give her my card here. You can count on that, Senator. Thank you.

Senator CHAFEE. Thank you.

Mr. ARSENAULT. If I may give one example, Senator.

Senator CHAFEE. Go ahead, Mr. Arsenault. My time is up, so I have to be swift.

Mr. ARSENAULT. To my knowledge—and Curt can correct me on this, but to my knowledge, only one small woodland owner has received a habitat conservation plan. That was for a 105-acre parcel. It cost the landowner somewhere around \$28,000, and the end result was that the U.S. Forest Service bought about 60 percent of the land, and the owner was allowed to cut the rest.

Am I correct in that, Curt?

Senator CHAFEE. I don't know. Mr. Smitch, have you got an answer to that?

Mr. SMITCH. Yes. There actually are several small HCPs, and that is why frankly, Senator, we went to the other kinds of agreements, because we agreed that for very small landowners that HCP may be too complex of a process, but we're dealing with those through cooperative agreements.

Senator CHAFEE. Well, one last, quick question, Mr. Arsenault. I'm not pinning you down in your land, I don't want to do that, but I mean, you represent an organization. Does what Mr. Smitch talk about here, does that seem to be intriguing to you?

Mr. ARSENAULT. Yes, I think we see that as part of the end of what we're carrying on in Oregon now. It's some sort of a cooperative agreement that may differ for small landowners, mid-landowners and maybe large industrial, but, again, what we are after at this point is what is the real need out there first. You know, we just don't want to give away our land. We'd like to have it justified scientifically based on best available science and best available data, that is how much habitat is needed and how much is really out there.

Senator CHAFEE. OK, thank you very much, Mr. Chairman.

Senator KEMPTHORNE. All right, Senator Chafee, thank you.

Senator Packwood.

Senator PACKWOOD. Mr. Doppelt, I want to ask you a question about taking. On pages 17 and 18 of your statement, at the last you say:

Of course, where a taking of private property based upon constitutional standards can be shown, a private landowner should be compensated.

Before I ask further, what is your understanding of "based on constitutional standards"?

Mr. DOPPELT. Well, what we're specifically talking about is in the aquatic point of view. That's what we deal with, and it's very hard to actually identify. There are some specific things we know would constitute a take from an aquatic point of view. Fish that go on a diversion, an agriculture diversion and get killed in that way, toxic spills, etc., that to us is a take, and it is very clearly defined.

From a broader point of view, from the aquatic ecosystem point of view, it's much more murky after that, very candidly. It's not like if this tree has this particular nest in it for a bird which you can identify. It's very different for aquatic species.

Senator PACKWOOD. I thought you were talking about a broader basis. Let me ask you this question. The Supreme Court has by and large laid down this rule: If the government takes less than 90 percent of the value of your property, there's no compensation;

if they take it all or over 90 percent, then you get 100 percent compensation. Let's assume you own 10 acres of land that's worth \$100 an acre, and the government says, we're going to take your 10 acres for a highway, we're going to take a fee title to it, and they have to pay you \$1,000, because they've taken its full value.

Now let's say instead the government says, no, we're going to rezone this land for a scenic easement, we're not going to take title to it, and it doesn't take 90 percent of the value of your land. Do you think it's fair that you're not compensated at all for that?

Mr. DOPPELT. No, I don't think it's fair, but I think actually it's a broader question first. We're all burdened by and we all benefit by government environmental regulations at different times. Sometimes land values are greatly increased because of government actions, and sometimes they may be decreased. Zoning is a classic example where values change.

If there is a problem with that, we suggest that we create a trust fund for the funds gained on lands that have increased in value through the government actions, where the revenue from that is put into a trust fund and paid out to those that may have lost their value due to government actions. I think that would be a very fair way to do that.

Senator PACKWOOD. That may or may not be, but I want to come back to the constitution where it says the government cannot take your property—this is not a question of are you going to take from somebody some increase in value; you haven't taken any property from them. And you're suggesting a way to try to alleviate it is by paying a person whose property is taken. At the moment the law doesn't even require that he be paid unless you take over 90 percent of the value.

My first question is: Do you think he ought to be paid if you take only 50 percent of his value? We'll get in a moment to how he ought to be paid.

Mr. DOPPELT. No, I think we'll learn a lot about that in the Sweet Home decision and other things coming up. I think this question is still very much open, but I think there's a lot of extenuating circumstances that you have to look at. Did the person buy that land, for example, with the intent of having to get the government to pay them back as we've seen with the Oregon Dunes, etc., where it's basically blackmail that's gone on, blackmailing the government into paying for this take, etc.? I think there's a lot of extenuating circumstances, and I personally don't think the answer is that simple.

Senator PACKWOOD. Well, I want to come back again to the issue. You own the land, and you've owned it for 20, 30 years. The government decides to take it for a scenic easement rather than a fee and pays you nothing. They're taking for the general public good. Should you as the landowner be entitled to any payment?

Mr. DOPPELT. My guess would be that it's rare, if it ever happens, that government takes all the land without first negotiating to pay for it.

[Laughter.]

All the land? I doubt it.

Senator PACKWOOD. No, they're not taking any of it. They're rezoning it into a scenic easement. You get to keep title to it. You just can't use it. Should you be paid anything for it?

Mr. DOPPELT. I think there are some extenuating circumstances where they should. Absolutely.

Senator PACKWOOD. Would that be one?

Mr. DOPPELT. It depends on the circumstances.

Senator PACKWOOD. All right. We're considering a takings bill in Congress now, where in essence we are saying if the government takes your property, we should pay you the value of the taking. Do you like that idea or not like that idea?

Mr. DOPPELT. I do not like the idea.

Senator PACKWOOD. Why?

Mr. DOPPELT. I think that it's awful murky and that it's an awful slippery slope. It connotes that private individuals are not responsible for protecting public or common property rights which include water and air and the biodiversity we all depend on, and soil. I think that's a slippery slope that will come back to haunt even the private landowners eventually.

Senator PACKWOOD. It doesn't bother you that we pay you if we take your land for a highway for the public good. In that case you say—well, I assume you say, yes, we should pay you.

Mr. DOPPELT. Is that a question?

Senator PACKWOOD. Yes.

Mr. DOPPELT. Again, I think that it depends on the circumstances. When did you buy the land? What—

Senator PACKWOOD. No, no. You mean you say there might be circumstances—you've owned this land for 20 years. You didn't buy it to dupe the government. There might be circumstances where the government could take your land for a highway and not pay you.

Mr. DOPPELT. It depends, when did I buy it? Twenty years ago for what purpose? Did I know that the highway was coming through?

Senator PACKWOOD. Well, I see where you're coming from.

Now I want to ask Mr. Hubbard a question. Mr. Hubbard, on page 3 of your statement, you say:

Third, the Endangered Species Act as now written considers economics at every turn except the first: listing. The determination of whether a species is in trouble or not should be a purely scientific, not a social matter.

With that, I agree. It's a social matter of whether to and how much to expend recovering the species. From the designation of critical habitat to the development of a recovery plan, from consultation to takings, economics pervades the Endangered Species Act.

I want to know what your source for that statement is.

Mr. HUBBARD. Well, basically when you look at all of those areas of the Act, there is consideration for economics. You can take it to the absolute extreme, and there are other provisions that are taken into account, for instance, in the recovery plan. You can't do a recovery plan that amounts to extinction. I mean, common sense says that that doesn't make sense.

Senator PACKWOOD. But then—

Mr. HUBBARD. But then in doing that you have to consider economics, so it's part of the equation.

Senator PACKWOOD. But you cannot consider economics if the recovery plan would lead to extinction.

Mr. HUBBARD. Oh, not necessarily. There are a whole lot of areas in between. You're talking about a continuum here of different management strategies and different ways to conserve species. Some will involve some economic gain or loss. Some will involve a certain amount of time to recover species. Some eventually come up with up their levels of recovery, and that is often what takes place when analyzing different recovery plans and options.

Senator PACKWOOD. Well, then I'll read the statement that I read at the start from Lynne Corn of the Library of Congress, who is the Library's environmental and natural resources specialist:

Briefly speaking, as the agency begins to consider all relevant impacts of designating critical habitat, if it discovers based upon the best available science or data that failure to include any particular area would result in extinction, then it must disregard any economic or nonscientific analysis to include the area.

Do you agree with her statement?

Mr. HUBBARD. Well, actually I would need to look at the Act, and I want to do that and give you a clarification on that, because I do know that economics are a part of that process. So I guess I would take issue with it, but I'd want to clarify that with you.

Senator PACKWOOD. Then let me clarify for you right now, because I've gone over this and over this and over this with this woman at the Library of Congress who knows this Act better than anybody I've ever found.

You can consider economics in a recovery plan if the recovery plan can accommodate both the economics and the recovery. If any recovery plan that you may come up with is going to lead to the extinction of a species, then you cannot consider economics, and the species and only the species counts. That is the law.

I'm going to get to the God Squad, which is unfortunately the end of the process and it ought to be at the start of the process, but given that, are you in essence saying that if the extinction of the species is threatened, then no other facts can be counted?

Mr. HUBBARD. No, I read that differently. I read that very differently. I read that as saying look at the economics along with extinction, but we cannot have a recovery plan that leads to extinction. That's a very great and fundamental difference from what you're saying. You're saying you must not consider at all economics.

Senator PACKWOOD. You can look at economics during the recovery plan. Heavens, if you can come up with a recovery plan that accommodates economics and recovery, that's Shangri-La. That's what we all want. What Lynne Corn is saying is that if you cannot come up with that recovery plan, then you cannot consider economics. The recovery plan has to be recovery, and it cannot be hindered by economics if you cannot recover.

Mr. HUBBARD. Well, I guess what I disagree with is that economics can be as diverse and complicated as ecology can, and there are always other ways and economic avenues to get diversification of the economy and other avenues to recover and help the overall economy. I think to look at it by only looking at one industry or one mill is not the way to go forward with good public policy on

a national level, and so I think the way that it's worded and the way that interpretation comes down is not the way to interpret it on a broad policy level. There is always a way to look at economics and look at other economic avenues.

Senator PACKWOOD. Let me just ask one question if I might. Mr. Doppelt, are you familiar with the Dolan decision?

Mr. DOPPELT. A little bit.

Senator PACKWOOD. Do you agree with it or disagree with it?

Mr. DOPPELT. I'd have to look at it closely, but I don't agree with it basically.

Senator PACKWOOD. You don't agree with it basically.

Mr. DOPPELT. Yes.

Senator PACKWOOD. The Dolan decision came out of Tigard, OR; a business wanted to expand, and Tigard said, well, we'll let you expand, but in order to do that, you've got to build this bicycle path alongside your property. And the business in essence said that's an unconstitutional taking; you can't make me provide for the public good, you can't deny my right to expand my building for this reason, and went to the Supreme Court. And the Supreme Court said the business owner is right, that its property cannot be taken in that fashion. I think it's a good decision. I'm sorry you disagree with it.

Thank you, Mr. Chairman.

Senator KEMPTHORNE. Senator Packwood, thank you very much. [Applause.]

Let me thank the panel for all of your good input, and we appreciate it greatly.

With that, let me call the final panel forward.

Senator CHAFEE. Mr. Chairman, I'd like to join in the thanks of this panel. I thought they were very, very good. Appreciate it.

Senator KEMPTHORNE. Mr. Nelson Wallulatum, Mr. Mack Birkmeier—excuse me, Mr. Wallulatum is the Columbia River Intertribal Fish Commission out of Bend, OR; Mr. Mack Birkmeier, who is president of the Oregon Cattlemen's Association out of Joseph; Mr. Bob Allen, board member, Umpqua Watershed out of Roseburg; Mr. John Crawford, who is the president of the Klamath Basin Water Users, Klamath Falls, OR.

Mr. Wallulatum, would you like to begin? I may not have pronounced that correctly. If you need to correct me, please do so.

STATEMENT OF NELSON WALLULATUM, COLUMBIA RIVER INTERTRIBAL FISH COMMISSION, BEND, OR

Mr. WALLULATUM. Mr. Chairman and members of the committee, my name is Nelson Wallulatum, and I'm chief of the Wasco Tribe and a lifetime member of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. I am here today to testify at your request on behalf of the Warm Springs Tribal Council concerning our tribe's experience with the Endangered Species Act.

I believe that my comments also reflect the views of the other Columbia River treaty tribes; the Yakima, the Umatilla and the Nez Perce Tribes. Each of those tribes has submitted written testimony for your consideration describing their experience with the Endangered Species Act. In addition to our tribe's written com-

ments, I respectfully request that the written statements from the Yakima, the Umatilla and the Nez Perce Tribes be made part of the record.

Senator KEMPTHORNE. Indeed it will.

Mr. WALLULATUM. The Warm Springs Indian Reservation is in many ways a microcosm of the Pacific Northwest. Our 1,000 square miles reservation spreads east from the crest of the Cascades to the Deschutes River, and includes large stands of old growth timber and the principal spring chinook spawning areas in the Deschutes Basin. Like many Northwesterners, the Warm Springs people are dependent on our natural resources. Our tribal forest provides jobs for the tribal members in the woods as loggers or in the tribal saw-mill processing our timber into finished wood products.

In addition, some of our people raise livestock and engage in irrigation agriculture, which requires the use of the same water that supports the spawning chinook salmon population on the reservation. Finally, our people are true to their historic roots as Columbia River Indian people in that we depend on the salmon from the Columbia River, as well as from the streams in our ceded areas such as the Deschutes, John Day and Hood River systems for our treaty-secured ceremonial subsistence and commercial needs.

Because our economic livelihood and our cultural and spiritual way of life depends on the forest and the fishery resources of our reservation and our off-reservation treaty-secured areas, we have had considerable experience over the past several years with the Endangered Species Act. We know that the Northern Spotted Owl inhabits some of the old growth timber stands on our reservation. We also know that certain Snake River salmon stocks may be taken incidentally in our Columbia River fisheries.

Our tribe has maintained a consistent position on how the Endangered Species Act relates to tribal activities. Our view is that the tribe's inherent sovereign authority to manage its own land and its own resources, a right secured by the Treaty of 1855, and legally protected by the Federal Government's trust responsibility to the tribe, means that the Federal authorities must defer to tribal authority and acknowledge our ongoing efforts under tribal laws to protect the owl and salmon listed under the ESA.

Put another way, we do not believe that ESA limits our inherent tribal sovereignty or the treaty-secured rights. Nothing in the present language of the ESA conflicts with the tribal position, and we believe that this Act must be administered by the Federal Government in a way entirely consistent with this position.

Our experience with the ESA is that the Act itself is not the problem. Rather it is how it has been implemented. With respect to the Northern Spotted Owl, for example, the United States Fish and Wildlife Service has nearly made the mistake of attempting to impose Federal restrictions on our tribal lands that not only violated the tribe's sovereignty and treaty rights, but were totally unnecessary.

As part of our integrated resource management plan, the tribe has taken thousands of acres of prime timberland out of production in order to protect fish and wildlife habitat, including spotted owl habitat. Nonetheless, several years ago the Fish and Wildlife Service proposed restrictions on our tribal lands as critical owl habitat.

The areas proposed for protection were not even in the areas where the owls are located, and most importantly, the proposed designation failed to recognize the tribe's conservation measures taken to protect owls and other species. Once we pointed this out, the Fish and Wildlife Service dropped its proposed critical habitat designation of reservation lands.

Senator KEMPTHORNE. Chief, could you conclude your remarks now, and also your entire printed text will be made part of the record, so if you could conclude your comments now.

Mr. WALLULATUM. Yes. These problems with the spotted owl listing have nothing to do with the writing of the Endangered Species Act. Rather they have everything to do with how the Fish and Wildlife Service has administered the Act in an awkward, insensitive and possibly illegal manner with respect to the Warm Springs Tribe and the timberlands of the Warm Springs Reservation.

With that, I close, recognizing problems with the NMFS on the fishery problems that have been going on for the past year.

Senator PACKWOOD. Good. Mr. Wallulatum, I appreciate very much your comments; very helpful, and your testimony as well.

Bob Allen.

STATEMENT OF BOB ALLEN, PRESIDENT, OREGON CATTLEMEN'S ASSOCIATION, JOSEPH, OR

Mr. ALLEN. Thank you for allowing me to testify today. My father was a fish cutter for the 40 Fathoms Fish Company in Boston, Massachusetts. As a child in 1950's, I saw and ate fish every day. They were free for us and cheap and plentiful for everyone in New England. The abundance of New England fisheries of that historic time are no more. The New England fisheries are collapsing, and Atlantic salmon are seen rarely in the rivers there.

What happened? Overfishing, poor management, degradation of water quality in the rivers and not paying attention to the warning signs. For the United States and Canada, the cost to save these fisheries in the billions of dollars will far exceed the value of the catch. What can we learn from their experience? We need only to pay attention, listen to our scientists and natural resource managers, count and compare the numbers, decide what must be done and act.

The Umpqua River flows by this very building. It runs from the snows of Crater Lake to the sea entirely within our county. It is our river, a world class river, beautiful, productive, deteriorating in terms of water ecology and fisheries. The famous run of spring chinook salmon, winter steelhead, coho salmon and sea run cutthroat are in decline. The status of raw fish stock is a good indication of overall watershed health. The true effects of environmental degradation on these fish are often matched by hatchery production. Many are only marginally self-sustaining. Hatcheries are expensive and tend to weaken strains over time.

A quick review of the status of our wild anadromous fish stocks reveals a widespread decline in many of these extremely valuable fish. Coho salmon once formed the basis for a major fishing industry here. Harvest averaged 100,000, occasionally 250,000 fish out of a possible run of a million. Since the 1920's, we have seen a 90

percent decline in naturally produced coho in the South Umpqua River.

Much of the once productive stream habitat is no longer suitable due to grave conditions. In fact, the wild North Umpqua coho strain is extinct. Spring chinook: In the South Umpqua, native runs of these economically and spiritually important fish have declined from 5,000 fish to a few hundreds or less and face an imminent threat of extinction. Why? Decline again of stream river habitat, overfishing, possible loss of genetic viability due to nonadaptive hatchery fish.

With the steelhead, these relatively healthy stocks, nonetheless represent an 80 percent decline from historic runs. Again hatchery introductions mask the true severity of their decline.

Sea run cutthroat: We have observed a huge decline in abundance and distribution throughout the Umpqua Basin. It is the only species or stock presently proposed to be listed under the ESA. The National Marine Fisheries Service has determined their status to be so in jeopardy that the proposal is for endangered.

What does the Federal ESA do to change the situation? Certainly it causes improved accountability for land and water use on Federal managed lands, it encourages State agencies to be responsible resource managers, and it takes away the State's almost exclusive mandate to manage fish populations, giving Federal agencies at least equal authority. Our State has had this responsibility for over 100 years and look where we are.

Until recently the State's answer to the obvious need for maintaining and restoring of water ecosystems has been that forest and agriculture management is OK. That's denial in responding with halfway fixes like hatcheries and simplistic stream improvements. Applying the ESA to anadromous fish runs is only very recent. Redfish lake sockeye were first listed in the ESA and that was only 3 years ago, not even one generation.

By far, the major change in the Federal ESA that is needed is an early warning system that gets listened to and evokes responses before a species gets to a hopeless status. This will require more, not less Federal influence early in the process.

I support other modest changes in the Act such as financial incentives for property owners to promote conservation of species, Federal funds to finance habitat protection plans and moving in the direction of ecosystems planning to provide landowners with greater certainty over time. How long do we wait before taking action to protect the economic, social and ecologic interest of the Pacific Northwest?

It is clear that our inland and coastal fisheries are in serious peril. The Endangered Species Act has been and should continue to be a tool for us to preserve and protect all species, but especially those with which our whole region identifies and which contribute greatly to the well-being of our economy. We must begin eradicating our ignorance, our lack of understanding, not our endangered species. Thank you very much.

Senator KEMPTHORNE. Bob, thank you very much.

[Applause.]

John Crawford.

STATEMENT OF JOHN CRAWFORD, PRESIDENT, KLAMATH BASIN WATER USERS, KLAMATH FALLS, OR

Mr. CRAWFORD. Thank you, Senator. Thank you, distinguished members of the committee.

I'm here representing the Klamath Water Users Association in the Klamath Basin that spans both the State of Oregon and California and three counties in those States. The primary source of irrigation water in the basin is from the Klamath irrigation project. A couple of things separate us from Bureau of Reclamation projects throughout the West, especially those in the Central Valley Project, California. Primarily our project is virtually paid for. Second, the total ag diversion from the Klamath Project comprises about 2 percent of the flow at the mouth of the Klamath River.

In September 1994 in the midst of the worst drought year that we have had in 100 years, ag deliveries were cutoff completely a full 8 weeks prior to normal. Six wildlife refuges were denied access to any delivery of water at the same time. Agencies were making management decisions based upon emotional conflict between the needs of anadromous stocks proposed for listing downstream on the Klamath River and endangered sucker fish in Upper Klamath Lake, decisions they shouldn't have had to make.

Let's go back to the 1988 listing of the Lost River and short nose sucker. The best available information at that period of time was no information at all. Up until 1986 a legal snag fishery for these fish existed. The ongoing science evaluations today involve dating and typing of spark plugs recovered from broken lines used to snag these fish that were snagged in 1986 and listed in 1988. Populations were never a factor in the listing process, only recruitment in through the breeding population. Entire populations of the species had not been identified at that time.

An example would be that in 1993, a high water year, 50 million larva fish came down one small tributary of one of the five areas in the basin that contained the fish. Clear Lake which has documented now, but did not in 1988, at least 100,000 adult short-nosed suckers. In less than 3 years we've operated the Klamath project under no less than seven biological opinions. As applicants, we went through an arduous section 7 consultation that yielded a controversial but reasonable result for all, especially the endangered fish. After two seasons, neither considered normal—we had a wet year and a dry year—we are now reinitiating consultation and starting the process all over again.

We have proposed critical habitat within the basin. The economic impact and evaluation are terribly and admittedly flawed. Over 250,000 acres of private property is proposed for listing, approximately 51 percent of the entire area proposed for critical habitat. With some relief from region 1 of the U.S. Fish and Wildlife Service, particularly assistant regional director Dale Hall—he's tried to ease our minds and make reasonable changes to the proposed rule—nonetheless, undertaking ecosystem recovery and enhancement has subjected private property owners to critical habitat regulations, turning them away from restoration projects.

Three and four generations of us have been asked to come on to this land. Homesteaders of two World Wars and their families have coexisted with all of the species in the basin for 100 years. The

wildlife that are an integral part of our lives and primary reason that we have stayed on the land may be the basis for our removal from some of these lands.

All of the elements of the ESA, the cry out for reform are affecting lives and livelihoods in the Klamath Basin today. Thank you.

Senator KEMPTHORNE. John, thank you very much.

Mack Birkmeier.

**STATEMENT OF MACK BIRKMEIER, PRESIDENT, OREGON
CATTLEMEN'S ASSOCIATION, JOSEPH, OR**

Mr. BIRKMEIER. Thank you. My name is Mack Birkmeier, and I'm president of the Oregon Cattlemen's Association, and I wanted to give the Senators kind of a western howdy and welcome you, Senator Chafee, particularly, kind of a city slicker there from back east, but I want to say to you as one American to another that I appreciate your involvement in that Second World War and that Korean deal, and I'm proud of people like you that still are working there, and I'm proud that we have a system here where we can come and disagree together, and I think you're responsible for a lot of that, so thank you.

Senator CHAFEE. Well, and thank you very much. That's very generous. Thank you.

Mr. BIRKMEIER. I'd like to talk—being kind of the cleanup hitter here today, it kind of gives me an opportunity to kind of throw my notes away. You guys have got them and you can read them, but what I want to talk about the first thing here is the critical habitat listing. You know, you turn the endangered species over to the National Marine Fisheries Service, and they designate the critical habitat, and they neglected to list the ocean.

So right from the start, when you're asking for cooperation from landowners and land users and to address a problem that you're trying to address honestly, when the agency in charge doesn't list where the salmon spends three-fourths of its time where it's dependent on food and whatnot in the ocean and the conditions in the ocean, it sends the wrong message to us in the first place.

I think that's a critical flaw in the Act to allow an agency to determine the critical habitat and leave out the biggest section of it just because it was unpleasant to get into it, I guess. It was easy for them to come up into the upstream habitat and point the finger at us where we're an unorganized outfit, rather than take on all of the multinational fishing treaties and all these kind of things that would be complex in the ocean.

Let me give you the cowboy perspective a little bit of living under the Endangered Species Act for a few years. Being from Joseph, OR, and running a cattle ranch up there, I'm pretty cognizant of what's going on, and it doesn't make much difference whether it's a logging issue or a grazing issue anymore if you live in one of these little western towns. It's a community issue. It affects our community.

When we have three mills go down in our county and we're threatened with suits like we were last summer and to bring our cattle home off the public lands by preservationist groups, this affects your whole community, and really, if you don't do anything else, you know, if you take it on yourself to not change this Act,

you should rename it at least, because it is a community destruction act.

[Applause.]

The other thing I'd kind of like to say is in regard to where is the Act destroying or not helping the environment, you know. They're saying that it's doing a lot of wonderful things, but I can show you a couple of things up in our country that isn't so wonderful. It's enabled the preservationist groups to just about halt all resource use up there.

Now the timber stands are so thick and so stagnant, so diseased that they're just burning up. They're not letting us harvest it anymore, so it's overthick and stagnant. It dies, and it burns in a catastrophic fire that burns the entire watershed. All the streams that the fish are in, it literally cooks the fish in the brook. The effect is years coming back. The ash goes down these streams. Every high water in the spring of the year, why, you suffer the same thing.

It's a tremendous erosion. They talk about erosion in grazing. Well, I tell you what, one wildfire out there that burns up 23,000 acres like it did last summer, and you'll see some kind of erosion, so that's one of the places.

The other place where I noticed that they aren't protecting it and think they are, they were trying to enjoin us and bring us home off the forest last summer with our cows, and the salmon were spawning in the streams on the private land, in the low streams on private land, but these cows was up in the forest up in the high mountains, as far from the spawning habitat as you could get.

We had concurrence from the Northwest Power Planning Council and the Oregon Department of Fish and Wildlife, and I have letters to prove it, that this was a bad idea, this lawsuit, and they were trying to kind of persuade and back off of that, because they weren't protecting salmon by bringing these cows home. They were actually endangering them, and they just keep pursuing.

So my appeal or position is that this law is being used as a club to impede the harvest of natural resources, and as a dependent community on resources, we don't have anything else. We've lost the three mills now, and that's the only industry we have, we don't have anything else. And so I think I needed to—we need to work together on this. We need that sound verifiable science. Even though it doesn't answer all the questions, it's better than guesses.

The cattle industry has pledged its support. We work on every consensus group we can. We find that the people that don't work on the consensus groups are the ones that sue us all the time. This is the Wallowa County/Nez Perce salmon plan that Mike testified earlier. I was a participant in that all the way, so if you have any questions in that regard, why, I'd be happy to—and I see my time is up, so thank you all.

Senator KEMPTHORNE. Mack, thank you very much.

Chief, let me first state that I appreciate so many of the conservation efforts that tribes make such as yours and just ask you this. Are there changes that we should make to the Endangered Species Act that you think will encourage our relationships?

Mr. WALLULATUM. Well, I believe that making remarks to the Endangered Species Act, we have had treaty rights which were securing certain things to us, and this is what concerns us, that there

are not really all the efforts being made to try to implement the ESA so that our treaty rights are protected, and we have never had a chance to really participate in any of the dealings with NMFS or U.S. Fish and Wildlife Service.

The only thing that they did was to come on to the reservation on the spotted owl and tried to make us accept restrictions and other rules and regulations, when we believe that we're sovereign and that we deal on a government-to-government basis. And this was ignored, and so we did have an audience with them and got them to understand that we were not just a private landowner, that we were an entity that entered into a treaty with the U.S. Government, and we expect the U.S. Government to uphold our rights and protect those things that we look here to.

And I always make the remark, for 10,000 years we were doing OK, but within the last 200 years everything has gone to pot.

Now, we'll be celebrating our treaty. This is next month, and it will be 140 years that we've, you know, lived where we're at, and where we did roam and gather and hunt and fish. That's the reason we want to see that as a government we would like to participate on a government-to-government basis with all the other entities and get the agencies to respect that.

Senator KEMPTHORNE. All right, thank you, Chief.

Mr. Birkmeier, you'd be interested in the conversation I had with some of the staff at the National Marine Fisheries Service. At one point they told me that we needed to be aware that they were rather new to the inland waterways issues, that they were an oceanographic agency. I said, well, then can you tell me what's happening to the salmon in the ocean, and they said, no, that's a black hole. So it's very difficult. I appreciated your comments there.

Mr. BIRKMEIER. Senator, I appeared at their hearings in regard to the critical habitat listing, and I heard the same thing, and I just want you to know that the preponderance of testimony at those hearings was that they include the ocean, but they disregarded that testimony. I know they did. And so they just went ahead and did it the way they wanted to do it.

Senator KEMPTHORNE. Mack, let me ask you this, and if you'd give me a real fast response, but as a rancher, are there incentives that you would welcome that could help you with conservation and help you as a rancher?

Mr. BIRKMEIER. I think probably that's something that needs to be explored a little, Senator. We've been reluctant as ranchers to take a lot of handouts from the government, but that may be something we can think about and talk about. We've done a lot of this through cooperation. However, we started habitat projects back 24 years ago and stream restoration and whatnot, so we're already well on our way, and we've used BPA funds, ODFW funds in that regard, so I think so.

Senator KEMPTHORNE. All right, OK. And, Mr. Crawford, it's clear from your testimony that section 7 consultation did not work for the Klamath Basin water issues. How would you improve the section 7 consultation process?

Mr. CRAWFORD. I think it was my insinuation that I felt that the section 7 consultation process went very well and reached a desired goal. Now, however, after only two seasons, because of one entity,

we are reinitiating that consultation. I don't think we have had time to learn about the species and their survival in this 2-year interim period. I think that that long-term hard consultation should be allowed to work.

Senator KEMPTHORNE. Thank you very much.

Senator Chafee.

Senator CHAFEE. Mr. Allen, you presented a pretty grim picture of what's happening to the fish in this area, and on it went a litany of close to disaster, yet during all this time we've had—or a good portion of this time we've had the Endangered Species Act. So I guess the question is, is the Endangered Species Act doing any good?

Mr. ALLEN. Well, I think, like the people said about Ireland, there's a lot of religion, but not much Christianity. We tried the Endangered Species Act only on one species so far, the red-eye lake sockeye salmon. At the point where two or three of them made it back those 900 miles up the Columbia, it was listed 3 years ago. That's less than one generation of fish, and fishery biologists that I talked to say they need 15 to 20 generations to see if they're really going to make it. So it hasn't been applied until recently.

Even though over time, the last 20, 25 years, the stocks of these anadromous fish that come up our river here have been in a steady decline with occasional flips of increases, but they've been in decline. We don't have the early warning system which I recommend that we do. We wait until it's—that's the Act—until it's really an emergency safety net that we put it into place.

Senator CHAFEE. Well, the Act, as you know, has a threatened category as well as an endangered category. The threatened category is meant to be somewhat of a warning system, but you say that's not effective?

Mr. ALLEN. Well, I think it is effective as a warning, but it hasn't been done very much that I have seen.

Senator CHAFEE. I must say in today's hearing I find the most intractable problem, insoluble problem, if you want, seems to be the fisheries. I'm just not sure what the answer to that is, it seems so difficult.

Mr. ALLEN. Well, it's pretty discouraging, and one must do something and that's why I support the Endangered Species Act with modifications. That's something that the Federal Government can do, because our State government hasn't been able to cut it in 100 years to reverse these trends.

Senator CHAFEE. In your testimony you said on page 2, I support modest changes in the Act, and then go on to talk about promoting financial incentives for property owners to promote conservation of species. I think that's something that appeals to all of us, whether it's some kind of a tax break because of easements imposed on property or whatever it might be, particularly doing something under the inheritance tax. Then you say a Federal fund to finance habitat protection plans, and moving in the direction of ecosystems planning to provide landowners with greater certainty over time.

Did you listen to the testimony of Mr. Smitch from the Fish and Wildlife?

Mr. ALLEN. Yes.

Senator CHAFEE. What did you think of what he had to say?

Mr. ALLEN. Well, it sounds good if it's implemented. It doesn't seem to be being implemented very much.

Senator CHAFEE. Well, I thought he gave a pretty impressive list of those landowners that he's dealt with. Obviously, there could be more.

OK. Well, fine. Thank you. I want to thank you and Mr. Birkmeier and Mr. Crawford and the Chief also for your testimony here.

Senator KEMPTHORNE. Senator Chafee, thank you very much. Senator Packwood?

Senator PACKWOOD. Mr. Chairman, I have no questions of this panel. I just want to conclude by thanking you and Senator Chafee again for coming to Roseburg for these first hearings. As much as I know of this issue, I have found these hearings very illuminating, and I thought I knew everything there was to know about this issue, and I should realize I will never know everything there is to know. And I just want to thank all the panelists, but especially the two of you for coming to Oregon. Thank you very much.

[Applause.]

Senator KEMPTHORNE. Senator Packwood, I thank you for the invitation and your encouragement that we come to Oregon to have the first of our field hearings. We will now move on to Idaho for the next field hearing, but before we adjourn—and I want to thank this panel. Again, your comments, your candor was extremely helpful to us.

Let me also now ask Senator Chafee if he has any closing comment that he would like to make.

Senator CHAFEE. Well, Mr. Chairman, I want to again thank Senator Packwood for encouraging us to come here. Thank you, Mr. Chairman, for holding these hearings in the western part of our country where the effects of the ESA have been felt so dramatically. I want to thank the patience of the audience here. I know sometimes one can get restive after hearing so many witnesses, but I thought each of the witnesses did a very good job, and I'm grateful to all of you for taking the trouble to come here. Many people have given up a day's pay to come here, and that's influential on us. It shows you care. It isn't something that you're just brushing by. You made the effort to be here.

Now we have to digest all this. We've got the record. We'll look at it, look at the statements, talk amongst ourselves and try and reconcile the different views that have come. I must say it's been—I was asking the Chairman if he had pretty evenly balanced panels, and he thought they were, and I must say he certainly did today. We had all views represented, and that's the fair way to do it. So, Mr. Chairman, I congratulate on your selection of the witnesses.

[Applause.]

Senator KEMPTHORNE. Thank you very much.

A couple of other announcements. Any of you that would like testimony from those that provided us their comments today, there are copies on the long table to the right of the exit doors. I cannot see it from here, but anyway, you can pick up copies of that testimony if you would like. Also, I again encourage you if you would

like to provide us with written testimony, that would be extremely helpful as well.

Now, we tried to figure out if there's any way to open this so that more individuals could take part, but we had established that we must conclude this at 1 o'clock. Therefore, what we have worked out is I know that petitions have been circulated from different perspectives here today, so there are two groups that would like to present their petitions to us. We've agreed that we'll give each of them 2 minutes to make their comments as they present their petitions to this panel. They're the Yellow Ribbon Coalition and the Umpqua Watershed, Inc., which represents the timber interests and environmental interests, etc., so Merilee Peay and Jim Ince—Merilee, if you would like to come forward, and, Jim, if you would like to come forward. We'll give each of you 2 minutes. Merilee, if you'd like to go ahead and lead off.

STATEMENT OF MERILEE PEAY, COORDINATOR, YELLOW RIBBON COALITION

Ms. PEAY. Thank you. Mr. Chairman and members of the committee, I am Merilee Peay, coordinator of the Yellow Ribbon Coalition. The Yellow ribbon Coalition is a grass roots member-supported organization with more than 5,000 members in Lane County. We are a member group of the Oregon Lands Coalition, whose membership includes more than 100,000 Oregon families.

Speaking for grass roots, I want to thank you for coming to Oregon to hear how the Endangered Species Act has affected us. We asked you to come to the heartland of Oregon's working people, and we commend your choice of Roseburg where impact of the ESA has been devastating.

While you were inside today listening to testimony, hundreds of individuals were outside, each with a unique personal account of living under the ESA. We are compiling these stories into a video as testimony to this committee. Social problems, job losses, family separations and fear are all realities of the ESA.

We do not know the ESA for its success in saving species. We know it mainly for the havoc it has caused families and communities. This was surely not the intention of Congress when they wrote the Act in 1973. Laws that work against people are laws that do not work at all.

On paper, finding so-called balance is easy. Living under that so-called balance is not always that simple. Your coming here today has again given us hope. We urge you to listen to the plight of our people and look hard for the real balance, a balance that makes the people of Oregon as important to this Congress as bugs, plants and critters of all kinds.

At this time I would like to present you with these scrolls. These scrolls were signed by the hard-working American families that came to Roseburg today, and signed with this newfound hope. Also, I have testimony, written testimony, handwritten letters, type-written letters, computer written letters from members all over the State of Oregon that I would like to leave here with you.

Pate Cat, an industry in Lane County, have left me with some photos and some testimony that explains how important other busi-

nesses are because of the natural resource industries in our community.

With that, I would like to thank you for allowing me to speak today, and thank you once more for coming to the beautiful State of Oregon.

Senator KEMPTHORNE. Thank you, Merilee, and it is a beautiful State.

Ms. PEAY. Yes, it is.

Senator KEMPTHORNE. Jim Ince.

STATEMENT OF JIM INCE, PRESIDENT, UMPQUA WATERSHED, INC.

Mr. INCE. Thank you, Senators and staff for coming to Roseburg and for your efforts toward achieving balance in testimony. It's been quite good.

My name is Jim Ince, and I'm also a rancher. I own a 160-acre woodlot and have a sawmill on my ranch. I'm president of Umpqua Watershed, Incorporated, a conservation organization, to clarify an earlier comment. We're based here in Roseburg, OR, and we helped organize this event.

I would like thank for their efforts the dedicated members of the National Wildlife Federation, the Pacific Coast Federation of Fisherman's Associations, the Oregon Natural Resources Council, Umpqua Watershed, Inc., and the other groups which have contributed to the effort.

Today we are witnessing a decline in natural resource sustainability. Our future economy is dependent upon a viable, sustainable resource base. An extremely important component of a secure future is the regulation of these public assets that we covet so dearly. The ESA is just such a regulatory godsend. Without it or with a weakened Act, our natural resources will be coveted by the excesses of a laissez faire industry which is yet to demonstrate a commitment to long-term stewardship or toward a responsible land ethic. The commercial and sport fisheries demand such adequate regulatory oversight. I see no other means to assure the future of these industries. Indeed, the timber industry will be carried more securely into the next century if we seek to conserve and regulate these resources.

Moreover, incoming corporations shopping for new locations look at factors contributing to the quality of life of their employees. If the scenic assets and recreational opportunities are frittered away mindlessly, we will then burn perhaps our last bridge to sustainable economies.

I've heard references questioning the science that says the Northern Spotted Owl is threatened. While these owls have been found in non-old growth forests, the best available science points to the facts that these birds are merely seeking to take refuge or dispersed as juveniles in the younger stands as their critical old growth habitat is being decimated. They're not known to flourish in non-old growth ecosystems.

Last, I invite all of you to come across the street to where a rally is beginning for fishermen and conservationists. We have five speakers scheduled shortly drawn from the list of witnesses you've heard today, including Lane County commissioner Jerry Rust and

Glen Spain of the Pacific Coast Federation of Fishermen's Associations.

Thank you for the opportunity to address your subcommittee.

Senator KEMPTHORNE. Jim, thank you very much. Do you want to borrow the timing device for your speakers? That's fine.

I want to thank all of you, and again, on the written comments, if they are postmarked no later than 1 week from today and if you wish to send them to Washington, DC., just put Environment Public Works Committee and mark ESA on the outside, and it will get to us.

With regard to the timing, it would be our intent on the subcommittee that before we go into the August break that we could have the language written for the reform of the Endangered Species Act. When we return then in the fall, we would take it up. At that point roughly, I would hand it off to the chairman of the Full Environment Public Works Committee. It would be our hope that we can take this to the floor this fall. The House is going to be moving also, and it's my intent that we will see the reauthorization and the reform of the Endangered Species Act this year.

Having said that, let me thank all of the folks in the audience; you established an atmosphere of respect and I appreciate that greatly. All of the panelists. I thank the folks that went into setting this up; it was done well, and also, to thank John Harden, who is the sheriff of Douglas County and was very helpful in the organization of this, and to point out, too, some of the individuals with his department: Lieutenant Bobby Urban, Sergeant Mike Norris and Sergeant Dan Hoy. So with that—

Senator CHAFEE. What's the ZIP?

Senator KEMPTHORNE. Oh, and the ZIP is 20510.

Senator CHAFEE. The ZIP if you want to mail something is 20510, Washington, DC.

Senator KEMPTHORNE. It's now 1 o'clock. This hearing is adjourned.

[Whereupon, at 1 o'clock p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements for the record follow:]

**Testimony of Senator Rod Johnson before the
US Senate Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries, and Wildlife
Thursday, June 1, 1995, in Roseburg, Oregon**

Mr. Chairman and members of the Committee, on behalf of the good people of this wonderful area who I represent in the Oregon Senate, and as a fifth-generation Oregonian who was born and raised in Douglas County, welcome to Roseburg. Thank you for allowing me to testify. Simply having this hearing is a sign that you are serious about changing the Endangered Species Act and are willing to listen to those on the ground. It means a lot to us.

First let me say that the other legislators who represent Douglas County, Senator Bob Kintigh and Representatives Bill Markham, Bill Fisher, and Jim Welsh, have specifically authorized me to speak for them here today. I have submitted Representative Markham's written testimony as well. They all wish they could be here, but we're in the closing days of our 1995 Session.

One of my friends in the Oregon Senate is fond of saying that **"The road to Hell is paved with good intentions."** **Congress had good intentions in 1973...we've had Hell in 1993.** One of our most important qualities as human beings is the ability to learn from our mistakes. We know now much about the Endangered Species Act that Congress did not know, or have reason to expect, in 1973. The purpose of this hearing is that it is time to use this knowledge, which we've paid so dearly to acquire, and fix our mistakes.

Fixing our mistakes in the Endangered Species Act does not necessarily mean that we need to repeal it entirely. It's important that we have a mechanism to force us to make protection decisions whenever a species is becoming endangered. The question is how. Since I'm representing the Oregon Legislature before you here today, I'm going to report on several Resolutions to Congress we have passed this year relating to the endangered species problem.

For example, to try to make sure that we only list species which are truly in trouble, the Oregon Legislature passed a resolution this year, HJM-2, to you in Congress asking you to substitute the phrase "sound verifiable science" for the phrase "best available science" in all environmental legislation. This standard would get away from the anecdotal evidence and other unsound scientific theories and hunches that in the past have been used to list species as endangered. For example, the Spotted Owl has been studied extensively in the last five years, and some of the hunches and assumptions on

which the Spotted Owl was listed have been proven to be grossly false. The most famous of these is the theory that there are only a few hundred Spotted Owls in existence, and that they could only nest in pure old growth forests. Sane, sound verifiable science should also be used in deciding how to recover a species if it is determined to be endangered.

Another resolution passed to you by the Oregon Legislature this year indicates our belief, as elected representatives of the people of the state of Oregon, that the science involving the Spotted Owl indicates that it's not endangered. **HCR-4 urges you to delist the Spotted Owl.** It passed 20 to 10 in the Senate and 44 to 13 in the House. I assure you that we would not have passed this resolution if we believed, after living with the truth about the Spotted Owl, that it was truly in danger of extinction.

It should go without saying that the true facts are not the ones that you likely read about in the papers back east, but I am saying it anyway because it helps to point out one of the flaws in the Endangered Species Act. That flaw is that hysterical public opinion can drive decisions to be made that are not based on reality, especially when those decisions are made by people far removed from the area affected.

As other evidence of the desperate need for Oregon to get out of the clutches of the federal Endangered Species Act, here are some other resolutions we passed to you this year: (1) SCR-1, regarding transfer of control of federal forest and grazing lands to state government; (2) HJM-4, regarding amendment of the Marine Mammal Protection Act to allow us to control the population of sea lions and seals to protect our salmon runs; (3) HCR-14, requesting that title of Oregon O & C lands be transferred to the state of Oregon; and (4) SCR-2, requesting Congress to take action to immediately insure timber communities survival. I have attached copies of all these resolutions to my written testimony.

The last legislative Resolution I want to mention is the one that goes to the heart of the reason we are here. HJM-3 requests that you amend the federal Endangered Species Act to give equal consideration to the human and economic impacts of a listing so that those considerations can be **balanced** against the need for the listing. This resolution passed 50 to 10 in the House and 22 to 8 in the Senate.

The primary problem with the Endangered Species Act is that it contains no common sense, has no room for reason, and is applied almost blindly as to the impacts of the human species. The intent of the Endangered Species Act was to make sure that we don't blindly protect the human species at the unnecessary expense of other species, and **it's time we remember that that same logic works in reverse as well.**

If instead of allowing the Endangered Species Act and other related federal laws to completely shut down the federal forest timber sales in Douglas County, we had instead used a common sense approach, we would have applied more sound verifiable study in the first place to truly determine whether the Spotted Owl was endangered. This might have taken some time, but it's time that we recognize that species don't become threatened overnight, nor do they go extinct overnight. **We have time to make good decisions.** Then, if we determined it needed protection, the timber harvesting practices could have been studied to determine how logging and Spotted Owl protection can be compatible. We've learned a lot about managing the front for the characteristics that Spotted Owls need.

We also would have listened to and made allowances for the human need in the area. This brings me to my two final points. First, the very lack of a mandatory consideration of the human impacts before a species is listed results literally and inevitably in an unbalanced picture being presented to the average American regarding the listing decision. This is a significant advantage to those people who would favor ignoring the human impacts, and enables them to fan the average American's environmental passions in total ignorance of the human cost. If the government press releases are one-sided, usually the press stories will be one-sided also.

Partly as a result of this official sanctioning of this one-sided information, the loggers and woodworkers of Oregon have been subjected to most unjust vilification in our times. People who are willing to get up at 3:00 in the morning, ride in an old crummy for two hours, and work their tails and risk their lives all day in the woods are not bad people. They're doing an honest day's work to feed their families and provide Americans with wood products from two-by-fours to toilet paper. The same goes for the men and women who work in the sawmills, the plywood plants, the sales offices, and the log and lumber trucks.

But they've all been made out to be forest rapers and baby tree killers, because it's easier for the extreme environmentalists to justify hurting us if they can first convince America that we're bad, and therefore not worth protecting. Plain and simple, this vilification would not have been possible if the official government action pursuant to the Endangered Species Act had not been so unbalanced and so totally lacking in concern for the human consequences.

I've always been dismayed at the total lack of appreciation for the **culture** of timber communities. Think how different this whole Spotted Owl thing might have played out if the people whose culture was based on logging timber had been Eskimos, Aborigines, or Bushmen. The same liberals who in the 1990's love to hate Oregon's loggers would have found a way to protect the Spotted Owl and protect the people's

culture and way of life. They'd have found a balance. This is the kind of balance that needs to be a requirement in the Endangered Species Act.

The final point I want to make is that it is absurd for the federal government to assume that the people of Oregon do not care about their environment. The total lack of input from the state or local governments into the federal Endangered Species Act decisions is a crime. We are a state who invented the bottle bill, cleaned up the Willamette River, protected our coastline, and enacted and by far the strongest Forest Practices Act in America. Just this spring, the people of the Portland area voted by nearly a two to one margin to raise \$136 million in bonds to purchase some greenways. Right here in Douglas County, we have the Umpqua Basin Fisheries Restoration Initiative. It represents an excellent example of a local, public-private partnership approach to addressing resource issues. We in Oregon are protecting our streams, our forests and our beaches, and I guarantee you we can protect the Spotted Owl and the Marbled Murrelet as well.

If you do nothing else to the Endangered Species Act, amend it to require that the local people are made a major partner in the process. Let them "vote" through their elected officials. Share the power and the responsibility. The people of Oregon are creative and strong, and can achieve solutions that don't fit the blind cookie cutter approach from Washington DC. Let us get involved.

I thank you again for being here, for it is wonderful evidence that the new Congress is indeed interested in how the people of Roseburg, Douglas County, and Oregon feel about the Endangered Species Act. I assure you that your presence here means a great deal to us, and we trust that you will make the decisions that need to be made.

Thank you.

Resolutions Passing the 1995 Oregon Legislature

HJM 3 - Endangered Species Act: Requests Congress to amend the Federal Endangered Species Act of 1973 to give equal consideration to human and fiscal impacts when listing species. (Passed House 50 to 10; Senate 22 to 8.)

HCR 4 - Delist Spotted Owl: Urges the Director of the US Fish and Wildlife Service to remove the northern spotted owl from threatened species list under the Endangered Species Act. (Passed in House 44 to 13; Senate 20 to 10.)

HJM 2 - "Best Available Science": Requests Congress to substitute the phrase "best available science" with the phrase "sound, verifiable science" in all environmental legislation. (Passed House 42 to 17; Senate 20 to 8.)

SCR 2 - Timber Community Survival: Requests Congress to immediately (1) Require salvage of dead and dying timber, (2) Release enjoined timber sales, (3) Sell 2 billion board feet annually for four years, and (4) do all 3 with "sufficiency language" to prevent obstruction. (Passed Senate 20 to 7; House 41 to 14.)

HJM 4 - Pinnipeds: Requests the Congress to enact legislation amending the Marine Mammal Protection Act of 1972, as amended in 1994, to include population control of sea lions and seals within certain guidelines. (Passed House 56 to 2; Senate 24 to 4.)

HCR 14 - O & C Lands: Urges Congress to transfer title to Oregon and California Railroad Grant Lands to State of Oregon. (Passed House 57 to 1; Senate 23 to 4.)

SCR 1 - Federal Lands: Urges Congress to delegate regulatory authority over federal forest and grazing lands to state government. (Passed Senate 20 to 5; House 43 to 13.)

House Joint Memorial 3

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Natural Resources)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Memorializes President and Congress to amend federal Endangered Species Act of 1973 to give equal consideration to human and fiscal impacts when listing species.

JOINT MEMORIAL

To the President of the United States and to the Senate and House of Representatives of the United States of America, in Congress assembled:

We, your memorialists, the Sixty-eighth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas the forest resources of this state are important to the economic, social, cultural and human needs of Oregonians and the nation; and

Whereas wise multiple-use management of forestlands in this state is important to natural resource dependent communities and provides significant local and state revenues; and

Whereas the federal Endangered Species Act of 1973 and other environmental laws are being used to restrict these uses, thereby creating economic instability and hardship for natural resource dependent communities and local and state governments; and

Whereas the use of wood substitutes causes unnecessary use of fossil fuel; and

Whereas artificial restrictions of available timber supply will artificially increase the price of wood products used for housing and other important human needs; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The President and Congress of the United States are memorialized to take action to amend the federal Endangered Species Act of 1973 to give equal consideration to human and economic impacts in making further additions to lists of threatened or endangered species under the federal Endangered Species Act.

(2) A copy of this memorial shall be sent to the President of the United States, each member of Congress and the Director of the United States Fish and Wildlife Service.

**This Resolution was adopted by the
1995 Oregon Legislature:**

**House, 50 to 10 vote; and
Senate, 22 to 8 vote.**

A-Engrossed House Concurrent Resolution 4

Ordered by the Senate April 21
Including Senate Amendments dated April 21

Sponsored by Representatives VANLEEUWEN, TARNO, REPINE, MARKHAM, OAKLEY, HAYDEN, Senator JOHNSON; Representatives BAUM, CLARNO, FISHER, MILNE, NORRIS, QUTUB, SCHOON, STARR, WELSH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Urges Director of United States Fish and Wildlife Service to remove northern spotted owl from threatened species list under Endangered Species Act.

CONCURRENT RESOLUTION

To the Director of the United States Fish and Wildlife Service:

We, the Sixty-eighth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas the forest resources of this state are important to the economic, social, cultural and human needs of Oregonians and the nation; and

Whereas wise multiple-use management of forestlands in this state is important to natural resource dependent communities and provides significant local and state revenues; and

Whereas the Endangered Species Act and other environmental laws are being used to restrict these uses thereby creating economic instability and hardship for natural resource dependent communities and local state governments; and

Whereas the use of wood substitutes results in the unnecessary use of fossil fuels; and

Whereas artificial restrictions of available timber supply will artificially increase the price of wood products used for housing and other important human needs; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The Director of the United States Fish and Wildlife Service is urged to remove the northern spotted owl (*Strix occidentalis*) from the list of threatened species under the Endangered Species Act in consideration of the recent, sound and verifiable scientific data indicating a substantially larger species population than was previously believed to exist.

(2) A copy of this resolution shall be sent to the President of the United States, each member of the Oregon Congressional Delegation and the Director of the United States Fish and Wildlife Service.

**This Resolution was adopted by the
1995 Oregon Legislature:**

**House, 44 to 13 vote; and
Senate, 20 to 10 vote.**

House Joint Memorial 2

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Natural Resources)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Memorializes Congress to substitute for "best available science," phrase "sound, verifiable science" in all environmental legislation.

JOINT MEMORIAL

To the Senate and House of Representatives of the United States of America, in Congress assembled:

We, your memorialists, the Sixty-eighth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas much federal and state environmental legislation contains the phrase "best available science"; and

Whereas the phrase "best available science" may be no more than anecdotal and something other than proven science; and

Whereas anecdotal evidence may be biased in numerous ways and can lead to unwise decisions that may have far-reaching negative effects; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The Congress of the United States is memorialized to substitute for "best available science," the phrase "sound, verifiable science" in all environmental legislation.

(2) Copies of this memorial shall be sent to each member of the Oregon Congressional Delegation.

**This Resolution was adopted by the
1995 Oregon Legislature:**

**House, 42 to 17 vote; and
Senate, 20 to 8 vote.**

Senate Concurrent Resolution 2

Sponsored by Senator JOHNSON, Representatives BAUM, HAYDEN, MARKHAM, VANLEEUWEN; Senators ADAMS, BAKER, DERFLER, HANNON, KENNEMER, KINTIGH, MILLER, PHILLIPS, SHANNON, SMITH, TDMS, WALDEN, YIH, Representatives CLARNO, FISHER, GRISHAM, LEWIS, LUKE, LUNDQUIST, MEEK, MONTGOMERY, OAKLEY, REPINE, SCHOON, STARR, TARNO, TIERNAN, WELLS, WELSH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requests Congress to immediately adopt legislation requiring that dead and dying timber on federal lands in Oregon be sold, awarded and available for harvest.

Requests Congress to immediately adopt legislation requiring the release for harvest timber from previously offered, sold and/or awarded timber sales on federal lands in Oregon.

Requests Congress to immediately adopt legislation requiring that not less than 3.0 billion board feet of timber be sold, awarded and available for harvest from federal lands in Oregon for each of next four years.

Requests that Congress enact legislation to allow timber to be harvested as specified notwithstanding any other laws.

CONCURRENT RESOLUTION

1
2 **WHEREAS**, unconscionably senseless federal forest management has allowed hundreds of
3 thousands of acres of timber to be killed or damaged in Oregon due to drought, insects, disease and
4 wildfires;

5 **WHEREAS FURTHER**, 150,000 acres of old growth forests have been lost in eastern Oregon
6 and another 500,000 acres of old growth forest is at risk of being lost due to overstocking resulting
7 in insect mortality of old trees;

8 **WHEREAS FURTHER**, hundreds of thousands of people are employed directly or indirectly
9 by the forest products industry, many small communities, and a very large segment of the Oregon
10 economy depend heavily on the harvest of timber from federal lands in Oregon;

11 **WHEREAS FURTHER**, the forest products industry makes a significant, positive contribution
12 to Oregon's economy and is especially important to the economic vitality of many rural communities;

13 **WHEREAS FURTHER**, President Clinton's federal forest plan has failed to resolve the timber
14 availability crisis facing Oregon which has resulted in mill closings, job losses, and economic hard-
15 ship for many of our citizens, businesses and timber-dependent communities;

16 **WHEREAS FURTHER**, the federal listing of the Northern Spotted Owl in 1990, the listing of
17 the Marbled Murrelet in 1992, and other appeals and objections filed in federal court and with fed-
18 eral agencies, have resulted in court injunctions and agency paralysis regarding federal timber sales
19 in Oregon;

20 **WHEREAS FURTHER**, these court injunctions and agency paralysis have resulted in a near-
21 total freeze in the sale of the timber from federal lands in Oregon;

22 **WHEREAS FURTHER**, the amount of volume in Oregon represented by sold and/or awarded
23 sales on federal lands has declined from 7.2 billion board feet in 1989 to 1.5 billion board feet today;

24 **WHEREAS FURTHER**, many millions of board feet of timber which have been sold and/or
25 awarded have been prevented from being harvested as a result of misuse of authority by the U.S.

NOTE: Matter in boldfaced type in an amended section is new; matter *(italic and bracketed)* is existing law to be omitted. New sections are in boldfaced type.

SCR 2

1 Fish and Wildlife Service and paralysis within the land management agencies;

2 **WHEREAS FURTHER**, these unharvested timber sales represent both a loss of sale prepara-
3 tion investment by the federal government and a loss of bid preparation investment by the successful
4 bidders;

5 **WHEREAS FURTHER**, timber sales already sold and/or awarded represent the best opportu-
6 nity to provide immediate relief to many federal timber dependent mills and the communities which
7 rely on them;

8 **WHEREAS FURTHER**, less than 1/2 of 1 percent of suitable spotted owl or marbled murrelet
9 habitat will be affected by the harvest of the sold and/or awarded sales in Oregon;

10 **WHEREAS FURTHER**, 91 wood processing facilities have closed and terminated their em-
11 ployees in Oregon since 1990, and nearly all of these mill closures have been the result of reduced
12 federal timber supply and the uncertainty regarding any future reliable federal timber supply;

13 **WHEREAS FURTHER**, these mill closures have cost Oregonians 9,044 direct timber jobs and
14 at least that number of indirect jobs, together with loss of tax revenue to the state, counties, and
15 schools, and have caused significant increases in depression, frustration, domestic violence, divorce,
16 and human anguish;

17 **WHEREAS FURTHER**, although many surviving mills have been able to temporarily replace
18 lost federal timber with timber from private lands, the availability of additional timber from private
19 lands is limited and will be further reduced by future federal and state regulations;

20 **WHEREAS FURTHER**, if efforts to harvest dead and dying timber in the forests of central and
21 eastern Oregon is not taken immediately, loss of valuable wood fiber through decay will certainly
22 result, and catastrophic fires will likely result; now, therefore:

23 **Be it Resolved by the Legislative Assembly of the State of Oregon that respectful and**
24 **urgent request is hereby made upon Congress and the President of the United States to im-**
25 **mediately adopt the following legislation:**

26 (1) Order the sale from federal lands in Oregon of not less than 1.0 billion board feet of new
27 dead and dying merchantable timber sales for each of the next four years; and,

28 (2) Release for immediate harvest all timber contained in any Forest Service or Bureau of Land
29 Management timber sale on federal land in Oregon which has been sold and/or awarded but not
30 harvested under the terms and conditions in which they were originally advertised;

31 (3) Order the sale from federal lands in Oregon of not less than 2.0 billion board feet of new
32 "green" merchantable timber sales for each of the next four years;

33 (4) Insert sufficient language in all legislation referred to in paragraphs (1), (2), and (3) above
34 which authorizes the Forest Service and Bureau of Land Management to offer, sell, award and re-
35 lease for harvest all said timber sales in the year they are offered, notwithstanding any other law
36 and free of any appeal or objection.

37

**This Resolution was adopted by the
1995 Oregon Legislature:**

**House, 41 to 14 vote; and
Senate, 20 to 7 vote.**

House Joint Memorial 4

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Preession filed (at the request of House Interim Committee on Natural Resources)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Memorializes Congress to enact legislation amending Marine Mammal Protection Act of 1972 to authorize intentional taking of pinnipeds where those mammals are having negative effect on decline or recovery of salmonid fishery stocks.

JOINT MEMORIAL

- 1
2 To the Senate and House of Representatives of the United States of America, in Congress assembled:
3 We, your memorialists, the Sixty-eighth Legislative Assembly of the State of Oregon, in legisla-
4 tive session assembled, respectfully represent as follows:
5 Whereas salmonid fish species are an important natural resource to the citizens of the Pacific
6 Northwest; and
7 Whereas salmonid stocks at this time are at levels well below historic and desired levels; and
8 Whereas pinnipeds are known salmon predators; and
9 Whereas all measures within reason should be taken to control natural and artificial detrimental
10 effects on salmonid populations; now, therefore,
11 Be It Resolved by the Legislative Assembly of the State of Oregon:
12 (1) The Congress of the United States is memorialized to enact legislation amending the Marine
13 Mammal Protection Act of 1972 to authorize the intentional, lethal taking of pinnipeds, without re-
14 quiring identification of individual mammals, when it can be demonstrated that pinnipeds are having
15 a significant impact on the decline or recovery of salmonid fishery stocks.
16 (2) A copy of this memorial shall be sent to each member of the Oregon Congressional Delega-
17 tion.
18
-

**This Resolution was adopted by the
1995 Oregon Legislature:**

**House, 56 to 2 vote; and
Senate, 24 to 4 vote.**

House Concurrent Resolution 14

Sponsored by Representatives TARNO, WELSH, MARKHAM, FISHER, CLARNO, VANLEEUWEN, REPINE, JOHNSTON, Senators JOHNSON, WALDEN, ADAMS; Representatives ADAMS, BAUM, BEYER, CARTER, CORCORAN, FAHEY, FEDERICI, HAYDEN, JOHNSON, JONES, JOSI, LEHMAN, LEWIS, LUNDQUIST, NGORIS, PARKS, ROBERTS, ROSS, SCHOON, STARR, TIERNAN, WATT, Senators BRADBURY, DERFLER, DWYER, KINTIGH, LEONARD, LDM, PHILLIPS, SHANNON, STULL, TIMMS, YIH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Urges Congress to transfer title to Oregon and California Railroad Grant Lands to State of Oregon.

CONCURRENT RESOLUTION

To the President of the United States and to the Senate and House of Representatives of the United States of America, in Congress assembled:

We, the Sixty-eighth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent and request action as follows:

Whereas the Oregon and California Railroad Grant Lands ("O & C Lands") were originally conveyed into private ownership by the Act of July 25, 1866 (as amended by the Acts of June 25, 1868, and April 10, 1869), and the Act of May 4, 1870, to aid, in conjunction with construction of a railway, in the economic development of the State of Oregon and its communities; and

Whereas the railway was built but the intent of the original grants to facilitate community development was not carried out and on February 14, 1907, the State of Oregon petitioned the Congress of the United States by legislative memorial to take steps necessary to compel action in furtherance of the original intent of the land grants; and

Whereas the O & C Lands were revested to the United States by the Act of June 9, 1916, for the purpose of management and redistribution to achieve the original goal of economic development of local communities, particularly in the 18 Oregon counties within which the O & C Lands are situated ("O & C Counties"); and

Whereas the United States ceased reconveying the grant lands back into private ownership and, instead, Congress placed them by the Act of August 28, 1937, into management for the sustained yield of timber with minimum harvest levels to provide for long-term community stability in the O & C Counties, conservation of watersheds and provision of recreational opportunities; and

Whereas the State of Oregon by legislative memorial on April 27, 1951, petitioned Congress to transfer title to the lands to the State of Oregon to help achieve the efficient management of the lands for the benefit of the people of the State of Oregon; and

Whereas approximately \$1 billion in revenues that would, under the law, have gone to the O & C Counties since 1952 were instead retained by the Federal Government with the understanding that the revenue would be used to improve the sustained yield capacity of the O & C Lands and would increase the annual harvests and revenues from the O & C Lands; and

Whereas the Federal Government is not now complying with its obligations under the Act of

NOTE: Matter in boldfaced type in an amended section is new; matter (*italic and bracketed*) is existing law to be omitted. New sections are in boldfaced type.

HCR 14

1 August 28, 1937, and has reduced the annual harvest below required minimum levels, thereby en-
2 dangering the economic stability of the O & C Counties, their timber-dependent communities and the
3 families dependent on timber jobs; now, therefore,

4 **Be It Resolved by the Legislative Assembly of the State of Oregon:**

5 That the Congress of the United States be and hereby is urged to pass such legislation as will
6 result in the transfer of title to the O & C Lands to the State of Oregon, subject to such terms and
7 conditions as are necessary to assure management in perpetuity for the sustained yield of timber to
8 stabilize and support the O & C Counties, conserve watersheds and provide recreational opportu-
9 nities to all citizens, as set forth in the Act of August 28, 1937, and to provide sound wildlife man-
10 agement and protect cultural resources; and be it further

11 Resolved, That copies of this resolution shall be sent to the President, the Speaker of the House
12 of Representatives and the President of the Senate of the United States and to each member of the
13 Oregon Congressional Delegation.

14

**This Resolution was adopted by the
1995 Oregon Legislature:**

**House, 57 to 1 vote; and
Senate, 23 to 4 vote.**

B-Engrossed Senate Concurrent Resolution 1

Ordered by the House April 21
Including Senate Amendments dated February 7 and House Amendments
dated April 21

Sponsored by Senator JOHNSON, Representatives BAUM, MARKHAM, TARNO, VANLEEUWEN; Senators BAKER, KINTIGH, SHANNON, WALDEN, Representatives CLARNO, FISHER, GRISHAM, HAYDEN, LEWIS, LUKE, MEEK, MILNE, MONTGOMERY, OAKLEY, PARKS, QUTUB, REPINE, SCHOON, SNODGRASS, STARR, WATT, WELLS, WELSH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Urges President and Congress to delegate regulatory authority over federal forest and grazing lands to state government.

CONCURRENT RESOLUTION

To the President of the United States and to the Senate and House of Representatives of the United States of America, in Congress assembled:

We, the Sixty-eighth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas the people of Oregon are in the best position to manage and protect their own natural resources; and

Whereas it is the desire of the people of Oregon to end gridlock by providing a sustainable supply of natural resources while at the same time protecting the environment; and

Whereas the people of Oregon should control the management and use of federal forest and grazing lands located within the state; and

Whereas any moneys raised from state management of federal forest and grazing lands should be dedicated to the funding of Oregon public educational programs, counties and schools; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The Legislative Assembly of the State of Oregon urges the President and Congress to return jurisdiction and control of federal forest and grazing lands, except wilderness areas, national recreation areas, wild and scenic areas, national parks and military areas, to state governments.

(2) Copies of this resolution shall be sent to the President, the President of the Senate and the Speaker of the House of Representatives of the United States and to each member of the Oregon Congressional Delegation.

**This Resolution was adopted by the
1995 Oregon Legislature:**

**House, 43 to 13 vote; and
Senate, 20 to 5 vote.**

**Testimony of
James E. Brown
State Forester
Oregon Department of Forestry
and
Chair, Federal Lands Committee
National Association of State Foresters**

**Senate Environment and Public Works
Subcommittee on Drinking Water, Fisheries, and Wildlife
Endangered Species Act Hearings
June 1, 1995**

Northwest Forests have been the heart of the storm over the Endangered Species Act. It is hard to think of the Endangered Species Act (ESA) without also thinking of the spotted owl and the salmon. The Endangered Species Act touches all Oregonians because of our strong environmental, economic, and spiritual link to our forests.

Oregon rightfully claims a history of strong protection of its forests and wildlife. Passed in 1971, and most recently amended in 1991, the Forest Practices Act (FPA) was the first of its kind in the nation, and it continues to be one of the most effective among states with similar regulations. The FPA applies to all commercial forest operations on state and private forest lands in Oregon. It establishes standards for forest practices, including timber harvesting, road building and maintenance, slash disposal, reforestation, and use of pesticides. It also provides significant protection for fish and wildlife. The FPA has evolved over the years, and protection levels have been strengthened primarily in response to federal requirements, but also as new knowledge has become available and as social values have changed.

Oregon also has a state Endangered Species Act which applies only to state-owned lands. The Oregon Legislative Assembly is on the verge of approving amendments to our state Endangered Species Act which were cooperatively worked out among various interest groups and state agencies. These amendments will help streamline the Act. Both the Oregon Department of Forestry and the Oregon Department of Fish and Wildlife agree with these changes, and Governor Kitzhaber has said that he will sign the bill.

Recommended Changes to the federal Endangered Species Act

Changes to the Endangered Species should focus on three areas:

- Strengthening the role of the states
- Streamlining and improving the Act
- Boosting certainty for landowners and relying increasingly on incentives

Strengthening the Role of States

States should be actively involved because of states' authority in environmental and wildlife regulations. States with species protection programs approved by the Secretary should be given the option to assume the lead for implementation of certain parts of the Act. For example, the Oregon Forest Practices Act could be considered "best management practices" for wildlife similar to the Clean Water Act. States could assume primacy, provided the goals of the Act are being met, and retain authority over pre-listing prevention activities, recovery planning and implementation, including critical habitat designation, and all other aspects associated with land resource and wildlife protection.

I applaud the reduction in restrictions connected with the Federal Advisory Committee Act (FACA). Removal of this barrier should result in the states working closely with federal agencies in the listing and recovery plan process.

The ESA should provide for a cooperative federal-state rule making process to identify standards and criteria for designing programs to conserve habitat and species. State research, laws, regulations, and monitoring information should be incorporated into the listing and recovery plan process.

It is critical that adequate federal funding be provided to help support state and local comprehensive, preventative conservation programs. The burden of providing these programs should not be borne solely by the state and the private landowners; they should be shared on a national level, too. A stable source of funding should be identified and earmarked for conservation efforts and encouraging sound stewardship of our forest lands.

Streamlining and Improving the Act

The *listing process* should be revised to:

- (a) consider state programs already in place;
- (b) tighten standards for listing and the type of information that will be considered;
- (c) share listing information with states and incorporating state input;
- (d) establish specific recovery goals;

- (e) consider the probability of extinction despite the protection efforts afforded by the Act;
- (f) provide clear, scientifically defensible regulation defining which acts are prohibited under Sections 9 and 10;
- (g) allow pre-listing agreements to be honored;
- (h) provide the Secretary with suspension authority if a state can complete an agreement demonstrating the adequacy of its program.

The *conservation and consultation provisions* should be revised to:

- (a) provide greater flexibility in determining when a regulated take is appropriate;
- (b) streamline and expedite the Habitat Conservation planning process;
- (c) provide cost-share assistance to landowners to complete HCPs and pre-listing agreements;
- (d) limit full formal consultation to high impact plans and projects; an expedited process should be provided for all other federal actions and when they are addressed in an approved HCP or recovery plan;
- (e) include state information and comment as part of the consultation;
- (f) develop recovery plans with the full participation of states and tribes;
- (g) include in the recovery plan an analysis of the economic impacts;
- (h) base the recovery plan on the most cost-effective alternative;
- (i) specify clear objectives and quantifiable criteria for de-listing in the recovery plans;
- (j) provide the discretion to the Secretary to preclude designation of critical habitat if it is indeterminate or unnecessary for protection of the species;
- (k) include public review and comment in the recovery plan development and use this to satisfy NEPA requirements in lieu of a prolonged NEPA review process;
- (l) provide mandatory periodic review of recovery plans;
- (m) show federal lands as be the primary source of protection with nonfederal lands providing any necessary supplementary protection.; and
- (n) encourage de-listing or down-listing of a distinct population when that population has reached recovery goals but another distinct population has not;

Boosting certainty for landowners and increasingly relying on incentives

As long as state, private, and tribal lands are necessary for the recovery of species, cooperation of landowners is essential. The private property rights movement has spread like wildfire, and using regulations as a hammer has just about reached its limits. If we hope to successfully manage our natural resources, we must provide incentives to landowners.

Incentives can take a variety of forms including federal tax credits, reforming estate tax laws, providing cost-share arrangements to encourage habitat conservation plans and pre-listing agreements, increasing funding to the Forest Incentives Program (FIP) and Stewardship Incentives Program (SIP), and beefing-up technical assistance.

Regulations establish base levels necessary to achieve a given goal. Education and incentives are tools to reach standards of performance above that base level. The Oregon Board of Forestry is initiating efforts to aggressively pursue the collection and sharing of technical and scientific information and incentives that encourage Oregon's forest landowners to willingly manage their forest lands beyond regulatory standards. The Board of Forestry has appointed a Forest Incentives Committee, chaired by former state representative Walt Schroeder, to investigate and recommend incentives that will improve the stewardship of Oregon's forests. Committee recommendations are due early next year.

The Secretary and state agencies should be specifically authorized to enter into voluntary pre-listing agreements and expedited HCPs which would be honored even if there are changes to take guidelines or if a pre-listing agreement species becomes subsequently listed. This would provide long-term certainty for landowners and be a significant incentive to negotiate pre-listing agreements and HCPs. Further, federal agencies should be encouraged to develop an inexpensive, expedited HCP and pre-listing process that includes a simplified NEPA review process.

If the federal Endangered Species Act could be amended with the goals of strengthening the role of the states, streamlining and improving the ESA, and boosting certainty for landowners and relying increasingly on incentives, I believe that not only will the Act provide much needed flexibility and recognition of the problems of landowners and managers, but will also improve the conservation goals and reduce the economic cost of the Act.

Attached is a National Association of State Foresters (NASF) position statement regarding the Endangered Species Act. You will find the statement parallels my remarks above. The NASF represents the directors of the State forestry agencies from all 50 states, 4 U.S. territories (American Samoa, Guam, Puerto Rico, and the Virgin Islands), as well as the District of Columbia. In that capacity, members provide management and protection services on over two-thirds of the Nation's forests. In many western states, the members of NASF are directly or indirectly responsible for the management of forested State trust lands, many of which are adjacent to, or co-mingled with, Federal forest lands.

JEB:CB
Attachment

**National Association of State Foresters
Position Statement — December 1993**



**Reauthorization of the
Endangered Species Act**

NASF — Hall of the States, 444 N. Capitol St., NW, Suite 540, Washington, DC 20001-202/624-5415

Executive Committee

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Oregon

Washington Representative

Terri Bates

The National Association of State Foresters (NASF) represents the directors of the forestry agencies in fifty states and three territories (Guam, Puerto Rico, U.S. Virgin Islands) and the District of Columbia. In that capacity they have the responsibility of managing and protecting over 500 million acres, or more than 80 percent of the nation's state and private forest resources according to stewardship principles. Forest management and protection programs traditionally include pest management, fire protection, private landowner assistance, urban and community forestry programs, marketing and utilization and management of state forest lands.

NASF — Endangered Species Act

National Association of State Foresters Position Statement

Reauthorization and Amendment of the Endangered Species Act

BACKGROUND

The conservation of native plant and animal species is an important national goal of the United States and should be supported by federal, state, and local governmental units. The Endangered Species Act (ACT) of 1973 (P.L. 93-293), as amended, is regarded as one of the nation's principal tools for conserving threatened and endangered species.

Of the known threatened or endangered species in the United States, many exist within, and depend upon, forested ecosystems. Much of the 731,377 million acres of forestland in the United States is state or privately owned. In some southern states, up to 95 percent of the forestland is privately owned.

State Foresters are responsible for the protection and management of state and private forestlands. Our charge is to ensure that the forests and forest ecosystems of our respective jurisdictions are healthy, productive, sustainable, and able to support species conservation.

State Foresters work with private forest landowners on a daily basis to help them achieve their personal woodland-management, economic, and social goals, in a manner consistent with society's goals. We have helped more than eight million non-industrial private landowners manage their privately owned forestlands under a stewardship ethic.

The NATIONAL ASSOCIATION OF STATE FORESTERS (NASF) endorses the goal of conserving indigenous plant and animal species. NASF urges Congress to carefully review the Endangered Species Act during the reauthorization process and consider changes that will streamline administration of the ACT and minimize the adverse effects upon individual members of society.

Specific NASF concerns and recommendations for amendment and reauthorization of the ACT are addressed in this position statement.

PURPOSE AND POLICY

NASF strongly supports the original purpose and intent of the Endangered Species Act to provide a "safety net" for species in severe biological trouble. Species conservation depends upon a variety of programs and activities that must be supported by all levels of government, business, and the general public.

All too often, unfortunately, the ACT has become the driving force in all land management decisions.

The ACT was not intended to be the preeminent natural resource management policy of the United States. Nor was the ACT intended to be a stand-alone, all-purpose policy tool for managing ecosystems.

Other natural resource policy tools, such as the National Forest Management Act, the Federal Land Management Policy Act, the Clean Water Act and the Clean Air Act have been enacted to provide for the management of land and natural resources.

NASF — Endangered Species Act

The ACT will be more effective, therefore, as a safety net for species in trouble, if other federal land management and environmental laws are used to manage land and other natural resources.

Congress should use the reauthorization process to refocus attention on the "safety net" intent of the ACT.

THE LISTING PROCESS

Current law requires the proposed listing of any species for threatened or endangered status to be based solely on the best scientific data available. NASF concurs. Listing should also be based solely on the biology of the species in question.

Because of the fragmentary nature of the data on the biology of many species, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) should consider and use data gathered by state and private organizations during the listing process. Many such organizations have extensive pre-listing information on the population status and geographic distribution of candidate species.

There is also a need for increased funding and more agency effort to gather information about species with declining population or habitat trends. The time to develop a comprehensive information base for species in trouble is before the species reaches "threatened" or "endangered" levels.

Lastly, when a species is listed, the rationale and basis for the listing decision must be made known to the public.

DISTINCTION BETWEEN THREATENED AND ENDANGERED

The ACT distinguishes between "threatened" and "endangered" species, with the status of "endangered" being subject to more protective regimes than "threatened."

Clearly, two separate categories were legislatively provided for in the ACT for very definite purposes. However, the FWS and the NMFS apply their rules for protecting endangered species to threatened species as well, regardless of whether these additional protections are warranted.

Congress should direct the agencies to reaffirm and respect the integrity of the distinction between these classifications in the ACT, including the application of the special rule under Section 4(d) allowing for management flexibility.

RECOVERY PROGRAMS

The purpose of the ACT is to protect and recover listed species.

NASF believes good forest management to be an integral part of recovery for many plants and animals. State forestry programs, and the private forestlands they influence, can help manage forest resources to aid species recovery and provide forest products on a sustainable basis.

Federal lands should be the primary focus of any endangered species recovery plan — with state lands in a secondary role. Private lands should be included in recovery plans on a volunteer basis using cooperative agreements, easements, tax credits, or other economic incentives to gain needed support and cooperation.

The FWS and NMFS can greatly improve species recovery programs by putting more money into the

NASF — Endangered Species Act

process and seeking more participation from state agencies, local authorities, and volunteer private landowners.

To facilitate and improve species recovery programs, Congress should direct the FWS and NMFS to:

- Encourage and support, with adequate funding, the development of recovery plans for threatened and endangered species.
- Prioritize species recovery efforts so that existing funds are used effectively.
- Immediately fund existing state programs to recover listed species without waiting for the completion of a formal federal plan.
- Clarify the duties and responsibilities of recovery teams. Recovery teams should have permanent status until delisting occurs.
- Expand participation in the recovery planning process. Improve coordination with state and local governments; encourage participation by private landowners or their representatives; and better inform the public about species management and recovery.
- Recovery plans should focus on "keystone species" which are indicators of ecosystem health. Recovery Plans could also be developed around multiple species that share the same habitat and management. Recovery plans should be "loose leaf" (continuously revisited and updated).

THE DELISTING PROCESS

NASF believes that delisting and downlisting due to recovery of the species must be pursued with the same zeal as the original listing. The desired result of the listing process — delisting due to recovery of the species — must be both the driving force and the measure of success for the entire program.

Without concerted emphasis on successful delisting, the program will continue to flounder as it tries to deal with the hundreds of species already listed and the thousands awaiting evaluation for possible listing. Delisting and downlisting represent a successful original listing, development of a workable recovery plan, and success in implementation of the recovery plan.

ADMINISTRATION OF THE ACT

NASF supports the continued use, and improvement, of the Section 7 consultation process as a mechanism for assuring that federal actions are consistent with the ACT. NASF also supports inclusion of private land owners in the consultation process.

During the course of interpreting and implementing the Act, different FWS and NMFS regional offices have occasionally taken conflicting positions on the same issue or point of law. Such differences have even occurred within the same region. This leads to confusion, duplication, and inefficiency in implementing species recovery, especially if the species range encompasses different states or FWS regions.

Consistency in administering the ACT is essential for the effective use of limited resources.

State forestry agencies, state fish and wildlife agencies, and other state natural resource agencies, need to be more involved in all program activities — including status reviews, listing, downlisting, delisting, designation of critical habitat, recovery teams, recovery planning, recovery implementation, Section 7 consultation, and Section 6 cooperative agreements.

NASF — Endangered Species Act

NASF advocates a strong jurisdictional role for state fish and wildlife agencies as provided by the ACT. Congress should recognize an obligation to work with appropriate state agencies to resolve all issues associated with implementation of the Act. Increased state involvement will improve both action and acceptance related to the Act. Funding for cooperative agreements between federal agencies and state agencies should be increased.

The state agency which shares jurisdictional authority with the FWS and NMFS for protection of the listed species should not be subject to the provisions of the Federal Advisory Committee Act (FACA). The ACT should be amended to exempt the appropriate state agency from FACA, thereby ensuring full partnership status to the state agency.

IMPACTS OF THE ACT ON STATE AND PRIVATE LANDS

During its twenty-year existence, the ACT has had substantial impacts on the people of the United States. In many cases, just the public knowledge of a potential listing has created uncertainty and fear of financial loss among landowners.

Threatened or endangered species do not recognize property boundaries. Listing of a species invariably affects state and private lands as well as federal lands. Private landowners, however, seldom have the knowledge, or the resources, to effectively manage a listed species. Such landowners have little or no incentive to carry out the "public good" on private land at private expense.

If public policy requires the listing and recovery of threatened or endangered species, the government must provide incentives to adversely affected, non-federal landowners to encourage cooperation with recovery plans. Such incentives could include tax credits, cost-sharing grants, and accelerated technical assistance. Non-federal landowners should not be required to pay the extra costs of carrying out public policy on their lands.

Congress should direct the FWS and NMFS to evaluate the financial losses to non-federal landowners from species listing and recovery — and to compensate for such losses in a reasonable manner through negotiated settlements or court order.

The reauthorized ACT must include a funded landowner education program.

The vast majority of landowners seem willing to accommodate threatened and endangered species needs, but are concerned about the high costs and burdensome regulations that attend most recovery programs.

The Stewardship philosophy of forest management is to manage the forest in such a way as to enhance the value of all forest resources for this and future generations. This concept is part of the forest management technical assistance program of all state forestry agencies, as well as the industry-supported Tree Farm Program.

A landowner education program, built on a stewardship foundation that allays landowner fears, would do much to encourage voluntary cooperation with species recovery plans.

NASF supports reauthorization of the Endangered Species Act with modifications as discussed. As administrators of state and private forestry programs in the 50 states and three territories as well as the District of Columbia, we stand ready to help the federal agencies work with nonfederal landowners in carrying out the intent of the ACT.

NASF supports an Endangered Species Act that is simple, cost effective, and fair to all our citizens.

NASF — Endangered Species Act

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Testimony
of
DOUG ROBERTSON
Douglas County Commissioner

Presented to the

Senate Committee on Environment and
Public Works' Subcommittee on
Drinking Water, Fisheries and Wildlife

June 1, 1995
Roseburg, Oregon

Good Morning: Chairman Kempthorne, members of the committee, ladies and gentlemen.

On behalf of the Douglas County Board of Commissioners and the 97,000 residents of Douglas County, welcome to "ground zero". We are extremely pleased that you have taken time out of what we know are very busy schedules to conduct this most important hearing in Douglas County.

As you can see, we have provided some visual references to help you understand some of the reasons we are so impacted by the E.S.A., and the implementation of the President's Forest Plan.

Please direct your attention to the smaller colored map. The bare map depicts Douglas County. The brown shaded areas depict BLM and the green show forest service lands. The dark areas are federally controlled timberlands that have been legislatively withdrawn over the last couple of decades. These areas represent elk calving areas, archaeologically sensitive areas, wilderness areas, etc...264,000 acres in all.

Let's now apply the overlays that articulate the cumulative effects of the Clinton Forest Plan. When you combine sensitive watersheds (blue), the adaptive management areas (orange), and the late successional, or old growth areas (purple), you begin to see a very restrictive pattern develop relative to the amount of federal timberland available for management. Add to that the potential impact of the 4d rule (red), and you can see why people in Douglas County are concerned.

Let me point out that the 4d area represents 650,000 acres of private timberland, and there are currently discussions on-going about the implementation of a 4d rule in Oregon. This is how it was first proposed in the U.S. Fish and Wildlife scoping document in 1994. Between 85 and 90 percent of the counties prime timberland base controlled by the federal government is either greatly restricted or simply off limits.

Let's now focus our attention to the larger map. This map depicts the progress and growth of the E.S.A. since its passage by Congress in 1973.

The first map simply shows the number of species that were grandfathered into the E.S.A. when it was adopted (about 135).

The second map shows where we are today, with nearly 1,000 listed plants and animals.

That, however, is only the beginning of the story. The act itself is dynamic in the sense that candidates for listing are being constantly added. The reason it is important to include candidate species is because the management agencies have virtually conferred listed status to candidate species numbering nearly 5,000, and that number grows monthly.

It is clear to even the most casual observer that the management, administration and cost of the E.S.A. in its current form has become, at best a bureaucratic nightmare, and at worst a potential blueprint to shut down every commodity industry in this country.

It is obvious that single species management simply will not work. It is also obvious that local and state impact must become a carefully considered component before a species even reaches the candidate list.

One of the unfortunate results of the E.S.A. is a national forest policy that locks up dead, dying, old, diseased timber, and focuses our harvest on young, immature stands of trees just when they are putting on their most significant growth and value...that, members of the committee, is forestry in reverse. **It is bad economically...it is bad environmentally, and it is bad public policy that must stop!**

I cannot sufficiently emphasize the damage that has been done by the federal agencies move to restrict and regulate the activities of private property owners on their own land. That action alone has

caused more distrust, frustration, uncertainty and environmental damage...at least in our area, than any other federal action in the last decade.

If, in the view of the federal government it is in the public's best interest to curtail or restrict activities on private property, then the federal government must compensate private owners for the restriction they impose.

Members of the committee, this country of ours did not become the envy of the world by imposing burdensome, centralized, bureaucratic regulations on every activity engaged in by its citizens. That is not what has made us great.

We don't have to reinvent government...all we have to do is rediscover and re-apply the principles that are the very foundation of our success as a society and a nation, our enormous human capacity for initiative and ingenuity, and our recognition of the tremendous impacts of the free market and free enterprise forces. Those are the principles we need to focus on in today's setting of complex issues.

Encouraging cooperation with incentives capitalizing on models already in existence...such as models for habitat enhancement by the Rocky Mtn. Elk Foundation, Ducks Unlimited, Pheasants Forever, the Federal Conservation Reserve Program, and many others.

In closing, let me emphasize the position we have held consistently in this county and that is held by many of our colleagues throughout this region. As hard as we are all looking for a solution to this problem, there will be no solution until people, communities and working families are considered and become part of that solution.

Thank you, and I would be happy to answer any questions.

Testimony to the Senate Committee on Environment
and Public Works' Subcommittee on Drinking Water, Fisheries and Wildlife
Endangered Species Act
Roseburg, Oregon
June 1, 1995

Presented by Jerry Rust
Lane County Commissioner

Senator Kempthorne, Senator Chafee, Senator Packwood, other distinguished members of Congress, and panelists. My name is Jerry Rust. I reside in Eugene, Oregon where I have been a County Commissioner for the past 18 1/2 years. I grew up in Douglas County and therefore have spent virtually all my life in the two most productive timber counties in the United States: Lane and Douglas. I am very familiar with the issues that are raised in these proceedings.

In 1966, an Oregon State researcher identified the spotted owl as being dependent on old growth forest habitat. In 1977 the Oregon Natural Resources Council filed suit against the Forest Service, charging that it was not taking into consideration the owl and its dependence on the habitat. In 1989 the owl made the endangered species list. It took 23 years from the time the owl was noticed in research until we finally began to do something about it. During these years, there was record timber harvests; lawsuits; violation of law, confusion, anger, greed, and one of the most acrimonious debates of the century. None of this was the fault of the Endangered Species Act.

The Endangered Species Act was doing exactly what Congress intended; that is, a species which is going extinct was identified, its habitat was evaluated, and a habitat recovery plan put forth. Against this backdrop there were dire predictions of catastrophic economic collapse of the northwest timber industry.

I am not a biologist and have never seen a spotted owl. I work with people, I am elected by people. Environmentalists like myself went to work to devise strategies that would ease the transition that was occurring. I worked to identify as many forest-related jobs as possible that were not old growth dependent. I worked for dislocated worker re-training programs. And I worked for ways to diversify our economies. The point here is that people have always been important in this equation, but there was also a bottom line; that is, that the forest has been overexploited and while trees are renewable resources, old growth forests are not. We were involved in an unsustainable practice: liquidating an entire ecosystem.

I used a forest service document from Region 6, Forest Service Briefing Paper 53089 (attached), which identified a number of jobs and activities that could be carried out within the region. These involved road maintenance, trail maintenance, reforestation, timber stand improvement, recreation, fish and wildlife, road construction and reconstruction, and trail construction. In addition, the Bureau of Land Management issued a staff report in this same period (attached) that created a number of jobs in tree planting, brush control, precommercial thinning, prescribed burning, and fertilization. These materials offered hope that we could mitigate the impacts on the forest workers of the Northwest.

WP bc/jr/00127/T

In addition, because counties--in western Oregon particularly--are so heavily dependent on forest service and BLM revenues from timber sales, county governments weighed in with Congress to mitigate the effects of stopping harvests in old growth forests on counties.

What emerged from Congress was a package that went beyond our wildest dreams. First, a \$1.2 billion package for community economic development in the northwest, for retraining of workers. Secondly, county governments were held relatively harmless and put on a fixed though declining income stream for 10 years. Finally, Option 9 was put forward by the Clinton administration which strikes a balance between preserving the habitat and timber harvests.

In addition, local governments and private businesses have combined throughout our state to diversify our economies. Today I can report to you that our economy is far more diverse today than in the '80s when we had our last serious recession. Lane County has used road funds to build infrastructure for industry and commercial development, to lure industries to locate in Lane County; we have developed regional economic development strategies; we have developed a tourism industry which currently employs 4,500 people; we have worked with agencies like Lane Community College to ensure high-quality worker training programs. Since 1989, approximately 3,000 dislocated workers have been retrained for high-skill jobs at Lane Community College. It is almost impossible to believe, but today the headlines in Eugene are about potential labor shortages in the near future. To be sure, we have pockets of areas that need extra assistance at this time. These are smaller cities and communities off the I-5 corridor, relatively isolated and having a higher dependence on timber-related jobs. We continue to be concerned and to reach out to rural areas that need assistance. Communities in denial will lag behind others that accept the inevitable transition and move forward with economic diversification.

We cannot think of going back. We can no longer be dependent on harvesting old growth timber. If we continue to diversify our economy, to assist and work with people who are dislocated in this industry, to continue to create labor-intensive jobs in the forest, we will find that we can afford, as a society, to save what is left of the magnificent forests of the northwest--and species that are dependant upon them.

There are some ways that we can strengthen and improve the Endangered Species Act:

1. We should allow the act to move more swiftly and early so we can get out in front of species that are going extinct and not wait for another disaster. The ecosystem management approach currently being undertaken by the Clinton administration is a wise approach because it seeks to prevent habitat destruction, which is almost always the cause of species extinction.
2. The Endangered Species Act should be implemented on private lands as well as public lands, but I would recommend tax credits for landowners who have to make management changes that benefit endangered species. It would be fair for the general public to pay for this through a tax credit.

3. I think in general we should end government subsidies that harm or threaten endangered species. Examples of this are overgrazing of cows on public lands, placing dams in fragile watersheds, or offering below-cost timber sales that cause serious problems.

The effect of the Endangered Species Act on Lane County, State of Oregon.

1. Jobs. Between the years 1979 and 1988, there was a 17 percent drop in employment in the forest products industry. This was due to a recession, to increased automation in the industry, and log exports. Since the listing of the owl as a threatened species in 1990, we have lost 15 percent additional employment. And while this is significant, it is not the catastrophic drop in employment predicted by many in the timber industry.
2. County Revenues. In 1982, O&C receipts fell to \$8 million. At that time we had about 1,800 full-time employees. I remember laying off 500 people in one day. We bottomed out in 1984 with 870 full-time employees, 528 in the general fund. In 1995, thanks to the congressional bailout, we received \$11 million in our general fund, we have 730 full-time employees in the general fund, and 1,264 overall (see graph attached). One of the byproducts of lean times has been county government that is far more aggressive in managing its budget. We have been forced to better control expenditures and to diversify our revenue base and to generally take a more business-like approach to the management of county government.

As noted above, our economy has diversified in response to the down-turn in the timber industry. As long as our state and region, or parts thereof, are in denial of the need for transition, that part of our state will continue to lag behind and not enjoy the fruits of economic diversity. The point of all this discussion is this: the down-turn in the '80s in measuring jobs, in measuring the economy, in measuring the effect on county government, were all more negative in the '80s than were the effects of listing the owl in the '90s on any basis.

In addition, we have stopped the liquidation of western Oregon's last remaining rain forest.

The committee has also inquired about managing "checkerboard areas." Before I became a county commissioner, I was a tree planter for six years and had planted tens of thousands of trees for the Bureau of Land Management in the Salem, Eugene, Roseburg and Coos Bay districts. I am very familiar with checkerboard management. BLM lands today provide key islands of biodiversity in a vast sea of clear cuts in western Oregon. They serve the purpose of allowing species dispersal routes, migration routes, and provide key zones for salmon and steelhead. Option 9 relies heavily on these lands. 65 percent of the BLM lands are off limits to intense timber harvest as 40 percent of BLM's lands contain 30 percent of western Oregon's remaining ancient forest. We have essentially been marching towards the liquidation of the old forests on these lands. Now, with the new forest plans in place, these lands provide key refuges for threatened and endangered species. In addition, 1,000 miles of Oregon rivers are to be found on these lands. These are critical to the survival of endangered species.

A bill recently introduced in Congress by Representative Cooley on behalf of the O&C Association is a blatant attempt to steal these lands from the public for the benefit of a few counties and the timber industry. This is not local control but a federal mandate which says you may have these lands, but only if you cut them to the ground. This proposal would destroy the integrity of the precariously balanced Option 9 plan. Congress should defeat this measure.

In general, federal forest lands in Oregon must serve broader purposes than timber extraction. Option 9 is a legal, balanced approach and should be implemented. O&C lands are a part of this balancing act.

Having grown up in Douglas County, I am very familiar with the landscape here. We destroyed most of the ecosystem of the South Umpqua drainage decades ago, destroying the headwaters. But now, even the North Umpqua drainage is in trouble. The native cutthroat is disappearing. Why? And why is the population of the bull trout falling throughout the northwest? Why are we losing coho and salmon? While the answers may vary and are not limited to a single cause, there can be no doubt that overharvesting of timber, improper road building and construction, sedimentation resulting from logging and road building, and warming waters caused by removal of large conifers, have had a cumulative effect on the water quality of the northwest. It would be tragic to lose the world famous steelhead runs on the North Umpqua. And it is interesting because the waters of the North Umpqua appear to be blue and clean, and yet the cutthroat is disappearing. It's a perfect example of how these species can speak to us through their mere existence. It is important for public officials to listen to all the voices. What these species are telling us is that their natural systems are in trouble. The Endangered Species Act is a way of listening and responding for the benefit of our own species. We have co-evolved with these species for millions of years. Why should we save them? There are potential scientific, medical and economic uses, but more often they are telling us something immediate and urgent about the general health of our natural systems. Are we going to listen or will we continue to degrade our environment?

In conclusion, let me say that while I can recommend some modification of the Endangered Species Act, the basic statutory scheme of the act is sound and valid and it is working. The dire predictions of catastrophic economic collapse in the northwest did not happen. We have shifted from old growth dependent jobs to a variety of other diverse jobs. On behalf of my constituents, I want to thank the federal government for protecting and preserving county revenues. And finally, I want to thank you for holding this public hearing in Roseburg and for listening to this testimony.

FOREST SERVICE BULLETING PAPER
 REGION 6
 5/30/89

TOPIC: - If the Oregon economy takes a downturn, due to a restriction in the supply of timber from Forest Service System lands, what could the PNW Region of the Forest Service do to stimulate employment?

- DISCUSSION:
- The acceleration of programs to offset employment cut backs is desired if timber supply restrictions continue.
 - In the face of an unstable timber supply, efforts should be made to mitigate community impacts.
 - The Region has \$73.9 million in projects and programs in Oregon that could come on line very quickly if additional funds are made available. This would employ almost 2500 in productive full-time work (8,000 with multiplier effect).
 - The following are examples of work, with the aim to fund the Draft or Final Forest Plans:

Road Maintenance - Forest roads have been deteriorating due to limited funding. Additional funding of \$5.7 million would employ 193 (616) persons in this productive activity.

Trail Maintenance - Forest trails are in need of improved maintenance. Funding of \$1.7 million would employ 57 (181) persons.

Reforestation - An additional \$4.3 million would be used on nursery operations, tree improvement activities, and to plant 3,882 acres of trees. This would employ 104 (334) people.

Timber Stand Improvement - Oregon has 58,987 acres of timber stand improvement projects to be completed. This would cost \$10.5 million and would employ 252 (807) people.

Recreation - Recreation O&M and other related activities would employ 344 (1099) people, at a cost of \$7.5 million.

Fish and Wildlife - Draft and Final Forest Plans call for an increase in work in this area. The Region has a current inventory of 25,312 acres of wildlife and fish projects. This would cost \$5.1 million and would employ 204 (654) people.

Road Construction/Reconstruction - This is a labor intensive activity and is badly needed throughout the Region. At a cost of \$11.6 million, 17 miles of road construction and 77 miles of reconstruction would be accomplished. This activity would employ 484 (1547) people.

Trail Construction - There are 114 miles of trails to be constructed at a cost of \$2.5 million. This productive investment would employ 38 (122) people.

BLM
Staff Analysis
of the Job Potential in Reforestation Related
Activities

I. Direct Employment

In February 1989, BLM issued a Final EIS on their program for "Western-Oregon-Management of Competing Vegetation." It contains estimates of full time employment associated with reforestation activities and timber harvest/processing. Copies of FEIS tables (2-8 and 2-11) that contain those estimates are attached.

Direct employment estimates for major activities are as follows.

Jobs/1000 acres

Tree planting	4
Brush Control	8
Precommercial thinning	5
Prescribed burning	1
Fertilization	1

II. Unfunded Job Potential

BLM in western Oregon has the following unfunded program needs related to reforestation.

<u>Activity</u>	<u>Acres (000)</u>	<u>Job Potential</u>
Tree planting	14	56
Brush control/protection	26	208
Precommercial thinning	33	165
Prescribed burning	10	10
Fertilization	96 ^{1/}	96
Miscellaneous (cone collection)		2
	Total	<u>537</u>

^{1/} Gross estimate

III. FY 1990 Job Potential

We are not sufficiently staffed to address all the unfunded program needs in 1990. Ceilings on BLM positions needed for project layout contract preparation, administration and lead time requirements indicate we have the capability to create the following additional jobs in FY 1990 if funding was made available.

<u>Activity</u>	<u>Acres (000)</u>	<u>Job Potential</u>
Tree planting	14	56
Brush control/protection	10	80
Precommercial thinning	12	60
Prescribed burning	5	5
Fertilization	22	22
Miscellaneous (cone collection)		.2
	Total	<u>225</u>

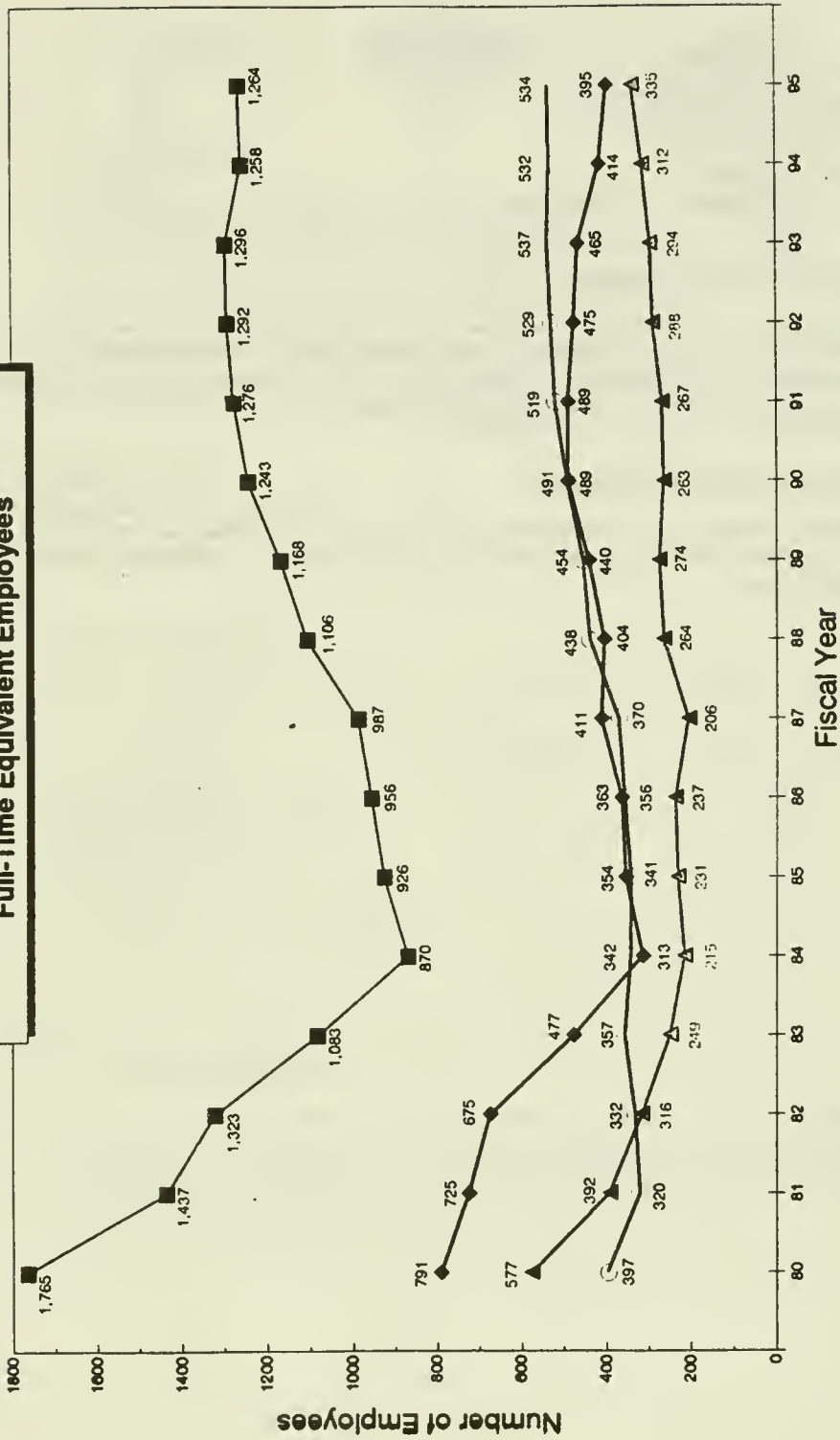
IV. Post FY 1990 Job Potential

Treatment levels above those described for FY 1990 will be needed in FY91, 92, and 93, to eliminate the backlog acres in plantation maintenance, precommercial thinning and fertilization. Associated jobs are estimated at 104 jobs in each of these years in addition to the increment estimated for FY 1990.

V. Timber Harvest Related Jobs

Direct jobs per million board feet harvested is estimated at 4.8 and total jobs, including indirect jobs is estimated at 16.9 per million board feet.

History of Lane County Positions Full-Time Equivalent Employees



All Non-General Fund
 Est. Discretionary Gen. Fund
 Est. Non-Disc. Gen. Fund
 Grand Total All Positions

As can be seen, Discretionary General Fund positions are on the decline while Non-Discretionary and All Other funded positions are on the rise.

TESTIMONY OF MARK SIMMONS, OF THE NORTHWEST TIMBER WORKERS
RESOURCE COUNCIL
BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE

Thank you for allowing me the opportunity to testify before you today. I want to especially recognize Senator Bob Packwood from here in Oregon, and his fine staff.

The social and economic implications of ESA implementation are far more horrible, and felt more widely than we thought possible. When the ESA was first adopted it seemed like a good idea. Protecting endangered plants and animals from extinction is the moral thing to do. But as time has shown, it is being used as a club to punish the productive communities and citizens of rural Oregon.

In Northeast Oregon the world is falling apart around us. We have lost many sawmills in the past several years, 4 of those within the past 14 months. In Wallowa County, with a population of 7000 people, 253 of the best paying, family wage jobs in the county have been lost. The most recent of these, Rogge Wood Products in Wallowa, where several of my friends worked, closed only last Friday. You should note that Rogge Wood Products tried for several years to gain the release of a Forest Service timber sale they had purchased. That sale had enough volume to run their mill for a year, but because of ESA management constraints they were unsuccessful.

In Joseph where the Boise Cascade sawmill was closed and torn down, the Main Street area where all the small tourist shops are appears to be busy and productive, but if you get into the residential areas where the mill workers live, many houses are for sale. The businesses that rely on year round residents have really suffered. Jerry's Main Street Market in Joseph is the kind of community store where you stop in for lunch, a pop or beer, or those things you need to pick up on the way home. Because of the mill closure their customer count is down 300 per week, and they've had to lay off five of their employees. This might not sound like much, but in rural Joseph a town of only 1000, the loss of five more jobs is very substantial.

The unemployment rate in Wallowa County was at 15.9% before the Rogge mill shut down. In fact the three Oregon Counties with the highest unemployment rates in the state are Harney, Grant, and Wallowa, all located in rural Eastern Oregon. The high unemployment rates reported for each of these counties are all directly related to reductions in available timber due the Forest Services misguided attempts to implement the ESA.

Some might think, fine let those woods and mill workers find other employment. But, there aren't many options available to mill workers in rural Eastern Oregon. In most cases there's not even any retraining available without relocating closer to a metro or large urban area. Put yourself in the position of a 50 something year old Eastern Oregon mill worker, who has worked in the timber industry all his life. Suddenly you are thrown out of work, and it is strongly suggested that you seek re-training. If you can successfully complete the training, and the statistics show that the overwhelming majority do not, and also survive financially during the process, you are then eligible to compete in the job market with 20 year olds who are quicker and have their whole working careers ahead of them, for jobs that do not pay nearly what you need to support yourself and your family. The average wage paid at the Boise Cascade sawmill in Joseph before it closed was \$13.68 per hour.

The situation in eastern Oregon is maddeningly frustrating. Not only are our people suffering, but our forests are suffering also. Senator Hatfield in an article in the April 10th Oregonian said that "...we are experiencing a forest health crises of epic proportions. Three years ago, 50 percent to 70 percent of the forests in Eastern Oregon's Blue Mountains were considered dead or dying".

A forester once told me that every insect or disease that kills trees has a home in Eastern Oregon. Our forests are in need of management to restore them to a healthy vibrant and productive state, but we have extreme difficulty implementing even the most carefully planned and well intentioned restoration projects because of management constraints put in place by the Endangered Species Act. We have thousands of acres with literally billions of board feet of fire killed trees that should be put to use, but because of the ESA, most opportunities for salvage are prevented.

The bottom line is, not only are we losing our economic livelihood because of the ESA, we are also losing our forests. We are told that we can't manage timber within 300 feet of most streams because the chinook salmon are endangered, yet over 80 percent of our suitable salmon spawning habitat is unused because so few fish return to the mountain streams. We are told that we can't cut any trees over 18 inches in diameter because those trees are considered old growth (no matter how old those trees are) and some species prefer it. The condition of our forests is such that the fires we have been experiencing burn through the crowns of the trees and kill them all. When wild fire races through our forests most trees large and small are killed. If our forests could be thinned the larger more fire resistant trees would stand a greater chance of surviving.

What are we to do? Among working men and women "Only in America" used to be something we said with great pride, but now it is something that is said in the form of a question or tragic joke, as we wonder at the direction our country is headed, and why

there is such a strong movement to prevent management of our natural resources. True our resources have not always been managed in a sustainable manner in the past, but our methods of management have changed and improved to the point that we are managing on a sustainable basis. With today's management techniques we truly can have it all, healthy productive forests and ample habitat for all forms of flora and fauna. But our forests are sustainable only if our hands are untied so we can implement management. As the ESA is being used in Eastern Oregon there are no winners, people economies and ecosystems all lose.

The forests, rivers and valleys are our life blood. We are connected to them and care about what happens to them more than anyone else does or can. We are the law abiding salt of the earth that make this country great. Don't allow the needs of working people, and our rightful place in this debate to be ignored any longer. Don't relegate us to retraining that doesn't work and is not wanted, to uncertainty, to food banks that struggle to meet demands, and to shame when we can no longer provide for ourselves and our children.

The ESA is a good idea gone wrong. Even though this act was well intentioned, it has been tragically unsuccessful. There are no species that have been recovered as a result of this act. Those species who's numbers have improved were saved through actions required by laws other than the ESA. The primary impact of the ESA has been hardship on people and economies.

I have included in my written comments a list of suggested changes to the ESA that I see as vast improvements to it's current language.

- *Species listing decisions should be based **ONLY** on verifiable science.*
 - A thorough analysis to determine the economic impact on each local area must be conducted prior to listing a species.
 - *Protect private property by incorporating appropriate legislation into the act.*
 - Rewrite Section 7 so that "take", including "harm", or "alteration of habitat", etc, must be verifiable scientifically and that the burden of proof is on the appropriate agency. Incorporate language that allows legitimate ongoing activities to continue until "harm" can be verified.
 - *List only true biological species. Delete "sub-species and distinct populations" from the language and delist those so classified that have been already listed. Allow for the option to **NOT** list a species based on the determination that the species is irretrievably lost.*
 - Insure that legitimate ongoing activities continue until the listing is completed including the delineation of critical habitat and the recovery plan.
 - *Include the public in plan preparation and provide that the agencies may not place more stringent conditions on landowners than they do on themselves.*
 - Delineate ALL CRITICAL habitat when listing species. (In the salmon listing the ocean was omitted even though it is the predominant part of their critical habitat and a prevailing reason for their decline.)
 - *Eliminate the provisions allowing citizen lawsuits against private landowners.*
- Empower local elected officials and local citizens to protect endangered species and their habitats through incentives.
- *Eliminate the provisions for "emergency" listings by the Federal Agency Heads. Only in cases where an activity can be reasonably established as an imminent threat to the existence of a species can an emergency be requested and if that species is adequately protected elsewhere, no emergency will be granted. Such cases will be dealt with locally, will be incentive based rather than punitive.*
 - Require law enforcement actions to come from the local jurisdictions.

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**STATEMENT OF THE
PACIFIC COAST FEDERATION
OF
FISHERMEN'S ASSOCIATIONS
TO THE
SENATE COMMITTEE ON ENVIRONMENT AND
PUBLIC WORKS' SUBCOMMITTEE
ON
DRINKING WATER, FISHERIES AND WILDLIFE**

**Roseburg, OR
June 1, 1995**

My name is Glen Spain. I am the Northwest Regional Director for the Pacific Coast Federation of Fishermen's Associations (PCFFA). We are the largest organization of commercial fishermen on the west coast, with member organizations from San Diego to Alaska. We represent thousands of working men and women who are part of the Pacific fishing fleet and who are the economic mainstay of many coastal communities and cities. PCFFA represents several billion dollars annually in economic interests which generate tens of thousands of family wage jobs -- not only in coastal communities, but far inland as well. We are the men and women who help put fresh, high-quality seafood on America's table, create a job base for coastal communities, and help support federal, state and local community services through our taxes.



STEWARDS OF THE FISHERIES

The commercial fishing industry as a whole is a major economic power throughout this country, accounting for well over \$50 billion in economic impacts and more than 700,000 jobs. When combined with another \$15 billion per year generated by the marine recreational fishery, the whole offshore fishing industry now accounts for about \$65 billion per year to the U.S. economy.¹ In addition to commercial fishing, the recreational sportfishing industry also contributes a mighty share to the U.S. economy. Fishing -- whether for sport or commercially -- is big business, with a combined economic input to the national economy in excess of \$111 billion and supporting 1,500,000 family wage jobs.²

Most of these jobs are to one degree or another dependant upon strong protection of the biological resources upon which they are based. **In other words, our industry would not exist -- nor would \$111 billion dollars in annual income and 1.5 million jobs in this economy that we generate -- without strong environmental protections.** Our industry is a prime example of a basic economic principle:

The fundamental source of all economic wealth is the natural environment. In the long-run environmental protection does not destroy jobs -- it creates them and maintains them on a sustainable basis for the future.

The biological wealth of this country is its "natural capital." Like any economic capital, we can invest it wisely or we can allow it to dissipate and waste. Pushing species to the brink of extinction -- and beyond -- not only wastes future economic opportunities but *helps destroy those industries we already have*, such as the Pacific salmon fishing industry. The ESA is the law of final resort that prevents us as a society from negligently wasting our irreplaceable "natural capital" -- and the jobs that this "natural capital" represents, both now and for our economy's future.

The ESA dispute is not really a clash between owls vs. jobs, nor between public trust values vs. private property rights -- *fundamentally, the ESA dispute is a clash between short-term profiteering vs. long-term and sustainable economic development.* The ESA merely establishes limits beyond

¹Economic figures from *Our Living Oceans, Report on the Status of U.S. Living Marine Resources, 1992*. NOAA Tech. Mem., NMFS-F/SPO-2. National Marine Fisheries Service, NOAA, U.S. Dept. of Commerce, Washington, DC. See also *Analysis of the potential economic benefits from rebuilding U.S. fisheries (1992)*. National Marine Fisheries Service, NOAA.

²From *Fisheries, Wetlands and Jobs: The Value of Wetlands to America's Fisheries*, a report by William M. Kier Associates (March, 1994) for the Campaign to Save California Wetlands. See also Fedler, A.J. and D.M. Nickum, *The 1991 Economic Impact of Sport Fishing in the United States*, by the Sportsfishing Institute, Washington, DC.

which voracious human consumption should not go, and that limit is "biological sustainability." This is also the basis of economic sustainability as well. As a society, we violate nature's natural limitations at both our biological and our economic peril. For each species pushed into extinction, that is a loss to the very fabric of our human food chain. It also represents a lost future opportunity to our entire economy. The biological diversity of our natural resources represents the foundation upon which industries of the present are maintained and also upon which industries of the future will be built and people of the future will be fed. Wasting our "natural capital" primarily impoverishes ourselves and limits our future economic growth

The commercial fishing industry has seen the Endangered Species Act up close and in operation for many years. Our industry is a highly regulated industry. We are, for instance, *far* more regulated under the Endangered Species Act (ESA) than the Northwest timber industry. While the timber industry has recently suffered through curtailments caused by one or two ESA listings, the fishing industry has long been dealing with the impacts of listings for chinook salmon in both the Columbia and Sacramento Rivers, sockeye salmon in the Columbia, sea turtles in the Gulf, and various marine mammal species protected under *both* the ESA and the Marine Mammal Protection Act (MMPA). On the west coast, we are also facing the imminent prospect of coastwide listings for coho salmon, chinook salmon and *every other anadromous salmonid on the west coast*. The effects of these upcoming listings will potentially be *far* more restrictive than any past restrictions caused by spotted owls or murrelets.

There is, in fact no industry more regulated under the ESA presently, nor more likely to be regulated in the foreseeable future, than the commercial fishing industry. And yet (in spite of short-term dislocations) we view the protections offered by the ESA as vitally important in protecting and preserving our industry, our jobs and our way of life for the long term. It is the declines which are the enemy, not the ESA.

The ESA is, in fact, only the warning bell and not the problem itself. Disconnecting the warning bell is not a viable response to an emergency in the making.

72,000 SALMON JOBS AT RISK -- SALMON AS A CASE IN POINT FOR HOW THE ESA PROTECTS JOBS

Salmon, once the economic mainstay of both the commercial and recreational fishing industry in this region, have been reduced by short-sighted human actions to a mere shadow of their former glory, largely as a result of a multitude of cumulative on-shore causes. The destruction of salmon

spawning and rearing habitat has been ongoing and pervasive in this region for many decades. Fewer and fewer salmon survive the silting up of their spawning grounds by inappropriate logging, grazing and road building practices. Fewer still survive the nightmare ride through hydropower turbines and slack-water reservoirs in the more than 30 major federal and state Columbia River Basin hydropower dams. In the eight federally operated Columbia and Snake River mainstem dams alone, each dam's turbines kill up to 20% of the outmigrant fish making their long journey to the sea.³ The relatively few which remain alive are then subject to otherwise natural conditions which combined with all the upstream human-caused assaults can be the final blow on an already highly stressed salmon ecosystem.

Salmon are the most sensitive to their environment in the egg stage and as juveniles when they are still in freshwater streams just after spawning. Some species (such as coho salmon) spend a fairly long time in freshwater streams since they must "overwinter" there before going out to sea. Even once they leave these freshwater streams, salmon must still spend additional time in coastal wetland estuaries and marshes in order to gradually adapt to life in salt water. They are "anadromous" fish, which means they are hatched in freshwater, then adapt to salt water, then return again to freshwater to spawn. In the ocean they are relatively large and relatively safe, but in inland streams they are subjected to every environmental problem created by mankind, in addition to natural predation and other natural impacts. Salmon evolved for drought, for El Ninos, to avoid predators -- but have not evolved to prevent themselves from being sucked into irrigation pumps, nor from being destroyed by hydropower turbines, nor stranded without water in unscreened irrigation ditches. They also have not evolved to survive water pollution, oil spills and the many other unfortunate environmental problems created by modern civilization.

The fishing industry in the Northwest is highly dependant upon healthy salmon runs. However, we find ourselves in the midst of a massive extinction emergency as fewer and fewer salmon smolts are generated in badly silted and devastated upper watersheds. Roughly speaking, we have lost about 80% of the productive capacity of salmon streams in this region as a direct result of various causes

³Both the impacts from upper watershed activities (logging, grazing, road building, etc.) and the impacts from the hydropower turbines are largely avoidable. Many of these practices are obsolete and unnecessary, and profits in these industries will not greatly suffer from curtailing or mitigating these problems. The externalized damage caused by these practices is, in many cases, more of a harm to society than any conceivable benefits from the practice itself. As an industry ourselves, we are very sympathetic to the current plight of timber works (many of whom are also fishermen) -- however, it is clear that short-sighted logging, grazing and hydropower practices conducted without any regard to stream protection has been disastrous for our industry and many coastal communities. Most of the federal hydropower dams were built without downstream salmon passage, and some (such as the Grand Coulee Dam) without upstream passage. Salmon are now totally extinct above Grand Coulee Dam, and this extinction was designed into the system. The fishing industry is federally regulated on the basis of biological sustainability (Magnuson Act). It is time that these other industries were as well. The current dislocations in these industries are fundamentally caused by past unrestricted overuse of their resource which now has to be balanced out and made more sustainable. Fundamentally, the timber industry, for instance, is not up against the spotted owl -- it is up against the Pacific Ocean. The historical rate of timber harvesting over the last few decades has been many times what is biologically sustainable without doing major environmental damage to other industries. The fundamental problem with the timber supply is that after decades of overcutting, the timber industry is simply out of big trees.

of watershed destruction. According to a 1991 comprehensive scientific study by the prestigious American Fisheries Society, at least 106 major populations of salmon and steelhead on the West Coast are already extinct. Other studies place the number at over 200 separate stock extinctions in the Columbia River Basin alone. The AFS report also identified 214 additional native naturally-spawning salmonid runs at risk of extinction in the Northwest and Northern California: 101 at high risk of extinction, 58 at moderate risk of extinction, and another 54 of special concern, plus 1 run already ESA listed.⁴ In a recent extensive GIS mapping study of present habitat occupied versus historical habitat, based on the AFS data and updates, the data indicated the following distributions across the landscape:

**Status of Salmon Species in the Pacific Northwest & California
Distribution Status as a Percentage of Historic Habitat**

Species	Extinct	Endangered	Threatened	Special Concern	Not Know to be Declining
Coho	55%	13%	20%	5%	7%
Spring/Summer Chinook	63%	8%	16%	7%	6%
Fall Chinook	19%	18%	7%	36%	20%
Chum salmon	37%	16%	14%	11%	22%
Sockeye	59%	7%	3%	16%	15%
Pink salmon	21%	5%	<1%	<1%	73%
Sea-run Cutthroat	6%	4%	61%	29%	0%
Winter Steelhead	29%	22%	7%	18%	24%
Summer Steelhead	45%	5%	5%	27%	18%

According to GIS mapping, Pacific Northwest salmon are already extinct in 38% of their historic range, between 50-100% of these species are at risk or extinct in 56% of their historic range, and in only 6% of their historic habitat range are fewer than 50% of these salmon

⁴ Nehlsen, et al., 1991. "Pacific Salmon at the Crossroads. Stocks at Risk from California, Oregon, Idaho, and California," *Fisheries* 16:2(4-21).

species at risk or extinct.⁵ The conclusions of this study (the best and most complete to date) are chilling — 9 out of 10 known species of Pacific salmon will be extinct in the lower 48 states in the near future unless land use patterns pressing those stocks toward extinction are reversed.⁶

The productive capacity of the salmon resource has always been enormous. Even as recently as 1988, and in spite of already serious existing depletions in the Columbia and elsewhere, the Northwest salmon industry (including both commercial and recreational components) still supported an estimated 62,750 family wage jobs in the Northwest and Northern California, and generated \$1.25 billion in economic personal income impacts to the region.⁷ An additional estimated job loss from the Columbia River declines alone had already occurred by the 1988 baseline year, amounting to another \$250 -- 505 million in economic losses per year as well as the destruction of an additional 13,000 to 25,000 family wage jobs. These jobs had already been taken out of the economy *as a direct result of salmon declines in the Columbia basin prior to 1988.*⁸ Had society taken better care of its "natural salmon capital" upstream, the economic potential to be realized would thus have been

⁵ From GIS survey maps prepared by scientists on contract to The Wilderness Society, and published in The Wilderness Society's report *The Living Landscape: Pacific Salmon and Federal Lands* (Volume 2). Published by the Bolle Center for Forest Ecosystem Management (October 1993). The report and data were peer reviewed.

⁶ The one exception was pink salmon, which only now occurs in the extreme upper portion of the Puget Sound area in limited populations. These are also (incidentally) the areas least affected by development since much of that area is in Olympic National Park — emphasizing the direct correlation between salmon production and intact watershed ecosystems.

⁷ Figures taken from *The Economic Imperative of Protecting Riverine Habitat in the Pacific Northwest* (Report 5, January 1992) published by the Pacific Rivers Council, based on official federal statistics from the Pacific Fishery Management Council. The fishery related job breakdown by state, according to that report, was as follows:

State	Commercial	Recreational	Total
Oregon	4,450	9,500	13,950
Washington	6,800	14,250	21,050
N. California	4,000	19,000	23,000
Idaho	Negligible	4,750	4,750
Pacific Northwest Total	15,250	47,500	62,750

Commercial fishery jobs are heavily concentrated in coastal areas. Recreational fishery jobs, while a larger number, are more diverse and are distributed more diffusely throughout inland communities.

⁸ From a report titled *The Costs of Doing Nothing: Externalized Costs to the Northwest Fishing Economy of the Current Operations of the Columbia River Hydropower System*. Institute for Fisheries Resources (2/10/95) draft report (unpublished), based on figures from a very recent study by Dr. Hans Radtke, Ph.D., a natural resources economist on contract to the Institute. Completion of the last main-stem federal hydropower dams was in the late 70's, and none were built with adequate fish passage. That study concluded that salmon losses in the Columbia Basin to date have amounted to the removal from the regional economy of between 13,000 and 25,000 jobs annually at a cost to the economy of between \$250 to 505 million dollars annually, which translates to the loss of natural capital assets of up to \$13 billion.

that much greater even than the 1988 figures.

Hydropower and irrigation dams are probably the major leading factor in the collapse of the salmon fishery on this coast. Historically almost one-third of all west coast salmon were produced in the Columbia and Snake river systems, making that river the richest salmon production system in the world. Now, however, in the Columbia and Snake rivers the hydropower system accounts for at least 90% of all human-induced salmon mortality, *as opposed to only about 5% for all commercial, recreational and tribal fisheries combined*. Official figures from the Northwest Power Planning Council indicate that the Columbia River dams kill the equivalent of between 5 million and 11 million adult salmon every year.⁹

Another problem is wetland losses throughout the west coast. California has already lost 91% of its original wetlands, Oregon has lost 38% and Washington has lost another 31% and the remaining percentages of original wetlands have been severely compromised in their biological functions.¹⁰ These wetlands are vital in protecting overwintering salmon, helping them survive droughts and (for saltwater wetlands) helping them adapt to ocean conditions. A main factor in the destruction of the coastal salmon stocks in the Northwest has been the rampant destruction of the area's wetlands. Loss figures for the most valuable coastal and estuarine wetlands is much greater even than the overall losses.

Estimates of salmon job losses due to lack of protection of salmon resources

With one major exception off central California, and a few very minor mostly sportfishing exceptions in Washington and Oregon, the entire ocean going salmon fleet was closed down in 1994 because of these declines, particularly of coho. This upcoming season is likely to be little better. We estimate that coastwide we have **now lost 90% of our income from the commercial fishery** from 1976-1993 averages – which translates to loss of 90% of the jobs created by the commercial salmon industry as a whole. The recreational salmon fishing industry has also suffered a similar decline of 70% in that same time period, with some areas (such as central Oregon) also suffering complete closures. While there is some mismatch of figures (due to different averaged years) these two figures combined will give us a pretty good estimate of total salmon industry job losses since 1988. Doing the calculation we get job losses as follows:

⁹ Northwest Power Planning Council publication *Strategy for Salmon*, Vol 2, page 17 and Appendices D & E.

¹⁰ Facts on wetland losses by state from a report by the US Dept. of Interior entitled *Wetland Losses in the United States 1780's to 1980's* by Thomas Dahl. California has lost a higher percentage of its wetlands than any other state. If only coastal or estuarine wetlands is included in these figures, each state's wetlands losses would be much greater.

15,250 x 90% = 13,725 jobs lost since 1988 in the commercial salmon fishery

47,500 x 70% = 33,250 jobs lost since 1988 in the recreational salmon fishery

46,975 jobs lost overall since 1988

In addition, habitat losses and hydropower mortality in the Columbia and Snake rivers have also resulted up to 25,000 lost jobs. Adding these lost jobs to the above figures indicates a total job loss within the last two decades of approximately 72,000 family wage jobs.

In other words, roughly 47,000 jobs have been lost in the northwest Pacific salmon fishing industry (including both commercial and recreational) just since 1988, with a total of 72,000 fishing-generated family wage jobs lost – including losses due to the current operations of the Columbia and Snake river hydropower system – over the past three decades.

Overfishing is not a likely cause of these declines. Harvest closures track numerical population numbers as required under the Magnuson Act, since the biological sustainability of the salmon resource is always the bottom line for both state and federal fisheries management. When there are fewer fish, more closures are instituted to prevent overfishing. Thus as stocks declined due to habitat loss and lessened productivity from salmon streams and rivers, more closures have been necessary year after year until almost complete salmon season closures were instituted in 1994. There has also been a clear overall declining trend year after year as the number of juvenile salmon produced by the Northwest's streams and rivers has itself continued to decline. Had overfishing been a major contributing factor in salmon declines (as some have claimed) then harvest closures should have resulted in substantial rebuilding of populations. However, there is no evidence that these closures resulted in substantial population increases – indicating that the limiting factors are in the watersheds, not in ocean or in-river harvest levels.¹¹ There are also a number of other indications leading to the same conclusion, including: (a) the most precipitous declines have occurred primarily in the most

¹¹ Dr. Chris Frissell, who did much of the GIS mapping for The Wilderness Society report cited above, took an independent look at whether harvest reductions were a significant factor in population dynamics for coho salmon. If overfishing were a significant cause of population declines, then harvest reductions should be effective in rebuilding depleted stocks. He concluded in his analysis as follows:

"Overfishing is often cited as a principle factor causing decline of salmon runs. However, there are few historical or recent records to indicate that curtailment of fishing has led to increased spawning abundance of coho salmon. For example, curtailment of fishing seasons has been thought to have reduced harvest-related mortality rates on Oregon coastal coho substantially during the past decade. However, there has been no evidence of increased spawner escapement during this period, suggesting that fishing curtailment is at best merely keeping pace with rapid habitat deterioration and declining productivity of coho populations."

(Pacific Rivers Council petition for the coastwide listing of coho salmon, dated 10/19/93).

inshore habitat sensitive species (coho salmon) as opposed to chinook salmon which spend much less time in inland watersheds and whose populations are still relatively robust; (b) precipitous declines have also occurred in species *for which there is no sport or commercial harvest* (searun cutthroat) but which originate in inland watersheds in which there has been substantial human disturbance (primarily clearcut timber harvesting and increased stream siltation from logging road washouts).

When seasons remain closed, the enormous economic investment already put into the Pacific fishing fleet goes to waste. *Just in the Columbia River gillnet fleet alone we have an estimated \$110 - \$129 million dollars in capital assets (see attachment)*. This figure does not even include buyer and processor investment. Also, this figure is what remains after decades of escalating closures due to unprecedented declines in the Columbia linked to hydropower dam construction. Additional closures essentially mean the bankruptcy of these fishing communities and the waste of a tremendous capital investment.

Again these extinctions represent lost jobs, lost family income and lost local tax revenues suffered by fishing communities as a result of poor environmental protection of Northwest salmon. These losses are being suffered by real people, many of them third or fourth generation fishermen, who suddenly find they cannot feed their families, pay their home and boat mortgages or help maintain their communities. Better protection of salmon and their habitat (through the ESA and other strong environmental laws) will help restore these 72,000 jobs to the region and rebuild these local economies.

WHY THE FISHING INDUSTRY NEEDS THE ENDANGERED SPECIES ACT – \$111 BILLION/YEAR AND 1.5 MILLION JOBS AT RISK

Most fish species spend only part of their lives in mid-ocean. During their juvenile stage, most live and thrive in the nearshore environment of streams, rivers and estuaries. Some, like salmon, reproduce and grow far inland in fresh water streams hundreds of miles from the ocean. However, salmon are just one example of commercially valuable species that are also dependent on inshore or nearshore habitat quality.

All around the country, *our industry is utterly dependent on species which themselves require healthy watersheds and estuaries for the most critical parts of their life cycle*. Nearshore waters, including rivers, streams and coastal wetlands, are essential nursery areas for fully 75% of the entire US commercial fish and shellfish landings. These sensitive ecosystems are valuable national assets

which contribute about \$46 billion per year to the US economy in biological value, as well as providing its healthiest food sources. Salmon are only one part of this whole economic picture, and only one of many commercially harvested species which need protection. The bottom line protection of all these species is the Endangered Species Act.

All the nation's \$65 billion commercial and marine recreational fisheries have been put at risk as a result of the continuing destruction of fish habitat in the nation's rivers, estuaries and coastal ecosystems. This destruction has led to billions of dollars in lost revenue to the nation, lost employment, lost food production, and lost recreational opportunities. The collapse of the salmon fishery is only a small part of this overall habitat disaster. The Congress and the Administration need to make a serious commitment to the protection of those habitats and ecosystems that determine the future productivity of fish and shellfish resources in the U.S. If this commitment is made, at least a doubling of anadromous fish and other near shore dependent marine fish and shellfish populations of the "lower 48" states can be expected. This could produce an additional \$27 billion in annual economic output (above and beyond the current level of \$65 billion) and more than 450,000 new jobs.¹²

Likewise the other component of the fishing industry -- inland recreational fisheries -- is also threatened by a wide array of habitat problems. At least an additional \$46 billion in economic activity has been placed at risk by the destruction or deterioration of inland wetlands, and riparian ecosystems which are the nursery beds for a wide variety of valuable fish species. Many of these species are now facing listings under the ESA as the last resort in efforts to protect them. Their protection (and eventual recovery) under the ESA is another example of how the ESA saves jobs and protects the economic capacity of this nation.

Environmental regulations exist because policy makers finally realized that a healthy environment is the ultimate source of the nation's economic wealth, its food and the well-being of its citizens. The crown jewel of all environmental protection is the Endangered Species Act (ESA). In spite of the problems the ESA has created for individual fishermen, it is also the last hope for the restoration of whole species (such as salmon) in many areas. Without a strong ESA, the only available remedy for species recovery is closing down the fishery, even though the real problems lie elsewhere.

This is exactly what has happened to the salmon industry to date -- as onshore habitat declined,

¹² Figures from *Marine Fishery Habitat Protection - A Report to the US Congress and the Secretary of Commerce* (March 1, 1994), copublished by the Institute for Fisheries Resources, East Coast Fisheries Foundation and PCFFA, with extensive citations. Copy available from PCFFA upon request.

as fewer and fewer fish survived to even reach the ocean, it has been the fishermen who have been cut back over and over again, and who have almost singlehandedly paid the price of inland environmental destruction on a massive scale. This is because under the Magnuson Act fishery managers can only manage fishermen -- they have no legal jurisdiction whatsoever over actions onshore which destroy the biological foundations of the fishery itself.

Whole watersheds can be destroyed, salmon runs can be battered to extinction, rivers polluted to the point of actually catching fire, *and NMFS or USFWS can do nothing about it -- until* their ESA authority has been triggered by a listing. The ESA -- flawed as it is -- is thus the key to watershed restoration and salmon protection throughout the region. It is also the principal tool for changing onshore practices which destroy fisheries and destroy fishermen's livelihoods.

Without a strong ESA, there will never be salmon recovery in the Northwest, and the approximately 72,000 lost salmon jobs -- which the salmon resource could still generate in this region with proper protection of the resource -- would be gone forever. Salmon mean business, and it pays to protect them. Without the ESA to drive recovery, however, you can kiss the entire Northwest salmon industry -- and many other components of the entire nation's fishing industry -- goodbye!

The fishing industry represents a major economic force which is dependent upon a healthy environment. The ESA is not the enemy, it is only the messenger. Listing a species is like dialing the 911 number when you need an ambulance. It should be used rarely, but when it is needed it is real handy to have an emergency number to call. Often it is the difference between life and death.

PUNCTURING SOME MYTHS ABOUT THE ESA

There has been a great deal of myth and hysteria about the Endangered Species Act, very little of which is based on the facts. Some effort needs to be made to bring some rational light to the discussion, as I will attempt below:

The problems are caused by declines, not listings

Species only qualify for listing under the ESA *because they are seriously declining*. They get listed because they face extinction. This point seems to have been missed by many who are calling for the elimination or curtailment of ESA protections. The best way to prevent listings, then, is to prevent the species' decline in the first place. Limiting or repealing the ESA itself only throws out the primary tool to achieve recovery, but does nothing to reverse declines.

Sadly, once declines have been allowed to happen, only the ESA seems to have the legal teeth to stop the clock and get a species moving back toward recovery. However, by the time a species has declined to the verge of extinction (thereby qualifying for listing), options are few and costs of emergency recovery plans are great. It should be no surprise that the job of species recovery at that late date is difficult or that it may cause temporary dislocations.

The ESA is a warning bell that an ecosystem is unraveling. Shooting the messenger is not a productive strategy, nor is denial. We should pay attention to the message and respond to it. This means a more proactive rather than reactive approach is necessary.

**This is not an "environment vs. jobs" issue – the ESA does
not cause substantial economic disruption and can in fact help protect jobs**

There is absolutely no evidence that the ESA seriously impacts state or regional economies, and every reason to think that it does not. For instance, a recent study by the MIT Project on Environmental Politics and Policy, which looked at the statistical relationship between the number of species listed in each state as compared to that state's economic performance (over the period of 1975-1990) concluded:

"The data clearly shows that the Endangered Species Act has had no measurable economic impact on state economic performance. Controlling for differences in state area, and extractive industry dependence the study finds that states with the highest numbers of listed species also enjoyed the highest economic growth rates and the largest increases in economic growth rates.... The one and a half decades of state data examined in this paper strongly contradict the assertion that the Endangered Species Act has had harmful effects on state economies. Protections offered to threatened animals and plants do not impose a measurable economic burden on development activity at the state level. In fact the evidence points to the converse...."

The author of that study also noted that actual ESA listings are themselves only affecting a very small number of development projects undertaken and that, in economic context, these impacts are very small indeed in comparison to other much more major factors:

"In fact, for every tale about a project, business, or property owner allegedly harmed by the efforts to protect some plant or animal species there are over one thousand stories of virtual 'non-interference.' In reviewing the record of 18,211 endangered species consultations by the Fish and Wildlife Service/National Marine Fisheries covering the period 1987-1991 the General Accounting Office found that only 11% (2050) resulted in the issuance of formal biological opinions. The other 89% were handled informally -- that is to say the projects

proceeded on schedule and without interference. Of the 2050 formal opinions issued a mere 181 -- less than 10% -- concluded that the proposed projects were likely to pose a threat to an endangered plant or animal. And most of these 181 projects were completed, albeit with some modification in design or construction. In short, more than 99% of the projects reviewed under the Endangered Species Act eventually proceeded unhindered or with marginal additional time and economic costs. Given the political and economic screening that occurs in listings cases it is not surprising that no measurable negative economic effects are detectable....

Furthermore local economic effects must be considered in context. Hundreds of state and federal policies have far more injurious impacts on local economies than wildlife protection. For example, the recent series of military base closings have had economic effects hundreds of times greater than all the listings during the 20-year life of the Endangered Species Act. Even greater economic and social harm resulted from the ill-conceived deregulation of the savings and loan industry during the 1980's. The number of jobs lost to leveraged buy-outs in the 1980's exceeds by many times the wildest estimates of jobs lost to endangered species; and no social good was accomplished in any of these cases." ¹³

In the case of the fishing industry, as well as many other environment-dependent industries, judicious application of the ESA to protect the biological resources we depend upon can add a substantial number of jobs to the regional economy. At least 50,000 additional salmon-generated family wage jobs can be restored to the Pacific Northwest by taking steps under the ESA to restore and recover the great salmon runs which once made this region the envy of the world. Without the ESA to drive recovery, however, this economic revitalization would never happen.

PROBLEMS WITH THE ESA AND THEIR SOLUTIONS

The Endangered Species Act is not a perfect law. As a regulated industry, we know firsthand some of the problems that the current act has created, and are seeking to make the act work better and more efficiently. However, what should not be in question is the need for the act itself. The problems with the act are not that it is too strong, but that it is too bureaucratic and too poorly funded to accomplish its purposes efficiently with the least amount of economic pain.

As a regulated industry organization which also strongly believes in the importance of the goals of the act, we believe the ESA needs improvement in a number of ways, including the following:

¹³ Stephen M. Moyer (March 1995). *Endangered Species Listings and State Economic Performance*. Massachusetts Institute of Technology, Project on Environmental Politics and Policy. Facts on actions cited from US General Accounting Office (1992) *Endangered Species Act: Types and Numbers of Implementing Actions* (GAO/RECD-92-131BR).

(1) *The ESA should promote species recovery, not mere maintenance on indefinite life support* -- The principal flaw of the ESA is that it establishes a goal far short of actual recovery of species. The stated goal of the ESA is to prevent extinction and to establish plans for the "conservation and survival" of listed species. This minimal level of conservation does not result, in many cases, in ultimate population recovery. More and more species are thus pushed toward, and indefinitely maintained just short of, the line of extinction. This is a much more expensive proposition than to bring the population up to well-distributed self-reproducing populations, after which the species will perpetuate itself naturally.

Each depleted species makes its ecosystem that much more fragile, leading to more problems later. The goal should be to *fully recover* a species to the point where it can be permanently delisted and sustain abundant and widely distributed populations.

For instance, under current recovery plan goals the ESA does not promote the production of a harvestable population of salmon species, only potential "museum runs" which then become an indefinite drain on resources. Since these runs are not harvestable they provide no offsetting economic benefits, yet become a limiting factor under "weak stock management" for other, perhaps more abundant, fisheries. Bringing these runs back up to harvestable levels thus creates economic benefits to offset the initial costs of recovery -- in other words, restoring jobs and economic stability is the "return" on the "investment" of restoring these once-abundant salmon runs.

(2) *There should be recovery plan deadlines* -- Recovery plans do not exist for most listed species, even years later. Recovery plans should be mandatory and be required to be published within 18 months. We also favor a two-phase recovery process which would work more or less as follows:

Phase One ("Science Phase")

The first phase should be devoted solely to the scientifically determined needs of species in order for them to recover. This would include gathering the best available scientific data on the species and drafting recovery targets with objective benchmarks for both recovery and delisting that address: (i) the section 4(a) factors that require listing; (ii) population sizes and distribution that would constitute or achieve recovery; (iii) all specific habitat requirements needed for achieving recovery, expressed in measurable, numeric terms and using identifiable benchmarks; (iv) and all other biological criteria relevant to recovery.

The Act should require the Secretary to solicit and carefully review public comment on the

draft Recovery Target document through notice and comment, with an emphasis on scientific information from scientists, states, and other governmental entities. This process should take no more than 12 months after listing to complete, and should result, after public review and comment, in a recovery target document setting forth the best available scientific assessment of the species and identifiable recovery plan targets.

Phase Two ("Implementation Phase")

Once the science and the recovery goals are clear, the remaining questions are how to achieve those goals most cost effectively. In the implementation phase, a recovery team should then be assembled which consists of federal agencies and other scientists selected by the Secretary (including those who developed Phase One of the plan), and with voluntary participation by state, tribal and local government entities, as well as affected industries or landowners, for the purpose of assisting the Secretary in preparation of the final recovery plan. The team would convene upon issuance of the draft Recovery Target document portion of the recovery plan. The purpose of industry and landowner participation is to promote "buy in" for the conservation measures required, as well as to solicit the best information on what measures can reasonably be implemented most effectively by those affected parties.

The implementation process should also require that each federal government agency with jurisdiction over affected lands develop an "implementation plan" that identifies its affirmative conservation duties for contributing to the achievement of recovery goals. The process should encourage state, local, and tribal governments to develop implementation plans that contain affirmative conservation actions to promote recovery.

Throughout the process, the recovery team should provide opportunities for regulated entities, states and other governmental entities, and interested citizens to review and comment on the proposed implementation plans and to help design more cost effective conservation measures.

Regulatory uncertainty is in many instances the cause of more economic dislocation than the conservation measures themselves would be once implemented. At present there are no deadlines on adoption of recovery plans, thus perpetuating that uncertainty. For an industry such as ours or the timber industry, this uncertainty makes it very difficult to develop long range business plans or to obtain financing. The law should therefore require the Secretary

to prepare within 18 months of listing a final recovery plan that incorporates the Recovery Target document and all implementation plans, and which also contains enforceable deadlines for all action items.

The law should also require the Secretary to ensure to the maximum extent practicable that the combined set of implementation plans will, when implemented, achieve recovery of the species within a reasonable time frame. The recovery plan should identify and prioritize actions that would have the greatest potential for achieving recovery of listed species.

(3) Assuring cost effectiveness and minimizing conflicts with private landowners -- Most of the conflicts between private landowners and the government with respect to species protection are more perceived than real. Nevertheless, there is a need to minimize those conflicts to the extent possible as well as providing for conservation measures which achieve the goal as cost effectively as possible. Some of the measures that should be incorporated into the law to achieve these goals include the following:

The law should direct the Secretary to emphasize the role of federal actions and public lands in achieving recovery. The law should be clearer in specifying that federal agencies have a responsibility to use their existing programs to foster the implementation of recovery plans to the degree they can.

If critical habitat occurs on privately held lands, the law should direct the Secretary to identify land for acquisition in the recovery plan (including any land interests less than fee title, such as conservation easements) pursuant to section 5 of the Act, from willing sellers, and should to set priorities for acquisition. This process should be well funded and the administrative procedures for financing these acquisitions should be simplified. Many landowners would be more than willing to help with recovery efforts if such financial incentives were more readily available.

The law should also direct the recovery team and the Secretary, in preparing the list of recovery actions, to consider the cost effectiveness of conservation actions in order to identify ways of reducing costs of recovery without sacrificing species preservation or recovery goals.

The law should also provide better guidance to private property owners regarding what may constitute a §9 "taking" of species through listing notices, recovery plans, regulations, or incidental take procedures. An expedited review of proposed habitat modification actions by private landowners in critical habitat areas should be provided so that no more than 30 days elapses between application for review and final decision.

Landowners should be encouraged to provide habitat protection through a variety of incentive and financing programs, including the following:

(a) Establish a revolving loan fund for state and local government entities to encourage such entities to develop regional, multi-species Habitat Conservation Plans (HCP's).

(b) Enable landowners with proposed activities consistent with an approved regional HCP to obtain expedited approvals of those activities.

(c) Authorize the Secretary to enter into cooperative management agreements with private landowners, providing financial incentives for conservation measures above and beyond those required by the ESA. Activities to be funded under this provision would be those called for by an approved recovery plan.

The Habitat Conservation Plan (HCP) procedure is a good tool for landowners to restore some certainty into the process as well as to provide for long-term protection measures. However, the current HCP process is deeply flawed and includes too little public notice and comment. Furthermore, HCP's can be inconsistent with approved recovery efforts elsewhere. The law should require HCP's to be consistent with approved recovery plans and goals.

Both HCP's and recovery plans may have to occasionally be updated and revised in light of new scientific information or the results of plan monitoring. During that review process, existing recovery plans should be kept in full force, but the Secretary should propose modifications to the plan to conform with new standards. These proposed modifications should be widely published for public comment and adopted into the recovery plan only when they will promote equal or greater protection and faster recovery in a more cost effective manner.

(4) Protection should be aimed at endangered ecosystems, not just individual species, so that the need for future listings can be prevented – A species by species approach does not generally work. Multi-species plans for the protection of endangered ecosystems need to be developed so that those species which are part of such ecosystems *do not begin the slide toward extinction to begin*

with. The ESA needs to become an "endangered ecosystem" act as well. Protection measures should be wholesale, not retail, in order to be cost effective.

(5) Funding for scientific surveys and recovery efforts should be greatly improved – The total funding for all ESA research and recovery efforts amounts to approximately 50 cents per US citizen per year. Given the level of problems the ESA needs to address, and given the potential economic return on this investment, the current levels of funding for species identification and recovery borders on the ridiculous. 50 cents per year is too little to invest in our biological future.

(6) Alternative Dispute Resolution for property owners – There are rare instances in which property owners were unfairly treated or in which government agencies made inappropriate decisions. This is inevitable in any large administrative process. However, there should be a speedy and effective way to put these problems to rights. Some internal dispute resolution mechanism would be very helpful for landowners to minimize unnecessary conflicts and resolve disputes. There is also an existing Alternative Dispute Resolution process within the U.S. Court of Claims which allows aggrieved landowners to present their case to a Claims Court judge without needing a lawyer and without a lot of paperwork. This process does not even require a trip to Washington, DC -- it can be done by fax and phone. At a minimum, the ESA process out to include this mechanism as a "safety value" to prevent problems from escalating out of control.

(7) All known information about the existence and range of threatened or endangered species should be available to prospective purchasers of property from a centralized data source – Information depositories should be created (perhaps made available through the National Biological Service and administered through state agencies) so that prospective purchasers of property would be able to ascertain quickly and inexpensively whether or not ESA listed species are known to exist on the property they are considering purchasing. Similar state-based information services are already available in states like California, through the local permit process. In theory, it would be possible to have all this information in readily searchable form with a quick computer inquiry for a very minimal fee.

Most land use conflicts result when landowners have invested substantial money and resources in a development project and feel that they have no choice except to proceed in order to recoup their investment. If a prospective landowner know before close of escrow whether or not there might be conflicts between development plans and fish and wildlife protection obligations, he or she could plan accordingly, propose mitigation measures with acceptance a condition of close of escrow, and in general take a number of proactive steps to minimize or eliminate any potential future conflicts.

Biological impact review of development plans by state fish and wildlife or local agencies is routinely done in many states as part of the permit process, and this additional data base would fit neatly into that process.

(8) The whole process of listing, comment, recovery plan development and delisting needs to be streamlined and made more efficient in various ways -- There is clearly room for administrative process improvement in all these areas, including a more open and less bureaucratic process for the development of recovery plans, independent peer reviewing of the science upon which decisions are made, etc. Most of these changes would help expedite the process and move the process toward recovery efforts sooner, and so we would support reasonable streamlining changes, provided the resource protection goals are not sacrificed along the way.

In general we also support the changes proposed in the last session of Congress in the Studds-Dingell Bill (HR 2043) and on the Senate side the Baucus-Chafee Bill (S 921). These bills were widely supported by landowners, conservation groups, the fishing industry and many others, and should be the model for any reforms which come out of this Committee. Thank you for your time and the opportunity to present this information.

**Economic profile
Columbia River non-tribal commercial fisheries
selected information from Economic Studies
produced by Dr. Hans Radtke
1992 and 1994**

ASSET VALUE

\$110-\$129 million Asset value of the fleet (fishing family vessels, gear, trailers, sheds, docks, etc.) estimated 1994 - does not include buyers or processor investment

AVERAGES FROM 1938-93

\$23 million Annual average personal income generated (1938-1993) in 1993 dollars and prices

1,150 jobs Annual average FTE jobs (based on \$20,000/job)

2,000 jobs Estimated average number of people employed
(This number not included in Radtke report, but gathered by Eaton from other reports and data)

7,668,000 lbs. Annual average pounds landed (1938-93, all species)

RECENT HIGHS

\$32 million Recent high in 1988 (in 1988 dollars, all species)

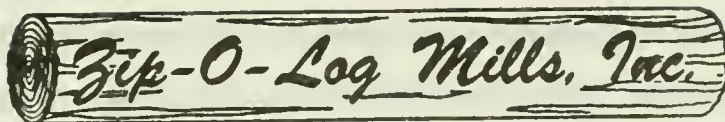
9,987,000 lbs. Recent high in 1988 (all species)

1,600 jobs Recent high in 1988 based \$20,000/FTE job

sources: "Some Estimates of the Asset Value of the Columbia River Gillnet Fishery Based on Present Value Calculations and Gillnetter's Perceptions", - Dr. Hans Radtke, August 1994

"Economic Contributions of the Commercial and Recreational Salmon Fishery on the Lower Columbia River (Oregon Jurisdiction) A Short Review" - Dr. Hans Radtke, October 1992

For more information contact Bob Eaton, (503) 325-3831



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PHONE (503) 343-7758

EUGENE, OREGON 97402

**TESTIMONY OF JAMES A. HALLSTROM
PRESIDENT / GENERAL MANAGER
ZIP-O-LOG MILLS, INC.
EUGENE, OREGON**

**GIVEN TO THE SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS'
SUBCOMMITTEE ON DRINKING WATER,
FISHERIES AND WILDLIFE**

**ROSEBURG, OREGON
JUNE 1, 1995**

I am Jim Hallstrom, President and General Manager of Zip-O-Log Mills, Inc. in Eugene, Oregon. We are one of many small family owned sawmills in the Pacific Northwest. We have been in operation for 50 years and I am a third generation owner/manager. I am here representing my 33 remaining employees and their families, reduced from the 118 employees I had less than five years ago. This dramatic economic impact on our small business is a direct result of the reduction in the public timber supply caused by the implementation of the Endangered Species Act (ESA) for the Northern Spotted Owl.

Social Impacts

In the last few years we have laid off employees for the first time in our company history. We made it through the depression of the early 1980's only to run up against a timber supply problem. Our company, like many of the small sawmill businesses in this area, is almost 100% dependent on the public timber supply from the U.S. Forest Service

and the Bureau of Land Management. Our timber supply comes primarily from the Willamette National Forest, which in the 1980's sold between 600 and 700 million board feet annually. The President's Plan (Option 9) calls for a 136 million board foot annual sales volume or 20% of historic levels. The proposed timber sales plan for the first six months of the 1995 fiscal year was 3.8 million board feet, but the actual volume sold was .5 million board feet, or less than 1/2 of 1% of the Option 9 volume.

The dramatic cutback in the timber supply as a result of the Endangered Species Act has resulted in major cutbacks to the employment level of our company. From the layoff of 21 employees in November, 1994, I had one employee discover that the dislocated workers program allowed him to use previous plumbing experience to get accepted into a plumber apprentice program. He started out making \$4.00 per hour less than the job he left. Within a few months his past experience and test scores increased his wage \$2.50 per hour and within 1-1/2 years he should be making as much as he was working for me.

Several former employees enrolled in the dislocated workers program and are going through retraining at this time. We put some back on the payroll on a full or part time basis. A few got jobs with other forest products firms. These are the positive stories.

Some of our dislocated workers have had a difficult time trying to figure out what to do with their lives. Some have taken six months unemployment benefits and will decide what to do later. One employee that was still working after the November, 1994 layoff had an emotional breakdown, didn't show up to work one day, and we later found out he had walked out on his family. The emotional strain endured when faced with

actual or potential unemployment creates very anxious and volatile times for all concerned.

In the last two months I have had three key employees, each of which had over ten years experience with the company, succumb to the uncertain future and quit their jobs. One moved to Sacramento, California to train to become a maintenance supervisor of a lift truck business, one went to work for a machine shop, and one is taking a ninety day leave of absence to try the used car business. In each case it was a very traumatic decision for both themselves and their families. Employees forced to relocate, whether due to a layoff or a career change, must uproot their families and leave friends and relatives behind. Most of our employees have spent many years in this community and would rather remain here than move somewhere else.

Economic Impacts

Next, I would like to present the results of a survey I took of suppliers of parts and services with which our company does business (please see attached Exhibits A through D). The economic impact on these businesses is a direct result of the requirements of the ESA, and more specifically the critical habitat designation for the Northern Spotted Owl. The initial survey was taken in May, 1991 and a follow-up survey was just completed in the last week.

I had a 76% response rate to my initial survey indicating a high interest in the spotted owl critical habitat issue and its potential impact on individual businesses. The results of the survey, as summarized in Exhibit A, indicate a high dependency on the forest products industry. The size of the companies surveyed shows that 79% employ 1 to 49 people; 8% employ 50-99; 10% employ 100-249, and 3% employ 250+. A

majority of these companies are small businesses with less than 50 employees. Because these businesses depend highly on the forest products industry, it would be difficult for them to survive the severe cutback in timber availability that the listing of the Spotted Owl has created.

The average company size by employment is 55 employees. This means 10,890 employees are represented by the 198 companies who responded to the survey. If we assume an annual salary/wage level of \$20,000 for the 10,890 employees, the total payroll represented is \$217,800,000.

The annual sales represented by these 198 companies totals \$802,494,000. Overall, these companies have over half their business (56%) tied directly to the forest products industry and 18% indirectly, for a total of 74%.

The forest products industry is a large, basic industry that has been in the Pacific Northwest for over 100 years. It is not surprising to see the strong dependence of other businesses on it. Any substantial reduction in the timber supply, as has been case with the listing of the Spotted Owl and the subsequent implementation of the associated ESA requirements has not only caused major damage to the forest products industry, but will bring about catastrophic damage to a large sector of the remainder of the economy represented by these support businesses.

The survey results have also been summarized by SIC groupings (see Exhibit B attached). This summary indicates a similar dependency on the forest products industry by each of the SIC groupings. Construction, manufacturing, wholesale, transportation, and business service groups all have a majority of their business tied directly to the forest products industry. A wide variety of types of businesses were included in the survey:

Construction:	Plumbing, Sheet Metal, Industrial Construction
Manufacturing:	Equipment Manufacturing, Printers
Mineral/Mining:	Quarry Operations
Wholesale Trade:	Bearings, Batteries, Steel, Oil, Tires, Saws, Chemicals, Electrical Supplies, Hydraulic Supplies
Financial/Ins.:	Insurance Agencies
Transportation:	Trucking of Logs, Lumber, Equipment, By-Products
Services:	Lawyers, CPA's, Engineers, Auto Mechanics, Restaurants, Employment Services.

I just completed a follow-up survey of our suppliers of goods and services almost four years to the date after the initial survey. One temporary employment service relied on the forest products industry for 94% of its business in 1991, now it makes up only 40% of their clientele. Two petroleum product distributors depended on the forest products industry for 50% and 70% of their sales in 1991 and in 1995 those numbers are 25% and 62% respectively. Five companies that provided electrical and machinery parts did 58% of their business with the forest products industry in 1991 and now it is only 34%. A tire distributor that specializes in servicing the forest products industry with tires for lift trucks, log trucks and log handling equipment saw this part of their business decline from 65% to just 35% of total sales. A sand and gravel/road construction company saw their forest products customers make up less than half as much of their total sales in 1995 as in 1991. Comments from a local loggers radio association are attached as Exhibit E.

I would like to submit one last supplier company profile that is a mirror image of the struggle my company has faced to maintain a viable operation. This company specializes in the relining of brakes used on heavy equipment in the forest products

industry. From the 1991 survey I submit the following statement prepared by their General Manager, Dick Walker:

"We had a total of 41 employees in August, 1990. We laid off six people in December because of the logging slowdown. We have laid off nine more so far this year for the same reason. Today (5/16/91) we are looking at four more going, all because of the logging shutdown. This is the first time in 64 years we have let anyone go for this type of reason!"

In the 1991 survey, Dick stated that 80% of their business came directly from the forest products industry. A September, 1994 letter Dick wrote (Exhibit F) details the impact on their business as cutbacks in logging continue. Today, forest products companies make up only 40% of their sales. The employment level in his company has gone up and down in the last four years, and he indicated to me yesterday that he just laid off six employees two weeks ago. That brings his current employment level to 29.

The secondary wood products industry is another group of businesses that has been significantly impacted by the reduced timber supply and subsequent mill shutdowns. A local handle manufacturer reduced his employment by 50% from 40 to 20 employees because of the reduced availability of raw materials (Exhibit G). To put it into perspective, the President of this handle manufacturing company said "We are a secondary manufacturer and depend on the sawmill's primary manufacturing capacity for our supply."

Another customer of our company, a secondary manufacturer, has the same story to tell (Exhibit H). They had a 60% reduction in their crew size over a two year period and it was directly related to a reduction in raw material supply. They have lost more than half of their suppliers and are paying substantially more for their raw materials.

The expanding of the secondary manufacturing industry has been promoted to be the saving grace for jobs in the forest products industry in general. As you can see by the two previous examples, the loss of timber supply for the primary manufacturing sector has a similar impact on the secondary manufacturing sector.

Recommendations and Conclusion

The economic impact of listing a species as threatened or endangered is not a consideration in the current ESA. The devastating effects on individuals, families and small businesses I have discussed should be sufficient evidence to indicate social and economic impacts on humans must be considered equally with plants and animals prior to listing. A full cost/benefit analysis and an economic impact analysis on the local area should also be completed prior to listing. All parties in the affected region should be given the opportunity to express their concerns in a public hearing or open meeting format.

Additional changes to the ESA should include the following items:

- Listing decisions should be based on verifiable science.
- All the science used by the U.S. Fish and Wildlife Service (FWS) should be subject to peer review by non-FWS personnel prior to listing.
- Limit the appeals process. Lawsuits and appeals are what have kept the management of our Pacific Northwest forests in the courts and not on the ground where it belongs.

We must consider that the recovery of every species is likely too broad a goal and may not be practical or cost effective in all cases. In the end, a little common sense would go a long way to making the ESA work.

EXHIBIT A

SUMMARY OF SUPPLIER SURVEY
 ZIP-O-LOG MILLS, INC.
 FOR USE AT USF&W CRITICAL HABITAT HEARING

COMPANY SIZE - EMPLOYMENT QUESTION #4 CATEGORY	QUESTION #4		QUESTION #1 DIRECT	QUESTION #2 INDIRECT	TOTAL DIRECT PLUS INDIRECT	QUESTION #3 ANNUAL SALES
	NO. OF FIRMS	% OF TOTAL				
1-49	157	79%	57%	18%	75%	\$3,100,000
50-99	15	8%	53%	19%	72%	\$5,700,000
100-249	19	10%	52%	18%	70%	\$9,500,000
250+	7	3%	64%	12%	75%	\$6,600,000
TOTAL	198	100%				
WEIGHTED AVE.			56%*	18%*	74%*	\$4,053,000*

* THESE WEIGHTED AVERAGES WERE CALCULATED BY MULTIPLYING THE PERCENT OF TOTAL OF COMPANY SIZE (EMPLOYMENT) TIMES EACH COLUMN ENTRY.

EXHIBIT B

SUMMARY OF SUPPLIER SURVEY - BY SIC GROUPS (1)
ZIP-O-LOG MILLS, INC.
FOR USE AT USF&W CRITICAL HABITAT HEARING

SIC GROUP DESCRIPTION (1)	NO. OF BUSINESSES	% OF TOTAL	QUESTION #1 (DIRECT)	QUESTION #2 (INDIRECT)	TOTAL DIRECT & INDIRECT
CONSTRUCTION	13	6.6%	66%	15%	81%
MANUFACTURING	6	3.0%	68%	6%	74%
MINING & MINERAL EXTRACTION	1	0.5%	30%	60%	90%
WHOLESALE TRADE	99	50.0%	53%	21%	74%
FINANCE & INSURANCE	1	0.5%	30%	50%	80%
TRANSPORTATION & COMMUNICATIONS	10	5.1%	89%	5%	94%
SERVICES	68	34.3%	54%	15%	69%
TOTAL	198	100.0%			
WEIGHTED AVERAGE (2)			56%	18%	74%

(1) SEE IRS FORM, EXHIBIT C, FOR DETAILED SIC GROUP DESCRIPTIONS

(2) THESE WEIGHTED AVERAGES WERE CALCULATED BY MULTIPLYING THE PERCENT OF TOTAL OF NUMBER OF BUSINESSES TIMES EACH COLUMN ENTRY.

Exhibit C

Schedule C (Form 1041)

Page 2

Part III Cost of Goods Sold (See Instructions.)

31	Inventory at beginning of year. (If different from last year's closing inventory, attach explanation.)	31
32	Purchases less cost of items withdrawn for personal use	32
33	Cost of labor. (Do not include salary paid to yourself.)	33
34	Materials and supplies	34
35	Other costs	35
36	Add lines 31 through 35	36
37	Inventory at end of year	37
38	Cost of goods sold. Subtract line 37 from line 36. Enter the result here and on page 1, line 4	38

Part IV Principal Business or Professional Activity Codes

Locate the major category that best describes your activity. Within the major category, select the activity code that most closely identifies the business or profession that is the principal source of your sales or receipts. Enter this 4-digit code on page 1, line B. For example, a grocery store is under the major category of "Retail Trade," and the code is "3210." (Note: If your principal source of income is from farming activities, you should file Schedule F (Form 1040), Farm Income and Expenses.)

<p>1</p> <p>Construction</p> <p>0018 Coerative builders (for own account)</p> <p>0034 General contractors</p> <p>0034 Residential building</p> <p>0058 Nonresidential building</p> <p>0075 Highway and street construction</p> <p>3889 Other heavy construction (pipe laying, bridge construction, etc.)</p> <p>Building trade contractors, including repairs</p> <p>0232 Plumbing, heating, air conditioning</p> <p>0257 Painting and paper hanging</p> <p>0273 Electrical work</p> <p>0299 Masonry, dry wall, stone, tile</p> <p>0414 Carpentry and flooring</p> <p>0430 Roofing, siding, and sheet metal</p> <p>0453 Concrete work</p> <p>0895 Other building trade contractors (excavation, glazing, etc.)</p> <p>2</p> <p>Manufacturing, Including Printing and Publishing</p> <p>0638 Food products and beverages</p> <p>0653 Textile mill products</p> <p>0679 Apparel and other textile products</p> <p>0693 Leather, footwear, handbags, etc.</p> <p>0810 Furniture and fixtures</p> <p>0836 Lumber and other wood products</p> <p>0851 Printing and publishing</p> <p>0877 Paper and allied products</p> <p>1032 Stone, clay, and glass products</p> <p>1057 Primary metal industries</p> <p>1073 Fabricated metal products</p> <p>1099 Machinery and machine shops</p> <p>1155 Electric and electronic equipment</p> <p>1883 Other manufacturing industries</p> <p>3</p> <p>Mining and Mineral Extraction</p> <p>1511 Metal mining</p> <p>1537 Coal mining</p> <p>1552 Oil and gas</p> <p>1719 Quarrying and nonmetallic mining</p> <p>4</p> <p>Agricultural Services, Forestry, Fishing</p> <p>1933 Crop services</p> <p>1939 Veterinary services, including pets</p> <p>1974 Livestock breeding</p> <p>1990 Other animal services</p> <p>2113 Farm labor and management services</p> <p>2212 Horticulture and landscaping</p> <p>2238 Forestry, except logging</p> <p>0826 Logging</p> <p>2246 Commercial fishing</p> <p>2469 Hunting and trapping</p> <p>5</p> <p>Wholesale Trade—Selling Goods to Other Businesses, Etc.</p> <p>Deurable goods, including machinery, equipment, wood, metals, etc.</p> <p>2613 Selling for your own account</p> <p>2634 Agent or broker for other firms—more than 50% of gross sales on commission</p> <p>Nondeurable goods, including food, fiber, chemicals, etc.</p> <p>2659 Selling for your own account</p>	<p>2675 Agent or broker for other firms—more than 50% of gross sales on commission</p> <p>6</p> <p>Retail Trade—Selling Goods to Individuals and Households</p> <p>3012 Selling door-to-door, by telephone or party plan, or from mobile unit</p> <p>3038 Catalog or mail order</p> <p>3053 Vending, machine selling</p> <p>7</p> <p>Selling From Showroom, Store, or Other Fixed Location</p> <p>Food, beverages, and drugs</p> <p>3079 Eating places (meals or snacks)</p> <p>3086 Catering services</p> <p>3096 Drinking places (alcoholic beverages)</p> <p>3210 Grocery stores (general line)</p> <p>0612 Bakeries selling at retail</p> <p>3235 Other food stores (meat, produce, candy, etc.)</p> <p>Liquor stores</p> <p>3277 Drug stores</p> <p>Automotive and service stations</p> <p>3319 New car dealers (franchised)</p> <p>3325 Used car dealers</p> <p>3517 Other automotive dealers (motorcycles, recreational vehicles, etc.)</p> <p>3523 Tires, accessories, and parts</p> <p>3552 Gasoline service stations</p> <p>General merchandise, apparel, and furniture</p> <p>3715 Variety stores</p> <p>3721 Other general merchandise stores</p> <p>3765 Shoe stores</p> <p>3772 Men's and boys' clothing stores</p> <p>3913 Women's ready-to-wear stores</p> <p>3921 Women's accessory and specialty stores and furriers</p> <p>3939 Family clothing stores</p> <p>3954 Other apparel and accessory stores</p> <p>3970 Furniture stores</p> <p>3995 TV, audio, and electronics</p> <p>3988 Computer and software stores</p> <p>4118 Household appliance stores</p> <p>4317 Other home furnishing stores (china, floor coverings, etc.)</p> <p>4333 Music and record stores</p> <p>Building, hardware, and garden supply</p> <p>4416 Building materials dealers</p> <p>4432 Paint, glass, and wallpaper stores</p> <p>4457 Hardware stores</p> <p>4473 Nurseries and garden supply stores</p> <p>Other retail stores</p> <p>4614 Used merchandise and antique stores (except motor vehicle parts)</p> <p>4630 Gift, novelty, and souvenir shops</p> <p>4655 Florists</p> <p>4671 Jewelry stores</p> <p>4697 Sporting goods and bicycle shops</p> <p>4812 Boat dealers</p> <p>4838 Hobby, toy, and game shops</p> <p>4853 Camera and photo supply stores</p> <p>4879 Optical goods stores</p> <p>4885 Luggage and leather goods stores</p> <p>5017 Book stores, excluding newsstands</p> <p>5033 Stationery stores</p> <p>5055 Fabric and needlework stores</p> <p>5074 Mobile home dealers</p> <p>5090 Fuel dealers (except gasoline)</p> <p>5284 Other retail stores</p>	<p>8</p> <p>Finance, Insurance, Real Estate, and Related Services</p> <p>5520 Real estate agents or brokers</p> <p>5579 Real estate property managers</p> <p>5710 Subdividers and developers, except cemeteries</p> <p>5538 Operators and lessors of buildings, including residential</p> <p>5553 Operators and lessors of other real property</p> <p>5702 Insurance agents or brokers</p> <p>5744 Other insurance services</p> <p>6062 Security brokers and dealers</p> <p>6080 Commodity contracts brokers and dealers, and security and commodity exchanges</p> <p>6130 Investment advisors and services</p> <p>6148 Credit institutions and mortgage bankers</p> <p>6155 Title abstract offices</p> <p>5777 Other finance and real estate</p> <p>9</p> <p>Transportation, Communications, Public Utilities, and Related Services</p> <p>6114 Taxis</p> <p>6312 Bus and limousine transportation</p> <p>6361 Other highway passenger transportation</p> <p>6338 Trucking (except trash collection)</p> <p>6395 Courier or package delivery services</p> <p>6510 Trash collection without own dump</p> <p>6536 Public warehousing</p> <p>6551 Water transportation</p> <p>6613 Air transportation</p> <p>6635 Travel agents and tour operators</p> <p>6690 Other transportation services</p> <p>6675 Communication services</p> <p>6692 Utilities, including dumps, snowplowing, road cleaning, etc.</p> <p>0</p> <p>Services (Personal, Professional, and Business Services)</p> <p>Hotels and other lodging places</p> <p>7098 Hotels, motels, and tourist homes</p> <p>7211 Rooming and boarding houses</p> <p>7237 Camp and camping parks</p> <p>Laundry and cleaning services</p> <p>7419 Coin-operated laundries and dry cleaning</p> <p>7435 Other laundry, dry cleaning, and garment services</p> <p>7450 Carpet and upholstery cleaning</p> <p>7476 Janitorial and related services (building, house, and window cleaning)</p> <p>Business and/or personal services</p> <p>7617 Legal services (or lawyer)</p> <p>7633 Income tax preparation</p> <p>7658 Accounting and bookkeeping</p> <p>7518 Engineering services</p> <p>7682 Architectural services</p> <p>7708 Surveying services</p> <p>7245 Management services</p> <p>7260 Public relations</p> <p>7286 Consulting services</p> <p>7716 Advertising, except direct mail</p> <p>7732 Employment agencies and personnel supply</p> <p>7799 Consumer credit reporting and collection services</p>	<p>7856 Mailing, reproduction, commercial art and photography, and stenographic services</p> <p>7872 Computer programming, processing, data preparation, and related services</p> <p>7922 Computer repair, maintenance, and leasing</p> <p>7773 Equipment rental and leasing (except computer or automotive)</p> <p>7914 Investigative and protective services</p> <p>7380 Other business services</p> <p>Personal services</p> <p>8110 Beauty shops (or beautician)</p> <p>8312 Barber shops (or barber)</p> <p>8334 Photographic portrait studios</p> <p>8552 Funeral services and crematories</p> <p>8714 Child day care</p> <p>8720 Teaching or tutoring</p> <p>8755 Counseling (except health practitioners)</p> <p>8771 Ministers and chaplains</p> <p>6882 Other personal services</p> <p>Automotive services</p> <p>8813 Automotive rental or leasing, without driver</p> <p>8829 Parking, except valet</p> <p>8953 Automotive repairs, general and specialized</p> <p>8896 Other automotive services (wash, tanning, etc.)</p> <p>Miscellaneous repair, except computers</p> <p>9019 TV and audio equipment repair</p> <p>9033 Other electrical equipment repair</p> <p>9050 Reprography and furniture repair</p> <p>2881 Other equipment repair</p> <p>Medical and health services</p> <p>9217 Offices and clinics of medical doctors (MDs)</p> <p>9233 Offices and clinics of dentists</p> <p>9258 Osteopathic physicians and surgeons</p> <p>9241 Podiatrists</p> <p>9274 Chiropractors</p> <p>9290 Otolaryngists</p> <p>9415 Registered and practical nurses</p> <p>9431 Other health practitioners</p> <p>9456 Medical and dental laboratories</p> <p>9472 Nursing and personal care facilities</p> <p>9886 Other health services</p> <p>Amusement and recreational services</p> <p>9557 Physical fitness facilities</p> <p>9537 Motion picture and video production</p> <p>9688 Motion picture and tape distribution and allied services</p> <p>9613 Videotape rental</p> <p>9639 Motion picture theaters</p> <p>9670 Bowling centers</p> <p>9656 Professional sports and racing, including promoters and managers</p> <p>9811 Theatrical performers, musicians, agents, producers, and related services</p> <p>9837 Other amusement and recreational services</p> <p>8888 Unable to classify</p>
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EXHIBIT D

Name: _____

Company Name: _____

Address: _____

1. What percentage of business does your company do directly with the forest products industry (e.g. lumber companies, logging companies, trucking companies, etc.)?

_____ %

2. What percentage of business do you do with companies that provide other supplies or services to the forest products industry (e.g. lawyers and CPA's that also represent logging equipment or sawmill equipment companies)?

_____ %

3. What is the annual sales volume of your company?

 \$1-999,999 \$10,000,000+ \$1,000,000-9,999,999

4. How many people does your company employ?

 1-49 50-99 100-249 250+

Please fax or mail this questionnaire to us ASAP. All information contained in this questionnaire will be kept confidential. Names of the companies participating in this study may be used in the testimony unless otherwise instructed. All statistical data will be summarized by groups with no reference to specific companies in any particular group.

Zip-O-Log Mills, Inc.
P.O. Box 2130
Eugene, OR 97402
FAX: 683-4241

(will be in D.C. area @ that time)

EXHIBIT E

Our Association has had nearly a 50% reduction both in the number of member companies and mobile units.

Likewise, we have had to pare down our expenses and cut out everything but the bare-bones necessities to keep operating for the safety of those still working in ^{the} woods. Taxes, insurance, electricity etc keep rising, in part, ^{due} to increasing pressure for more & more costly environmental restrictions. It's insanity to put the fate of the industry in the hands of politicians & judges.

Since our circumstances are different from those who actively make their living in the woods or mill, we do not have the same problems to deal with, but we are directly affected when those companies are forced out of business by laws and restrictions made by bureaucrats & politicians who know nothing whatsoever about good, hard, honest work, and seek only to serve themselves by pandering to the media and whatever is the current fanatical, news making play.

This is a personal opinion from my perspective, not on behalf of the Association. However, since all of our members are in the Industry, I feel they would express a similar sentiment.

Mel Hagen
 Secty, Mgr for Emerg Loggers
 Radio



September 17, 1993

Mr. Jim Hallstrom
Zip-O-Log Mills
2235 West 6th
Eugene, OR 97405

Dear Jim;

Thank you for your call. As you know Champion Friction is a small family owned business, founded in 1929. Through the years, a very large percent of our work has been supplying the timber related industry, Saw Mills, Plywood Mills, and Logging Companies.

Up until the early part of 1991 Champion Friction employed over forty people on a full time basis. The average term of employment was nine years. The sales were in the four million dollar range.

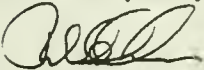
When the Government and Environmentalists began to cut back and curtail logging our Company was adversely impacted.

Our sales dropped dramatically, over a hundred thousand a month. We were forced to cut expenses and employees. Resulting in just under half of our people being let go, and sixty five to seventy five thousand dollars of goods and services not to be spent in our local economy.

Jim, it goes way beyond Champion Friction Co. I can name twenty or thirty business similar to us, that we used to sell to and work with that have not survived these past three years. Unfortunately most of them were in small communities through out the Northwest. And it doesn't take alot to figure out what happens to the people living there with homes and their livelihood gone. If what is planned for the future comes to pass, the future appears grim.

If we can help in any way, to bring to our Administration's attention how they are tearing apart the very fabric that holds our Northwest communities together, please let me know.

Yours very truly,



Richard Walker
General Manager

845 McKinley • P.O. Box 1459 • Eugene, Oregon 97440

Phone: 503/687-8015 • Watts: 1-800-547-6180 • Fax: 503/344-0104

**Cascade Handle**

COMPANY, INCORPORATED

P.O. BOX 488 • EUGENE, OREGON 97440 • 503/687-8611 • FAX 503/345-4542

September 16, 1993

Dear Madam/Sir:

My purpose in writing today is to provide you with information on how the timber shortage is impacting our business.

Since 1944 Cascade Handle has been manufacturing broom, brush and mop handles out of douglas fir. Our raw material is purchased from four local sawmills in the form of 2x2, 2x3, and edging material in random lengths. This material is trimmed to length, sawed into squares and automatically turned into a rough handles which are dried, sanded, graded, and painted for our customers.

We are a secondary manufacturer and depend on the sawmill's primary manufacturing capacity for our supply. Over the last two years the sawmills in our area have greatly reduced their production as timber supplies have declined. Consequently our raw material supply has been drastically reduced. As our douglas fir production has declined so has our employment from forty to twenty employees.

Not only has the supply declined, but the quality of material is considerably poorer as our sawmill suppliers have been forced to use second growth logs in place of the higher quality old growth. This second growth material has more knots and defects resulting in a much lower quality handle.

The law of supply and demand is ever active in the lumber markets. As supplies have declined prices have dramatically increased.

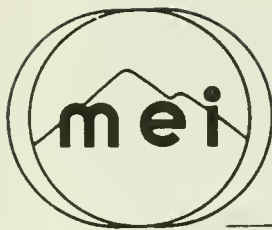
We now find ourselves in the position of trying to sell a product that has less quality, reduced availability, at higher prices. Obviously, this is an extremely difficult task. To be competitive in our markets we need both increased supply and better quality in our raw material.

For us to obtain this supply the sawmills in our area need access to timber. Our futures are directly related. Whatever action you can take to help increase the supply of timber to our suppliers will be most appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "James E. Holm". The signature is written in a cursive style with a large initial "J".

James E. Holm, President
Cascade Handle Co. Inc.



Maurer Enterprises, Inc.

(503) 479-2811 • P.O. Box 1767 • 1618 Allen Crk. Rd. • Grants Pass, Oregon 97526

SEPTEMBER 14, 1993

JIM HALLSTROM
ZIP-O INTERNATIONAL
PO BOX 2130
EUGENE, OREGON 97402

RE: YOUR SEPT. 19 TRIP TO WASHINGTON DC

DEAR JIM:

WE ARE A SMALL PRIVATE CORPORATION DOING LUMBER REMANUFACTURING, IN BUSINESS FOR 14 YEARS. OUR RAW MATERIALS ARE LOW-GRADE ROUGH LUMBER IN DOUGLAS FIR, WESTERN HEMLOCK, SITKA SPRUCE, AND SOME HEM FIR, PURCHASED FROM SAWMILLS IN OREGON, CALIFORNIA, AND WASHINGTON.

IN THE PAST TWO YEARS OUR CREW HAS DECREASED FROM 30 MILLWORKERS TO 12 AT PRESENT. ALTHOUGH THE COST OF OUR MATERIALS HAS MORE THAN DOUBLED IN DOLLARS, THE VOLUME HAS DECREASED FROM AN AVERAGE OF 60 TRUCKLOADS PER MONTH TO 18 TO 20, WHILE THE NUMBER OF SUPPLIERS HAS GONE FROM OVER 40 TO LESS THAN 15, AND SOME OF THEM ARE STRUGGLING TO STAY IN BUSINESS.

AS WITH OUR PURCHASES, OUR PRODUCT PRICES HAVE MORE THAN DOUBLED BUT THE VOLUME IS 30% OF THREE YEARS AGO. WE WERE SELLING OUR DOWNFALL TO A FEW SMALLER MANUFACTURERS BUT THEY HAVE EITHER GONE OUT OF BUSINESS OR CURTAILED THEIR PRODUCTION SINCE OUR VOLUME IS MUCH LOWER.

UNFORTUNATELY, OUR FUTURE OUTLOOK IS BLEAK DUE TO THE HIGH PROBABILITY OF FURTHER REDUCTIONS IN THE AVAILABILITY OF RAW MATERIALS.

IF SOMEHOW THE TIMBER SUPPLY PROBLEMS WERE ADDRESSED WITH ECONOMICS IN MIND, AS WELL AS ENVIRONMENTAL CONCERNS, AND SMALL COMPANIES LIKE OURSELVES COULD PLAN ON A REGULAR SUPPLY OF RAW MATERIALS, THEN WHEN THE HEALTH INSURANCE AND OTHER GOVERNMENTAL COSTS HIT, MAYBE WE COULD KEEP OPERATING AND NOT BECOME PART OF THE STATISTICS.

SINCERELY,

LOU ANN WILLIAMS
PRESIDENT



**NORTHWEST
SPORTFISHING**
INDUSTRY ASSOCIATION
P.O. BOX 4 OREGON CITY OR 97045

CHAIRMAN

Phil Jensen

PRESIDENT

John Martinis

*John's Sporting Goods***VICE PRESIDENT**

Tom Posey

*Tom Posey Co.***TREASURER**

Mark Masterson

*Worden's/Yakima Bail Co.***DIRECTORS**

Walt Hummel

Lewis River Sports

Rich Kato

Farwest/Sports Services

Tom Harger

John B. Merifield CO.

Dan Grogan

Fisherman's Marine

Buzz Ramsey

Luhr Jensen & Sons

B.G. Eliertson

*G. I. Joe's, Inc.***EXEC. DIRECTOR**

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Statement
of

Liz Hamilton

Executive Director

Northwest Sportfishing Industry Association

before the

Senate Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries and Wildlife
at a regional hearing on

Reauthorization of the Endangered Species Act

Roseburg, Oregon

June 1, 1995

Good morning, Chairman Kempthorn, Senator Packwood and members of the subcommittee, and thank you very much for the opportunity to testify here force today. For the record, my name is Liz Hamilton, and I serve as Executive Director for the **Northwest Sportfishing Industry Association (NSIA)**. With our headquarters in Oregon City, Oregon, **NSIA** represents several hundred businesses -- some large, and mainly small businesses -- in Washington, Oregon, and Idaho that derive a substantial amount or all of their income from sportfishing in our region. In addition, we serve as an umbrella organization for several sportfishing and trade organizations. The Sportfishing Industry generates nearly \$3 billion dollars to the overall health of the economies of the States of Oregon and Washington combined.

NSIA businesses have a vital interest in the recovery and restoration of Pacific Northwest salmon runs that we are dependent upon and dedicated to. For us, **SALMON MEAN BUSINESS** -- ours. Therefore, the **Northwest Sportfishing Industry Association** supports an Endangered Species Act which protects and conserves this precious regional resource.

Salmon are vital for the Northwest

What the bald eagle is to the nation, the salmon is to the Pacific Northwest. When the bald eagle became endangered, we as a nation, did not decide: "We don't need to save the bald eagle in the lower 48 states, we have plenty of them in Alaska." Nonetheless, certain

For more information call (503) 631-8859 or FAX (503) 631-3887

members of Congress have stated this position on salmon in our region. This is unthinkable!! Such a position contradicts numerous public opinion polls (enclosed)

Salmon swim at the very heart of our region's culture, our environment, and our economy. According to one study, even in its currently depressed situation, salmon fishing -- commercial, sport, and Tribal still pumps \$1 billion into the Northwest economy annually, and maintains 60,000 jobs directly

As recently as 1991, recreational Salmon/Steelhead fisheries provided the Northwest Region with the following *measurable benefits*:

- 43,342 Jobs throughout the region
- \$1.2 billion in total economic output
- \$16,187,000 in State Sales Taxes
- \$16,223,000 in State and Local Sales Taxes
- \$76,118,000 to the Federal Treasury

Our families, businesses and jobs are as diverse and as geographically disbursed as the salmon populations we rely upon. These jobs are distributed in communities throughout the Northwest and are in every congressional district.

Sadly these magnificent creatures are slipping dangerously toward extinction, particularly in the Columbia watershed which once harbored the largest salmon runs in the Pacific. When Lewis and Clark spent their bitter winter on the coast, perhaps as many as 40 million adult salmon and steelhead entered the Columbia annually on spawning runs. Before the erection of hydroelectric dams on the Columbia and Snake mainstems, some 16 million fish ran in these waters -- virtually all of them wild

This year the spawning run of Columbia/Snake salmon has dropped to 1 million adults, and of these, fewer than 200,000 are wild. Wild salmon and steelhead are absolutely essential because hatchery operators must infuse some wild eggs and sperm into each brood cycle in order to insure the genetic health and future of our hatchery programs. Without this infusion of wild genes, hatchery production can collapse, too. In other words, no wild fish, no salmon insurance policy

What we in the sportfishing industry feel you must understand is this: the upper Columbia chinook populations are on the same downward trend as the Snake River fish, following slowly, but surely behind the endangered fish. In order to comprehend the magnitude of these reductions, consider this: in the mid to late 1980's we had 2.5 million returning adults to the system, now we have 1 million. How many of you could run your businesses on 60% reduced opportunity, or on 60% reduced supply?

Federal agencies have not acted properly or promptly

As you know, the National Marine Fisheries Service (NMFS) has listed all wild salmon stocks in the Snake River Basin for protection under the Endangered Species Act. Petitions are pending and under status review for wild coho, steelhead, and some Chinook stocks throughout the Pacific Northwest. Clearly with the decline of salmon, the Northwest faces today the most dire threat yet to our economy, our Indian American cultures, and our distinctive way of life.

Some would tell this subcommittee that the region's salmon crisis is just another example of why the Congress must dilute or outright repeal the Endangered Species Act. We respectfully urge you, to reject this false notion. The act is only the messenger, not the message, and the message is 911!!! With salmon specifically and with declining species generally, the crisis comes not from the Endangered Species Act itself, but instead, from the failure of federal agencies to act properly and promptly to implement the Act.

Instead of acting positively and promptly to save the salmon, The Bonneville Power Administration (BPA) and the US Army Corps of Engineers which operate the Columbia River Basin hydroelectric dams have tinkered and delayed.

For many years now, BPA and the Corps have been staring at the decline of salmon in the Columbia watershed. Back in 1979, NMFS gave active consideration to listing stocks under the Endangered Species Act. This led to the fish and wildlife provisions in the Northwest Power Planning Act of 1980. NMFS agreed not to list because the Northwest Power Planning Council set aggressive and positive goals of doubling the then 2.5 million salmon in the basin. Coho salmon in the Snake River went extinct by 1985. Petitions to protect the Snake River runs were filed in 1990. This led to the regional Salmon Summit during the winter of 1990-91.

Despite these red warning flags, the federal agencies still did not act, and recovery promises were not kept. Thus, in March of this year, US District Judge Malcolm Marsh ruled that the federal agencies are, in violation of the Endangered Species Act, failing to take appropriate steps to save the salmon. In his ruling, Judge Marsh wrote: "NMFS has clearly made an effort to create a rational, reasoned process for determining how the action agencies [BPA, Corps, and Bureau of Reclamation] are doing in their efforts to save the listed salmon species. But the process is seriously, 'significantly,' flawed because it is too heavily geared towards a status quo that has allowed all forms of river activity to proceed in a deficit situation -- that is, relatively small steps, minor improvements and adjustments -- when the situation literally cries out for a major overhaul. Instead of looking for what can be done to protect the species from jeopardy, NMFS and the action agencies have narrowly focused their attention on what the establishment is capable of handling with minimal disruption."

There are workable ways to save the salmon

Fortunately, there are scientifically sound, pragmatic, cost-effective solutions for salmon recovery. We would point specifically to the Strategy for Salmon from the Northwest Power Planning Council, the Detailed Fishery Operating Plan for hydropower passage from the Columbia Basin Fish and Wildlife Authority, the Wild Salmon Forever plan from the Save Our WILD Salmon coalition, and the forthcoming recovery plan from the Columbia River Inter-Tribal Fish Commission.

All of these blue-prints for salmon recovery emphasize fixing the hydropower system. Why? The US Army Corps of Engineers built its mainstem hydroelectric projects in the salmon migration corridor without any provision whatsoever for safe passage by migrating juvenile salmon through the dams and the reservoirs. This is an historical fact. While ladders allow the adults to reach spawning grounds, their progeny when migrating to the sea face a relentless and lethal gauntlet of turbines and slack water.

We must move out of the denial stage, and into the recovery stage. We have spent millions and millions of dollars in the Columbia. We have built a science-based industry at the expense of the fishing industry, and we have the "*best science money can buy*". Until we address the fundamental problems of juvenile passage in the hydrosystem, we will continue to waste millions of dollars of the tax payers money, and continue to send our jobs into extinction along with the salmon. Surely, Senators cannot support the continued building of a "Science Industry" at the expense of the fishing industry? It is time for immediate action combined with meaningful study, not for study in order to take action. The salmon are being killed by science!

The National Marine Fisheries Service, the Northwest Power Planning Council, the Columbia Basin Fish and Wildlife Authority, and even the Bonneville Power Administration itself estimate that the hydropower system inflicts at least 80 percent, and in some species, upwards to 95 percent of all the human-caused mortalities to these fish. To succeed, 80 percent of the recovery effort must go into fixing 80 percent of the problem. This is common sense.

I want to underscore that the hydropower system is the chief, but by no means the exclusive, cause of the decline of salmon in the Columbia watershed. Clearly the recovery strategy must address all human-inflicted mortalities, including harvest. *NSIA*, sport anglers, and other harvesters have advanced numerous measures such as marking of all hatchery fish so that "catch-and-release" methods can result in the interceptions of fewer or no wild salmon. In addition, the angling community has embraced and even asked for any and all restrictions that would protect the beloved resource that our futures depend upon.

The Sportfishing Industry is exceedingly frustrated that so little progress is visible on fixing the hydropower system. Biologists at the federal and state fisheries agencies and the Tribes have recommended a package of measures to relieve the blockage to juvenile salmon migration. For passage at the dam structures themselves, spill --

especially enhanced by upstream surface collection -- has proven to provide the safest ride certainly compared to going down through the turbines. State, Federal and Tribal managers report that spill would at least **double the survival** of instream migrants.

To speed the young fish through the slackwater reservoirs, the biologists would combine flow augmentation with drawdowns of some reservoirs in the migration corridor. The drawdowns of downstream reservoirs are necessary to provide sufficient water velocities as well as to make the most efficient use of, and limit, the flow augmentation releases from upstream storage pools like Grand Coulee in Washington State or Dworshak in Idaho.

All of these recovery measures for relieving the blockage to juvenile salmon migration by the hydropower system are also incorporated into the adaptive management approach of the Northwest Power Planning Council's Strategy for Salmon. None of these measures are currently in implementation.

In fact, BPA and the Corps have fought these crucial recovery measures to a standstill, have substituted their own brand of biology for the professional judgment of the duly established fisheries agencies and the Tribes, and have pushed their own failed programs of yesteryear. The federal agencies claim that scientific "uncertainty" surrounds spill, flow augmentation, and drawdowns of downstream reservoirs; they demand more study before proceeding with these recovery measures. ***More delay will only bring about further declines in the salmon runs, higher recovery costs, more lawsuits, greater instability and uncertainty, larger economic impacts.*** With wild salmon runs now so depleted in the Columbia watershed, biologists can not design any "silver-bullet," "once-and-all-time" test of spill, flows, or drawdowns. In addition, the law and common sense direct BPA and the Corps to take action based upon the best available scientific information.

It insults the intelligence of the people I work for when federal agencies insist upon spending millions of dollars each and every year to "prove" what they are currently doing for the fish works just fine, when in reality it does not. For example, BPA continues to fund its multi-million dollar research project to develop and refine the CRiSP computer model of juvenile fish passage, which essentially says: "The more young fish that we feds truck and barge, the more adults come back." If the CRiSP computer model were correct and accurate, Ladies and Gentlemen, I would not be here today. I would be fishing, and you as our leaders and policy-makers would have a lot less heartburn.

As stated earlier, the terrible toll taken by the dams is not a recent discovery. So back in 1975, the Corps began its misguided practice of juvenile fish transportation -- trapping young salmon and hauling them to the sea in trucks and barges. Barging and trucking young fish simply doesn't work, hasn't worked, and can not be made to work. According to one review of the program, Tribal and fish agency biologists fear that juvenile fish transportation may inflict more harm than does migration through the lethal corridor of mainstem dams. Independent scientific peer review of juvenile fish

transportation recently concluded, "Juvenile salmon die at rates related to physical conditions in the river, including the hydroelectric system, despite the transportation effort. [T]ransportation alone, as presently conceived and implemented, is unlikely to halt or prevent the continued decline and extirpation of listed species of salmon in the Snake River Basin."

Nonetheless, the Corps and BPA have methodically expanded their failed "Fed-'X'-our-fish" program, and have refused to improve the physical conditions in the river through spill, flows, and downstream drawdowns. Regrettably in its draft recovery plan for the endangered Snake River salmon released last month, NMFS largely adopts the line of these federal agencies, putting the burden of salmon recovery on the backs of anglers instead of fixing the root problem at the hydroelectric dams. This is like making the victim pay restitution for the crime.

As a result, BPA and the Corps refuse to implement the Strategy for Salmon from the Northwest Power Planning Council. As a result, the states, Tribes, public-interest organizations, and -- yes -- business associations like mine have been forced to go to the courts for redress. (Not a place or undertaking that any self respecting sport angler would choose over fishing on the river.) And the salmon continue to decline toward extinction.

Costs of salmon recovery are modest and affordable

NSIA businesses who are losing income and livelihoods with the decline of salmon runs are deeply disturbed by the assertion that salmon recovery costs too much. This is simply false.

These doomsday arguments center around the question of whether salmon recovery costs might become a fatal burden for BPA, which is required under the Northwest Power Planning Act -- not the ESA -- "to protect, mitigate, and enhance fish and wildlife" damaged by hydroelectric development in the Columbia River Basin. Bonneville estimates that its fish and wildlife expenses now exceed \$300 million annually.

In point of fact, BPA by its own ledgers is actually writing checks for fish and wildlife expenses which total on the order of \$80 million annually. Thus the majority of Bonneville's salmon costs are so-called "lost revenues" due to shifting hydroelectric generation from the winter to the spring in order to provide fish flows. This idea of "lost revenues to fish" rests upon the false assumption that *every drop of water in the Columbia is allocated to power generation.*

Every competent economist and realtor will tell you that the value of anything, whether a home or a kilowatt-hour, is what a willing buyer will pay for it. By definition, BPA's lost revenues for fish flows have not undergone this simple test of the marketplace. So any dollar value attributed to fish flows is guesswork, which depends entirely on the assumptions going into the estimate

The Congress should maintain some healthy skepticism and request an explicit statement of the assumptions and justifications going into any and every estimate of salmon recovery costs. Here's why.

In the Columbia River System Operation Review (SOR), BPA itself looked at three different estimates for power costs in order to implement the Strategy for Salmon from the Northwest Power Planning Council. These three different methods are: the CT Replacement in which Bonneville builds and maintains combustion turbines (CTs) to fill any energy deficits, the Power Purchase in which the agency buys replacement power on the open market, and the Power Market Decision Analysis Model (PMDAM) in which BPA purposefully works with British Columbia and the US Southwest to supply all power requirements with the lowest possible costs.

In the SOR, BPA gave the following estimates of power system costs in order to implement salmon recovery:

Estimate Method	Total BPA Cost (1993 \$ million per year)
CT Replacement	160
Power Purchase	66-88
PMDAM	21

This extremely wide range of cost estimates illustrates how easily BPA and the Northwest can view salmon recovery as a competitive disadvantage or a business opportunity.

In this regard, it is important to note that, if BPA followed the CT Replacement method in the real world, the agency would pursue the unthinkable business strategy of constructing combustion turbines which would operate just 2.5 months during the next 50 years -- an average of 36 hours in each year! Nonetheless, in the draft SOR, Bonneville uses cost estimates from the CT Replacement method.

It is also important to note that the PMDAM computer projection showed a net benefit of some \$50 million annually across the entire West Coast grid. Clearly by Bonneville's own reckoning, the agency can -- with some creative and astute business strategies such as those identified in the PMDAM -- make salmon recovery workable and affordable for the Pacific Northwest.

Turning to overall costs, the Northwest Power Planning Council concludes that implementation of its Strategy for Salmon would cost BPA approximately \$170 million annually, which translates to a price hike of about \$2.50 per month for the average residential consumer of Bonneville electricity -- hardly a bank-breaking doomsday expense.

Polls conducted over the last year clearly illustrate the public's willingness to pay this small price for salmon recovery. Case in point, the most recent poll commissioned by several public utility districts in Central Washington State demonstrate a majority willing to pay twice that amount, and make personal sacrifices in order to restore salmon. *NSIA* urges you to listen to the voices and hearts of your constituents (survey results enclosed)

Meanwhile, BPA each and every year writes huge checks to pay off its debt on WPPSS nuclear power plants that have never generated and will never generate one kilowatt-hour. Fish and wildlife costs pale in comparison to this crushing debt load of \$8 billion from WPPSS and other sources. It is patently unfair and outright dishonest to imply that fish costs are bankrupting Bonneville.

Similarly, some BPA consumers, particularly the Direct Service Industries (DSIs), receive below-cost rates -- an expense borne by other customers at great competitive disadvantage to Bonneville. The DSI subsidy runs to \$180 million annually.

For full fairness, those who would criticize the cost of fish flows must also acknowledge other lost revenues to BPA. According to one estimate, each acre-foot of water withdrawn in southern Idaho for irrigation deprives Bonneville of some 2000 kilowatt-hours of hydroelectric generation at a lost revenue in excess of \$50. Running water through the navigation locks instead of the turbines at the four federal dams on the Lower Snake River waterway alone costs Bonneville some \$25 million annually. I am not suggesting that BPA or the Congress shut down southern Idaho irrigation or the Columbia-Snake federal waterway -- or fish flows! -- in order to maximize hydroelectric production.

It is unfair and unproductive to fixate exclusively on lost revenues for BPA to provide fish flows. Several Northwest industries -- not just fishing -- cause Bonneville to lose hydropower generation and revenues. At the minimum, those who live in glass houses should pay their fair freight before casting stones.

The cost of salmon extinctions would run much, much higher

Whatever the expense of salmon recovery, it pales in comparison to the staggering cost that the Pacific Northwest faces in the extinctions of salmon stocks. The debate in this hearing and before the public generally has focused on the costs of salmon recovery plans under the Endangered Species Act and the Northwest Power Planning Act.

Failure to implement a salmon recovery plan is producing staggering losses for the sportfishing industry. From 1985 to 1995, the recreational salmon/steelhead industry in this region lost nearly 50,000 jobs and \$1 billion in personal income from this region.

As salmon disappear in Oregon, Idaho, and Washington, Northwest anglers have reluctantly journeyed north to Canada and Alaska. Salmon anglers do not switch to

bowling; They take their millions and go where the fish are. In 1991, salmon anglers from Washington state alone spent \$41 million up north in the pursuit of their sport.

Additionally, the Magnuson Act keeps the oceans off of US shores open to all American fishing boats. So the number of, and the competition among, commercial harvesters in Alaskan waters will only increase -- to the detriment of both the resource and the industry -- if Northwest salmon continue to decline.

In 1985, the United States and Canada signed the Pacific Salmon Treaty for the good of both the fish and fishing in both nations. The treaty's premise is simple, fair, and effective: every time a US fisherman catches a Canadian salmon, a Canadian fisherman will catch a US salmon, and vice versa.

Consequently the treaty works if and only if both nations produce enough salmon. As a result, Canada and the US put mutual commitments into the Pacific Salmon Treaty to build up fish production. British Columbia, particularly on the Fraser River, has done so. But after signing and ratifying the treaty, the US has allowed salmon numbers in Northwest watersheds, particularly in the critical Columbia/Snake Basin, to slide even further downward. The Canadians routinely point out that, while they left the Fraser River free-flowing for fish, the Americans had built 13 hydroelectric dams on the mainstems of the Columbia and Snake Rivers -- dams which are grinding salmon runs inevitably into extinction.

As a direct result, bilateral talks to re-negotiate the Pacific Salmon Treaty broke down in 1994. Last summer Canada charged a \$2000 fee on US fishing boats for round-trip passage passed through British Columbia waters bound for Alaska. The Canadians have threatened to raise the fee to \$10,000 in 1995.

No end to this international salmon fishing war is in sight. To reach a new Pacific Salmon Treaty with Canada, the US must offer either substantial cash compensation, or a credible plan to restore salmon runs in the Northwest. The latter would benefit both nations.

Finally, in 1855, the wars with the sovereign American Indian Tribes ended in the Pacific Northwest with the signing of several treaties. So central were salmon in the Tribes' culture, religion, and way of life that the 1855 Treaties guaranteed to the Native Americans the right to salmon fishing at "accustomed sites" in perpetuity. The 1855 Treaties legally obligate the United States to put actual salmon in the rivers for the Tribes to catch. In other words, salmon extinctions would abrogate the 1855 Treaties. These costs of salmon extinctions would be substantial, annual, and forever -- because extinctions are forever.

Complaining about the ESA shoots the messenger

Extinctions -- not salmon recovery -- would inflict the real damage to the Northwest economy. So contrary to the complaints of its detractors, the **Endangered Species**

Act in the case of the salmon is one of the very few tools to bring all the players to the table for the recovery process. This is essential to protect the region and our economy against the worst possible nightmare. Complaints about the ESA amount to shooting the messenger.

Indeed the Endangered Species Act did not create the crises over salmon or other looming extinctions; the failure of federal agencies to properly and promptly implement the Act did. Costs associated with salmon recovery are a direct reflection of the long delay in response to the salmon crisis. Debating whether and how the Congress should reauthorize the Endangered Species Act will do nothing to save the salmon and thereby protect the Northwest economy and our salmon dependant industries

How much cheaper is to fill a cavity than to crown and bridge? How much cheaper still is brushing, flossing and other preventative measures? We need to implement corrective measures now, and then get on a health maintenance regime. The entire region WILL enjoy these "health benefits"!

In our view, the Endangered Species Act is a law that merits reauthorization by the Congress. The main fault lies with the Act's poor implementation, not with the statute itself. For salmon, listings in the Pacific Northwest did not begin until December, 1991, and too many stocks are still under status review. More than three years later, the National Marine Fisheries Service (NMFS) still has not prepared a recovery plan for the endangered Snake River salmon. And in its draft recovery plan, NMFS refuses to order the workable and affordable changes in the hydropower system necessary to save the salmon and reduce the terrible toll taken on the fish by the dams. Instead, NMFS proposes to blame the victims and put the burden of salmon recovery squarely on the backs of anglers and harvesters. In other words, *implementation of the ESA comes too late, works too slowly, falls too heavily on the victims of salmon declines, and ignores too easily the predominant killer of the fish.*

In this light, proposals from members of Congress to dilute or repeal the ESA merely adds insult to injury. Leadership must bring our federal agencies into action and appropriate adequate funds for salmon recovery in the Pacific Northwest -- a salmon recovery vitally needed by fishing business and communities. The unimaginable injury would be for our elected officials to use salmon at the point of their attack on the Endangered Species Act (ESA) -- the one law that has taken the best shot so far at saving the fish and our businesses.

Admittedly, the ESA is not perfect. Our society will gain by an improved ESA. *NSIA* respectfully urges you to consider these improvements:

- The ESA goal should be the broadest possible recovery -- not merely "minimum viable populations." Management for healthy populations will ultimately prove more cost effective and less risky to the resource. Healthy populations will also yield a healthy return on recovery investment.

- The ESA should mandate tighter deadlines for the recovery plan and their implementation. Congress should streamline the entire process for listing, comment period(s), recovery development and implementation, and delisting.
- The scope of ESA management should expand to entire ecosystems so that endangered species come out of, and stay out of, "emergency room" care, surviving and thriving under much less costly "HMO-style" plans.
- The ESA needs full funding, in order to encompass among other items: science, recovery efforts, resolutions to the rare conflict with property owners, and incentives for property owners

The Pacific Northwest can run the Columbia River for fish and electricity, for fish and irrigation, for fish and other uses. We can have salmon recovery AND the cheapest power rates in the nation. Therefore, the choice here is not between salmon and jobs; the choice is simply whether or not our region will save the fish and the fishing industry.

Senators, you and your colleagues have repeatedly been the champions of small businesses. The vast majority of *NSIA* members and fishing industry businesses are small, family, "mom-and-pop" operations. I call on you and your colleagues today to make good on your pledges and to save these small businesses in the sportfishing industry. I call on you to support a strong recovery program for salmon in the Columbia River Basin and throughout the Pacific Northwest. Columbia/Snake River Salmon Recovery will not only benefit our coastline communities with enhanced Tourism, Sport, Commercial, Tribal and Charter Industries, it will benefit an inland region the size of France.

Thank you for the opportunity to testify before this committee today, and I eagerly welcome your questions.

Attachments:

***NSIA* member listing**

Excerpts from study done by Tony Fedler, Ph.D. American Sportfishing Assn., 1995
 Upper Columbia Chinook Runs 1938-94 (population trend line), ODF&W
 Salmon/Steelhead decline impacts: Jobs and Personal Income, American Sportfishing Association.
 Recreational Fishing Export, Northwest Marine Trade Association, 1994
 News reports on Mid Columbia PUD Poll, 1995 Reprint of Elway Poll, 1994
 Current mortalities from Barge Collection facilities, and How Fish Died in 1994, Fish Passage Center



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PACIFIC NORTHWEST SALMON AND STEELHEAD MEANS **BIG BUSINESS!!!**

In 1991:

- Northwest Anglers In Washington, Oregon, California and Idaho spent **\$603,981,000** for salmon and steelhead fishing.
- These same anglers generated **\$1.2 BILLION** in total economic output.
- Salmon/Steelhead angling provided **\$735,532,000** in personal income to Northwest Workers.
- Personal income from salmon/steelhead angling supported over **43, 342 JOBS** throughout the region!
- Angler expenditures generated **\$16,223,000** in State Sales Taxes.
- The 43,342 employees contributed **\$16,187,000** in State and Local Income Taxes, AND **\$76,118,000** to the Federal Treasury.
- Over **1.5 MILLION Anglers** fished in the Northwest for salmon and steelhead.
- Over **227,000 Tourist** anglers fished for Northwest Salmon and Steelhead.

Source: Tony Fedler, Ph.D., American Sportfishing Association, 1995

For more information call (503)631-8869 or fax (503)631-3887

Studies have assumed sportfishing expenditures are "in-state transfers" of discretionary income. In other words, lack of fishing opportunity will cause Washington residents to transfer spending to another form of in-state recreation. Statistics show this assumption is false. While coastal communities in Washington have suffered a continued decline in charter fishing and associated tourism income in recent years, similar towns in British Columbia and Alaska have become sportfishing meccas supported by Washington residents and others who previously fished in Washington. Sportfishing industries have suffered as well. As Washington residents leave the state to salmon fish elsewhere, the potential purchase of boats and fishing equipment go with them. A look at license and spending trends in British Columbia, Alaska, and Washington demonstrates this economic loss.

- Washington residents bought 19,000 licenses to fish in Alaska during 1991 and 24,000 in 1992.¹⁴ Expenditures in Southeast Alaska by non-resident anglers in 1988 averaged \$172.48 per angler day, not including transportation costs.¹⁵
- From 1987-1991, the number of Washingtonians licensed to fish in British Columbia grew steadily from 29,000 in 1987, to 38,000 in 1989, 44,000 in 1990, and 48,000 in 1991.¹⁶ The average annual expenditure for non-Canadian anglers visiting B.C. in 1991 was \$676.08 per year, not including transportation.¹⁷
- The 266,000 Washington resident salmon licenses sold in Washington during 1992 was the lowest total since the state began keeping such statistics in 1978.¹⁸

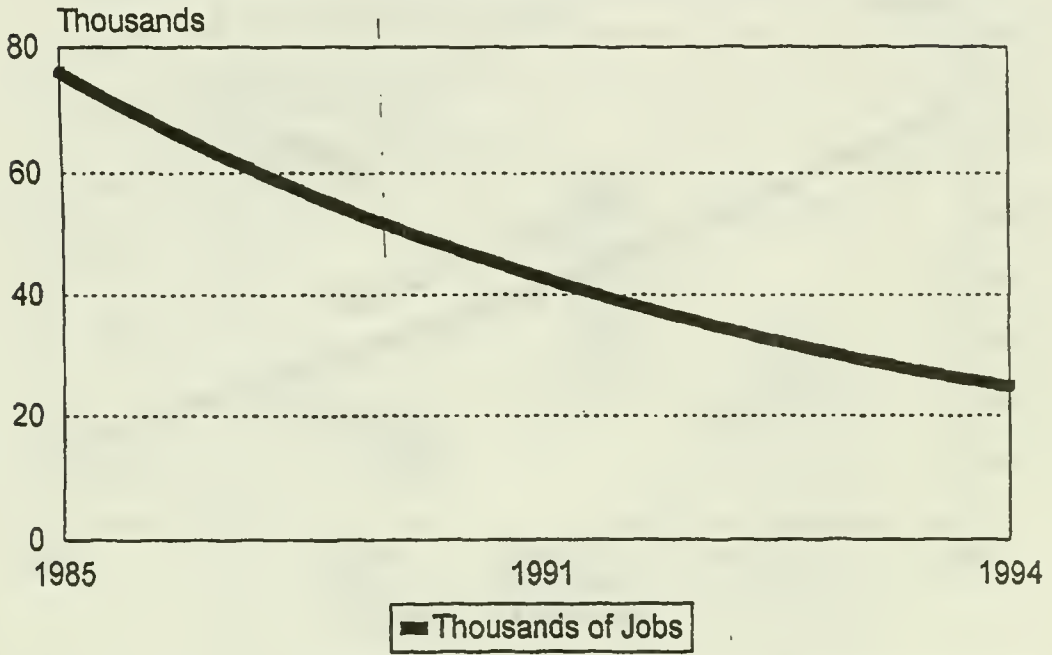
In 1991, Washington residents spent over \$40 million in British Columbia and Alaska on sportsfishing. When transportation costs to B.C. for 48,000 and to Alaska for 24,000 Washingtonians are factored in, and the loss of boat, motor, and trailer purchases is considered, the loss to Washington sportfishing businesses from the "export" of recreational fishing dollars becomes enormous.

Sources

- ¹ Southwick and Associates, *The Economics of Hunting, Fishing, and Non-Consumptive Recreation in Washington 1991*, October 1992.
- ² Southwick and Associates, *The Economics of Hunting, Fishing, and Non-consumptive Recreation in Washington 1991*, October 1992.
- ³ Washington Department of Fisheries Technical Report No. 73, October 1982.
- ⁴ Southwick Associates, letter to Northwest Marine Trade Association, July 11, 1993.
- ⁵ National Marine Manufacturers Association, *1991 Sales Statistics*.
- ⁶ Southwick Associates, letter to Northwest Marine Trade Association, July 11, 1993.
- ⁷ Southwick Associates, letter to Northwest Marine Trade Association, July 11, 1993.
- ⁸ U.S. Fish and Wildlife Service, *National Survey of Fishing, Hunting, and Wildlife Associated Recreation*, 1991.
- ⁹ DCD Study, March 8, 1988, Tables 13/14 Appendices 14-15.
- ¹⁰ Southwick and Associates/Washington Department of Wildlife, *The Economics of Hunting, Sport Fishing, and Non-Consumptive Recreation in Washington*, 1991.
- ¹¹ U.S. Fish and Wildlife Service, *National Survey of Fishing, Hunting and Wildlife Associated Recreation*, 1991.
- ¹² Southwick and Associates/Washington Department of Wildlife, *The Economic Impacts of Hunting, Sport Fishing, and Non-Consumptive Wildlife-Associated Recreation in Washington*, 1991, October 1992.
- ¹³ Spon Fishing Institute, *The Tidal Sports Fishery, A Shared Vision*, 1993.
- ¹⁴ State of Alaska Department of Fish and Game, License Information on Washington State residents, September 2, 1993, page 1.
- ¹⁵ Jones & Stokes/Alaska Department of Fish and Game, December 1991.
- ¹⁶ Canadian Department of Oceans and Fisheries, License Statistics August 31, 1993.
- ¹⁷ Department of Oceans and Fisheries - Pacific Region, *1990 National Survey of Sportsfishing*.
- ¹⁸ Washington Department of Fisheries, Licensing Statistics 1977-1992.

SALMON DECLINES: Impacts on the Northwest Economy

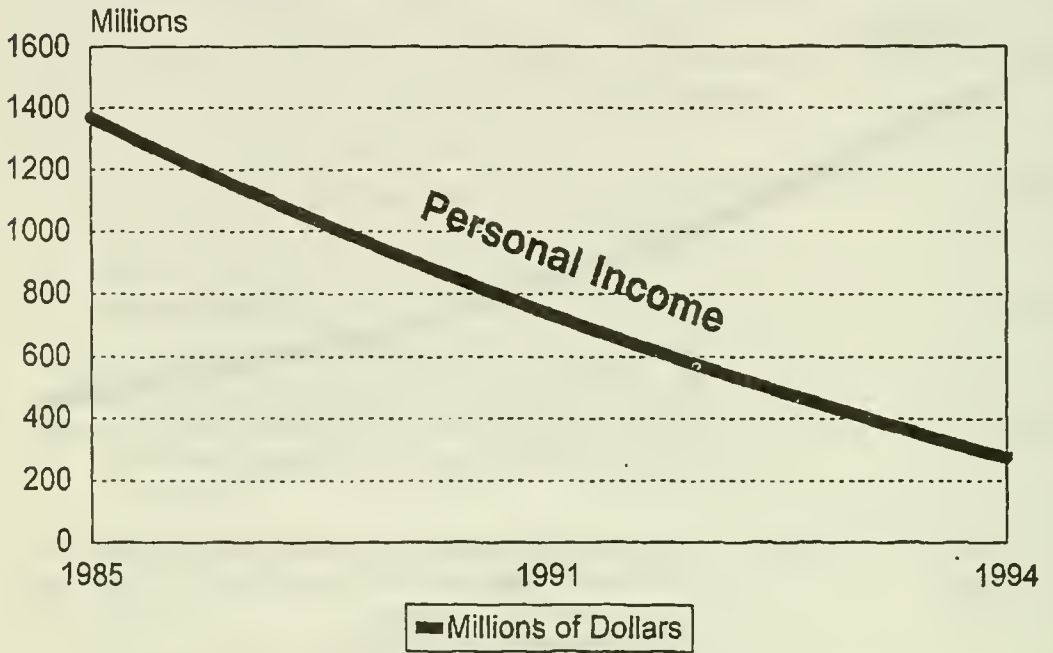
Jobs from Recreational Salmon Angling



Source: American Sportfishing Association

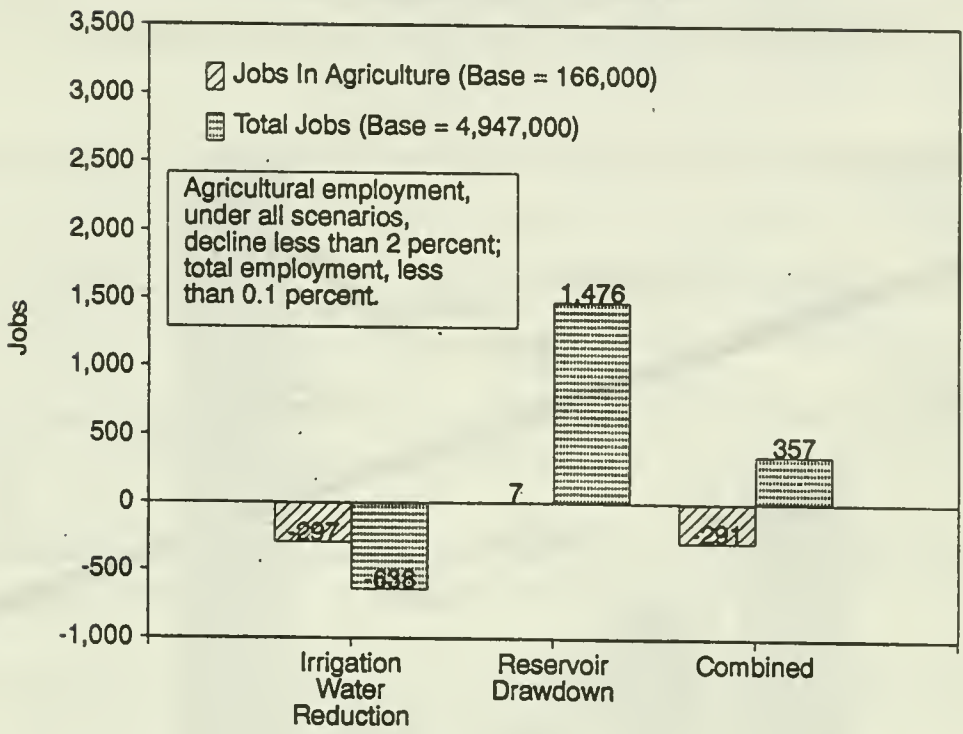
SALMON DECLINES: Impacts on the Northwest Economy

Personal Income from Recreational Salmon Angling

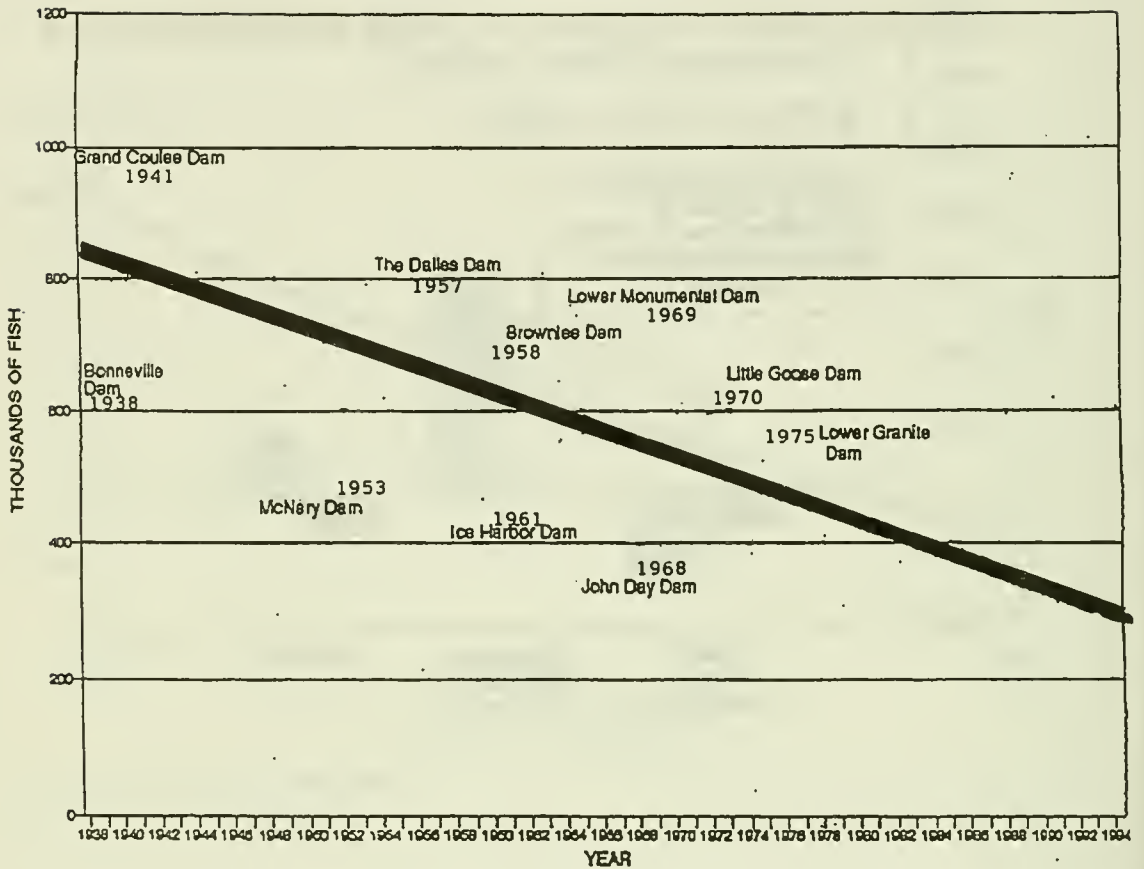


Source: American Sportfishing Association

Changes In Employment In Pacific Northwest Economy Alternative Recovery Scenarios

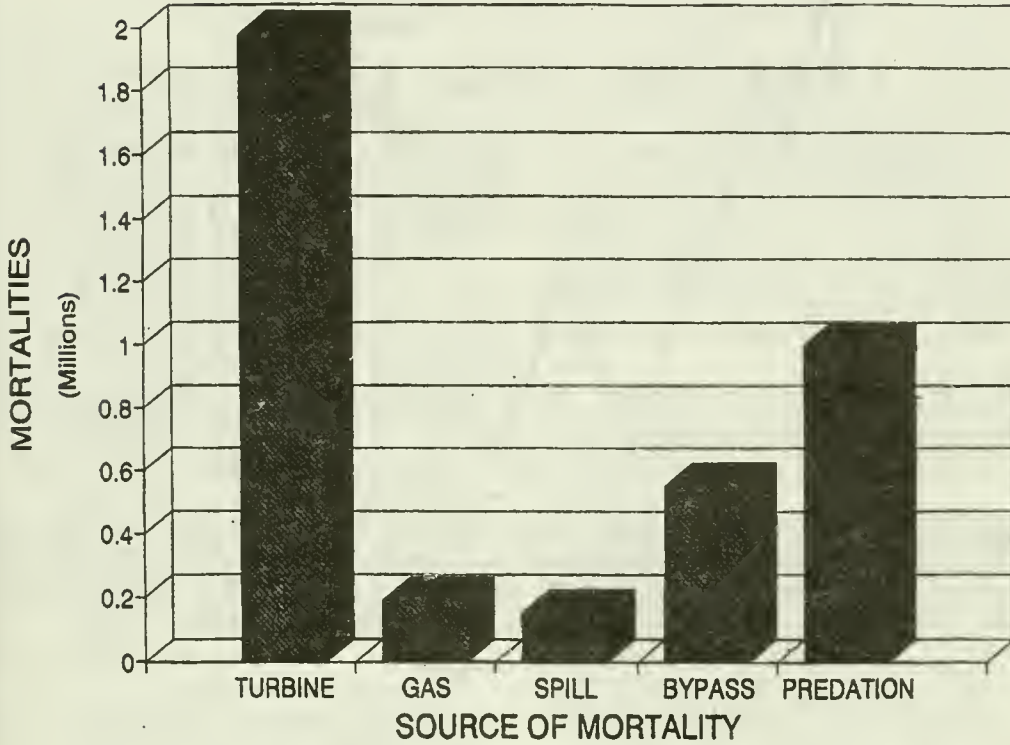


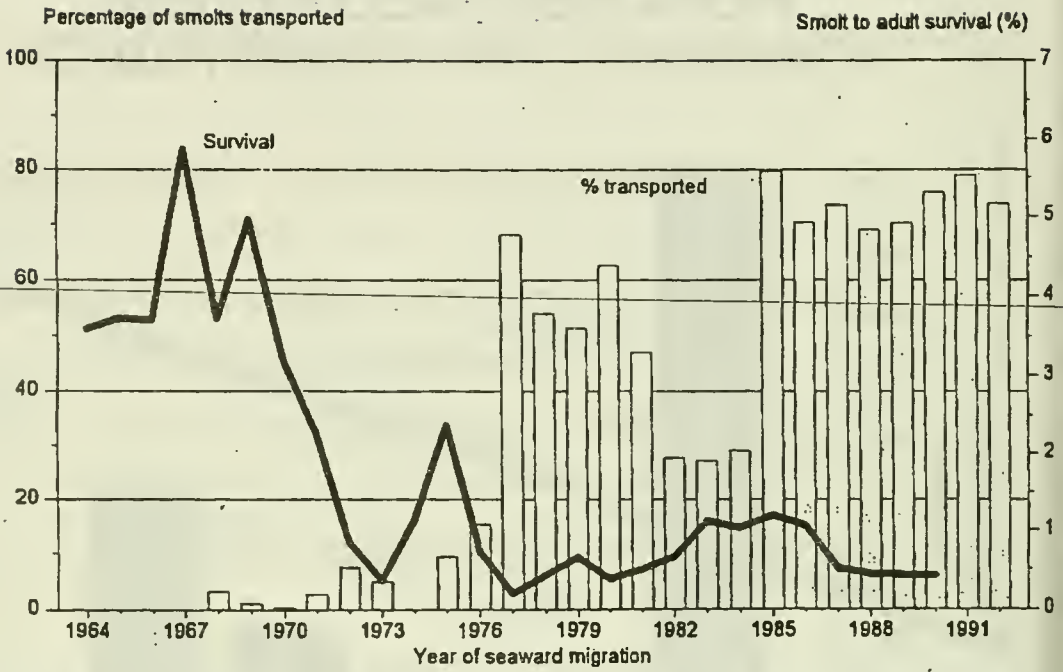
UPPER COLUMBIA CHINOOK RUNS 1938-94 POPULATION TREND LINE



DRAFT

HOW FISH DIED IN 1994 AT SNAKE AND LOWER COLUMBIA PROJECTS





20
 21 Figure VIII-3. Percentage of chinook salmon smolts arriving at the Snake River dams that
 22 were collected and transported downstream to Bonneville Dam; and percent survival from
 23 smolts at upper Snake River dam to adults returning to Ice Harbor Dam. Data from Park
 24 (1985), Raymond (1988), and calculations by Team for most recent years.

Seattle Post-Intelligencer

A will to save salmon

If the poll had been paid for by salmon advocates, it might come as no surprise that most respondents were willing to help bear the cost of saving the fish in the Columbia River.

But the statewide poll by the Boston-based firm Martilla and Kiley was commissioned by some of the very hydroelectric utilities whose dams are killing the fish.

Yet the results showed that 68 percent of the 800 respondents were willing to pay \$5 a month more in their electrical bills to save the fish, and three-quarters indicated some degree of willingness to reduce electrical or water use by 10 percent to help the salmon survive.

The poll demonstrated that Washington residents take the salmon crisis seriously and are perfectly capable of differentiating between an owl and a fish.

While 60 percent of the respondents said they think the northern spotted owl would survive even if no special steps were taken to protect its old-growth timber habitat, only 13 percent believe the wild salmon can survive without intervention — and that includes people who say they think the government has gone too far in protecting the owl.

"What it tells us as hydroelectric utilities is that for us to continue to generate electricity, we

must protect the salmon," conceded Don Godard, manager of the Grant County Public Utility District.

The message that Godard reads in the poll seems lost on Washington's Republican Sen. Slade Gorton and Rep. Linda Smith, R-Vancouver.

Gorton, who is pushing for a six-month moratorium on Endangered Species listings, has said some wild salmon runs may be too expensive to save.

Smith has reached for overheated rhetoric to warn that the cost of protecting salmon could "leave people unable to pay their heating bills."

What this region needs is can-do lawmakers who focus their energies on making salmon recovery work rather than making it fail.

Restoring wild salmon runs will be expensive, difficult and slow; indeed, some runs may well be lost.

If the effort succeeds, the sagacious legislators who lay the enabling groundwork are likely to be long gone from office, unable to benefit at the polls. And the short-sighted obstructionists are unlikely to be around to take their electoral punishment.

But either way, they and their contributions will be remembered when the fate of the wild salmon finally is recorded in the history books.

Price Not Too High To Restore Wild Salmon Runs

Compared to two years ago, fewer voters in this month's poll thought the economic costs of restoring wild salmon runs would outweigh the benefits. This appears to be one reason why public opinion is moving in the direction of salmon run restoration.

Putting money where their mouths were, 73% of these respondents said they would be willing to pay at least \$1 per month more in electric bills "if you thought it would help restore salmon runs." And by a 4:3 margin, respondents said they would vote to raise taxes to restore salmon runs.

By nearly 2:1, these respondents disagreed that either the individual costs or the cost to the region's economy would be too high to restore wild salmon runs. Both of these results are substantially stronger than response to the same questions asked in the May 1992 Elway Poll.

By the same 2:1 margin, respondents said, in the long run, restoring the salmon would contribute more to the economy than it would cost.

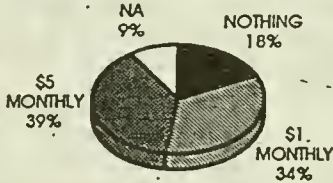
Results were closer when voters were asked whether restoring the runs was more important than the economic problems it may cause.

Evaluation of the cost of restoration was related to perceived reasons for the salmon decline: in each of the four questions, people who said over-fishing was the "most harmful factor" were less likely to agree that costs of restoration were worth it than people who blamed habitat destruction or hydro-electric dams.

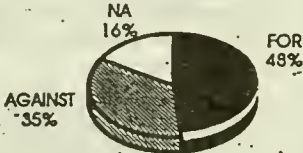
Income was a predictor for only one of these arguments: the one stating restoration was more important than the resultant economic problems. A majority of those with annual incomes over \$40,000 disagreed, while a 44-31 plurality of those with incomes under \$20,000 agreed.

Frequent voters tended to give the economic costs more weight than did infrequent voters. The difference was one of degree, however, not direction: most "perfect voters" were on the same side of these questions as less frequent voters.

ELECTRIC BILL INCREASE TO RESTORE SALMON



VOTE TO RAISE TAXES TO RESTORE SALMON



Voters See Salmon As Economically Important To Region

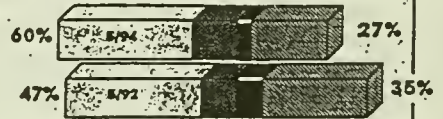
The following are statements about restoring wild salmon in the Northwest. In this poll, and in May 92 voters were asked if they "Agree," "Agree Strongly," "Disagree," or "Disagree Strongly" with each statement.

Legend: □ DISAGREE, ■ DISAGREE STRONGLY, ▨ AGREE STRONGLY, ▩ AGREE

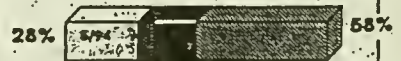
The cost to Northwest residents will be too high to restore wild salmon runs.



Too much of Washington's economy would have to be sacrificed to restore wild salmon runs.



In the long run, restoring the salmon runs would contribute more to the Northwest economy than it will cost.



Restoring the wild salmon runs is more important than the economic problems it may cause.



TESTIMONY OF
PAUL F. EHINGER
Forest Industries Consultant

Before the Senate Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries and Wildlife.

Roseburg, Oregon June 1, 1995
Beginning at 9:00 A.M.

Subject of Hearing: Endangered Species Act - How is it working on the ground,
and how could the Act be improved.

My name is Paul F. Ehinger. I am an independent consultant for the forest industry. My clients represent all categories of companies in the forest products industries from the very smallest companies to some of the largest. The one common interest is that they all have been dependent directly or indirectly on the federal timberlands for a portion of the raw material necessary to operate their mills. I am here today as a concerned individual who has spent a lifetime in this industry, and am urging you and the committee to come up with some solutions to relieve what has become a nightmare for many communities and families in the Northwest as it continues to destroy numerous small rural towns.

Prior to becoming a consultant, I was responsible for the operation of all types of mills: sawmills, plywood plants, and veneer operations, millwork operations, wood treating plants. These mills were also suppliers of mill residues (chips, shavings, and sawdust) to various types of board plants and pulp mills. Most of these mills were in small rural towns adjacent to the national forests.

My career in the industry spans almost 50 years, and I have been involved with federal timber through this entire period of time.

In the consulting business, I began tracking the closure of primary mill operations over 10 years ago. When the current crisis in timber supply began to rear its head in the late 1980's, I became more concerned that people making decisions to abruptly close down timber harvest on the national forests and BLM lands did not understand the impact of their actions. These actions were devastating the lives of people and destroying the lifeblood of communities in the Northwest who were dependent on the federal resource for their economic base.

I believed that once they were shown the magnitude of the havoc on people's lives that they were creating, a more moderate course would be pursued. However, this was not to be the case. The people in control of the process at the highest levels have been gifted with tunnel vision in pursuit of their goals-goals that excluded people from any consideration. As a result of this headlong rush,

we have the following picture of mill closures that has destroyed the economic base of the 175 small communities shown on the next page.

These are mostly small rural timber towns that have lost one or more mills since 1989. The closures are continuing. We can easily tally job loss at the mill, but the layoffs extend to the grocery stores, restaurants, hardware stores, etc. In many places, the "cash registers have stopped ringing on Main Street."

I talked with a friend of mine in Colorado last week where a mill that has been the economic base of the town for 50 years was forced to close. His comment was, "Since the closure, often in the middle of the day, there are no longer any cars on the main street.

Many of these towns were built on the basis of the national forest being their economic base. Often, they were built on a solicitation from the federal government with the promise of a sustained supply of timber that would always be the backbone of the community and the mill.

The timber is still there and growing along with a future potential for economic benefits to the community and the country as a whole. However, today the mill is gone, and the community will continue to shrivel to a small fraction of its potential. This is not a town that hi-tech computer companies will seek out. It is similar to the Burns, Hines, and Lakeview, Oregon towns as well as Fredonia, Arizona--all towns that were given promises of a rosy future by the same government that has abruptly pulled out the rug from beneath their economy.

Much of the wood produced by these mills now comes from New Zealand, Chile, Mexico, and elsewhere.

Mill Closures

The following is a summary of the mill closures since 1989 for the communities shown on the map that follows, which became a critical problem when the Spotted Owl management programs on federal timberlands and the subsequent litigation and injunctions began to take their toll on the communities of the Northwest. Since the Spotted Owl, there have been a series of other changes in programs that were effected by other species and new management theories all ignoring people and communities. The number of employees listed in the summary are only the number of mill employees. An additional estimated 11,000 woods jobs have also been lost.

MILL CLOSURE SUMMARY
1/1/89 TO PRESENT

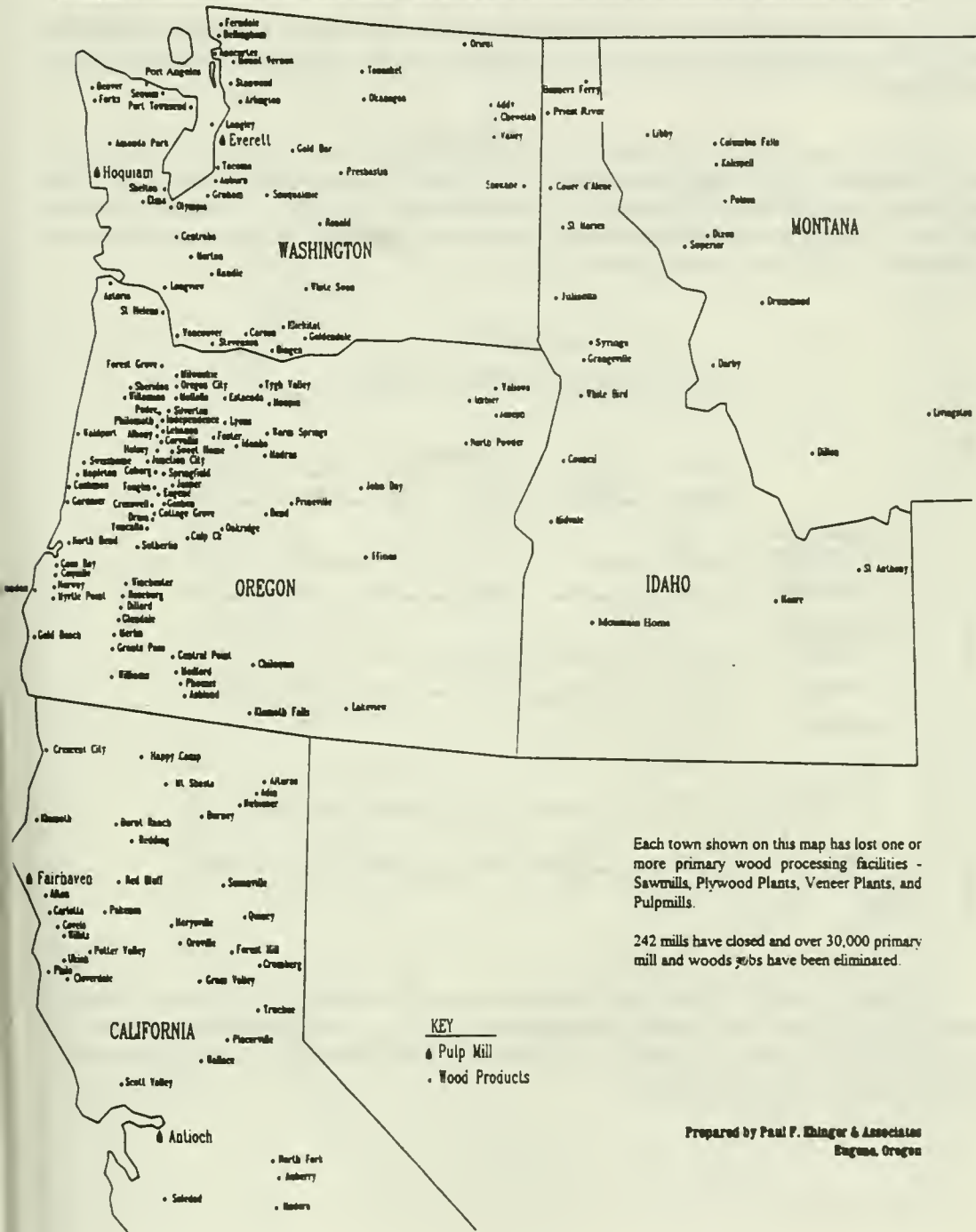
	SAWMILLS		Plywood/Veneer/Other		Total All Mills	
	No. Mills	No. Employees	No. Mills	No. Employees	No. Mills	No. Employees
Oregon	58	5,653	53	5,947	11	11,600
Wash.	38	1,624	17	1,661	55 **	3,285
Calif	43	3,925	3	502	46 **	4,427
Idaho	17	767	0	0	17	767
Montana	13	1,083	0	0	13	1,083
TOTAL	169	13,052	73	8,110	242	21,162

-2-

** Two pulp mills closed in each state

MCS8995 4/95

MILL CLOSURES 1989 - PRESENT



In order to properly understand the magnitude of the problem, it is necessary to examine the structure of the industry as it is currently constituted.

The primary forest products industry in the Pacific Northwest is made up of a full range of operations from the very smallest mills employing 15 to 20 people to some of the largest corporations in the United States.

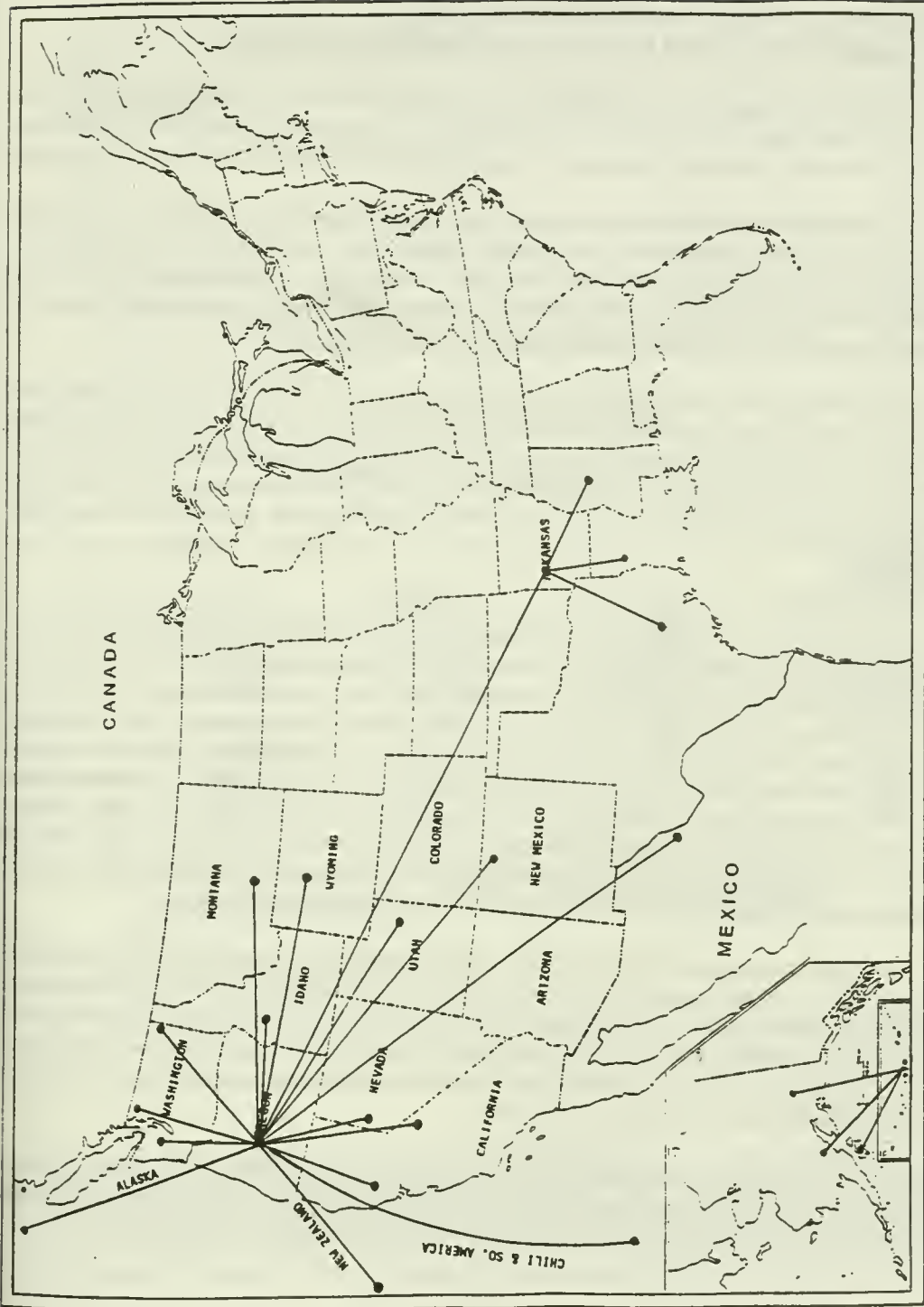
In the 5-state area, Oregon, Washington, California, Idaho, Montana, there are currently 411 operating sawmills, plywood and veneer plants. The following chart summarizes these by state and also includes the number of board plants (MDF, particleboard, hardboard, etc.) and the number of pulp mills. These plants, the millwork industry, and the accompanying woods operations employ approximately 170,000 people at the present time.

PLANTS IN OPERATION

OREGON/WASHINGTON/CALIFORNIA/IDAHO/MONTANA

	NO. OF PLANTS					Total
	Sawmills	Plywood Plants	Veneer Plants	Board Plants	Pulp Mills	
Western Oregon	80	29	22	13	11	155
Eastern Oregon	21	4	3	6	0	34
Total Oregon	101	33	25	19	11	189
Western Wash.	65	6	8	0	12	91
Eastern Wash.	23	4	0	1	3	31
Total Wash.	88	10	8	1	15	122
California	53	1	4	7	2	67
Idaho	46	3	3	2	1	56
Montana	32	4	0	2	1	39
TOTAL	320	51	40	31	30	472

In order to survive, the mills that remained are reaching to previously unheard of distances to acquire timber from other sources to enable them to survive. The following map shows the distances that mills in Western Oregon are reaching out to purchase the marginal volumes of timber necessary to keep operating.



TIMBER SUPPLY SOURCES FOR OREGON MILLS - 1994 & 1995

CLINTON PLAN/OPTION 9/SPOTTED OWL AREA
THE CHRONOLOGY OF AN ECONOMIC AND HUMAN DISASTER

The following segment of this testimony shows the impact of the activities which began in the name of the Northern Spotted Owl in the late 1980's and became the Clinton Plant or Option 9 program. This effort completely inflicted its wave of destruction on all the small towns in its path.

It is this type of activity that causes serious questions to be raised about the entire Endangered Species Act. At the time the legislation was originally passed, there was no hint that the outcome as described here was a possibility. We have witnessed the destruction of a significant portion of an industry and over 100 small towns and their citizens have taken the brunt of a questionable scientific theory that was pushed to implementation before it was thoroughly explored.

Had the process been exposed to a full scientific inquiry over several years, the owl would still be here in profusion, and competing theories would have had a full airing and more complete information would have been available for decision making. The rush to judgement would not allow this to happen much more for political than scientific reasons. Time has revealed, the process was cloaked in secrecy and competing views from credible scientists were given little time and less consideration. The project was tightly controlled, and the outcome appears to have been predetermined.

Since 1989, we have followed the problems related to the timber management policies that have been initiated in the name of saving the Spotted Owl. At one environmentalist's conclave, one of the speakers made the blatant statement to the effect that if the Spotted Owl had not come along, they would have had to find another creature to carry the banner in their efforts to halt the harvest of federal timber. The initial rallying cry of the environmental movement in the 1970's was to save old growth. In the early 1980's, saving the predicted extinction of the Spotted Owl was tied to saving old growth, often using flawed science and inaccurate statistics. The Spotted Owl quickly became the national rallying point for curtailing all types of timber harvest on federal lands. By 1994, all pretense was thrown aside and major environmental organizations led by the Sierra Club proposed the elimination of all logging for wood and fibre production from all federal forests.

Lip service was given to a transition from a timber economy to other diverse and sustainable rural economies for these communities, but their rhetoric lacked substance. At the same time they were successful in their efforts to reduce timber harvest, they were initiating attacks on farmers and ranchers for their activities on both private and federal lands. It's a little puzzling as to what base would be left for a rural economy after timber, ranching and farming are driven to the brink of economic extinction in the rural areas of the West.

The purpose of this study is to track the federal timber program in the Spotted Owl/Option 9/Clinton Plan area to show the complete dismemberment of the timber economy that has taken place in this region, which is often the entire local economy for many of these small communities.

The promise of the Clinton administration after the well publicized Timber Summit in April 1993 was to provide 2 billion board feet of timber the first year, and 1.2 billion board feet annually thereafter. The sell column of Table 1 gives mute evidence of the total failure to even remotely meet their commitment.

Table 1.

STATISTICS FOR CLINTON PLAN/OPTION 9/SPOTTED OWL AREA CALENDAR YEAR TOTALS 1989-1994			
U.S. FOREST SERVICE/BLM			
Timber Volume in Million Board Feet			
YEAR	HARVEST	SELL	VOLUME UNDER CONTRACT
1989	5,124	2,959	5,574
1990	3,123	4,529	6,519
1991	2,465	784	4,596
1992	1,826	271	2,840
1993	1,275	277	1,797
1994	611	171	1,259 *

* As of 1/1/95, approximately 550 million board feet is unavailable for harvest because of appeals, litigation, and delayed and protracted consultation with U.S. Fish & Wildlife Service.

All figures net merchantable sawtimber.

Paul F. Ehinger & Associates 4/95 cyowl
Source: Timber Data/USFS/BLM

The Spotted Owl emerged on the scene much earlier in the 1970's. We have tracked the timber supply problems from 1988 to present when the short supply situation became evident because of the Spotted Owl. All of today's timber supply problems have their genesis in the late 1980's with the first major cuts in the timber sale program. By 1989, the decline in the programs was so severe that legislation known as "318" was enacted to keep a nominal timber sale program flowing for the

years of 1989-1990 and to shield the agencies from the frivolous lawsuits stopping those timber sales--the same type of lawsuits that were stopping even the most modest timber sale programs. The increased environmental litigation was clearly sowing the seeds for the present economic disaster that has occurred in the Pacific Northwest. Since that brief surge in new timber sales in 1990, the sale program has gone downhill ever since. Each branch of the federal government, i.e., Fish and Wildlife Service, National Marine Fisheries, E.P.A., etc. has circled the problem like vultures picking off what little flesh remained on the bones of the weakening timber economy in the Northwest. They intensified their scrutiny of every activity of the timber selling agencies. They are no longer just the shadow agencies for timber supply, but are now the controlling agencies for almost every activity on the forests. We examined a listing of projects requiring approval by the Fish and Wildlife Service in one region and found it all-encompassing: their approval was required for road maintenance work; slash burning; campgrounds; off-road vehicle contests; rock pits; wildlife habitat improvement; parking lots; telephone cable replacement; water line installation to horse camps; 15-acre thinning sale for a study by the U.S. Forest Service experiment station; long-term study on unevenaged management of timber; ski center operation; firewood sales, and on and on. This total approval and veto power over nearly all Forest Service management activities has effectively transferred the political and policy control of the U.S. Forest Service from the Department of Agriculture to the Department of Interior under Secretary Bruce Babbitt.

At the same time the judicial, legislative, and other administrative branches of government each seem to be trying to outdo the other in further controlling the forest management activities of the Agency. They seem to be competing to deliver the final coup de grace to the timber industry and the numerous dependent rural communities shown on the map included at the end of this study.

The defenders of these communities were almost nonexistent in the administration and judicial branches of government, and those congressmen and senators from both sides of the aisle who have tried to salvage some semblance of the northwestern timber economy were outnumbered and largely ignored by the administration, regardless of party affiliation. They were rebuffed by their Midwestern and Eastern colleagues who, up until this session of Congress, held chairmanships and controlled the key resource committees of Congress and thus dictated the flow of natural resource legislation affecting the West.

The loss of jobs and closures of mills is of a magnitude not comprehended by most of the citizens of this country, nor do they understand the reason for the excessive prices that they now pay for wood products, whether they live in the East or West. The consumer and taxpayer have paid dearly for this folly.

COST IN MILL CLOSURES AND JOB LOSS SINCE 1989

I have carefully analyzed the actual job losses in the primary forest products industry due to the impact of the Spotted Owl regulations, litigation, and the change in administrative practices on the federal forests in the Option 9 area since 1989. The following is a summary of the employment loss from the changes in federal timber sale programs in that area. The loss of mill jobs is from

closures of sawmills, plywood and veneer plants, and pulp mills as well as the curtailment of logging. The logging jobs are calculated on the basis of the reduction of federal timber harvest between 1989 and 1994; this volume has not been replaced from other sources. We have identified and indicated certain mill closures and job losses which we believe are unrelated to the Spotted Owl/Option 9 issues to give an accurate picture of the situation as to the impact of the altered forest policy related to Option 9.

Table 2

Option 9 Area Job Loss Directly Related to Spotted Owl From 1/1/89 to the Present

	<u>Mill</u>	<u>Woods</u>	<u>Total</u>	<u>Mill Closures</u>
Oregon	8,097	5,040	13,137	86
Washington	1,802	1,168	2,970	35
California	<u>2,629</u>	<u>984</u>	<u>3,613</u>	<u>24</u>
Total	12,528	7,190	19,720	145

The following data relates to all mill closures in the Spotted Owl Areas.

Table 3

Employee and Mill Closure Data
Spotted Owl/Option 9 Area
1/1/1989 to the Present

Total Mill Closure and Job Loss in Option 9 Area

	<u>Related to Spotted Owl</u>		<u>Not Related to Spotted Owl</u>		<u>Total Closures & Job Loss</u>	
	<u>Mills-Jobs</u>		<u>Mills-Jobs</u>		<u>Mills-Jobs</u>	
Oregon	86	13,137	10	2,355	96	15,492
Washington	35	2,970	11	980	46	3,950
California*	<u>24</u>	<u>3,613</u>	<u>0</u>	<u>0</u>	<u>24</u>	<u>3,613</u>
Total	145	19,720	21	3,335	166	23,055

* The methodology for California included mills in specific counties located within or adjacent to Spotted Owl forests, and the closed mills all had some dependence on federal timber for their existence.

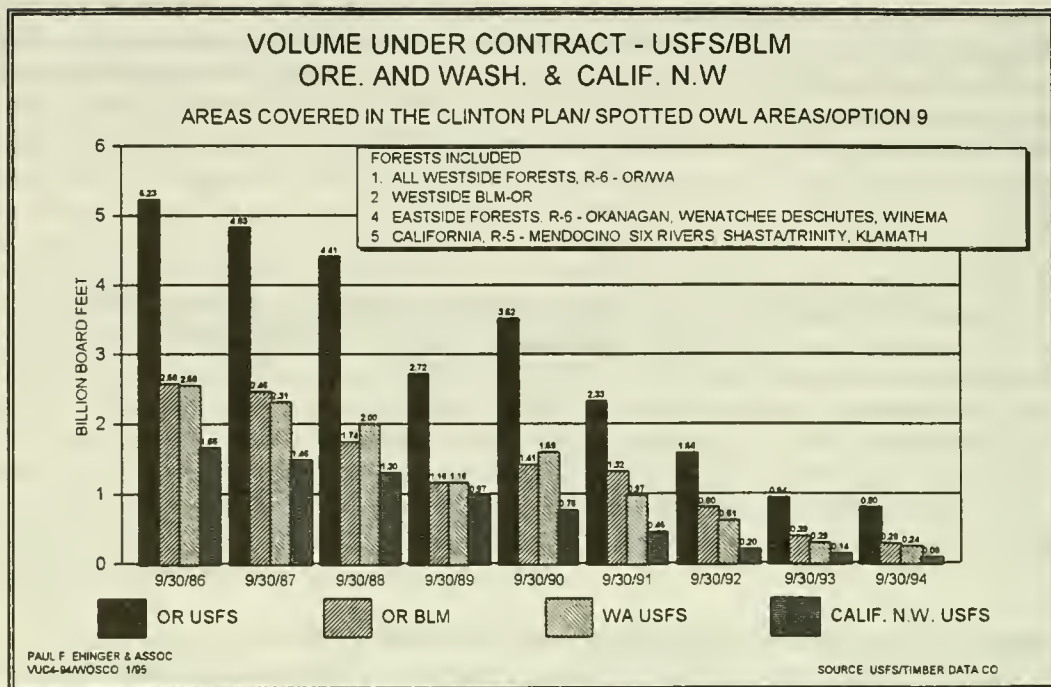


Figure 3

The cause of all these closures is illustrated in the following graph (Fig. 1) and Table 4 which show the complete demise of the timber sale program in the Option 9 area.

Table 4 STATE BY STATE ANALYSIS OF FEDERAL TIMBER SALE PROGRAM
SPOTTED OWL/OPTION 9/CLINTON PLAN
(Volume in Million Board Feet)

	Harvest		Sell Price		Volume Under Contract	
	CY89	CY94	CY89	CY94	12/31/89 - 12/31/94	
Eastern Oregon-USFS	357	63	149	28	393	93
Western Oregon-USFS	1,980	269	1,216	81	2,245	612
BLM-Oregon	<u>1,212</u>	<u>66</u>	<u>681</u>	<u>11</u>	<u>972</u>	<u>279</u>
Subtotal Oregon-USFS/BLM	3,549	398	2,046	120	3,610	984
Eastern Washington-USFS	258	39	188	10	342	57
Western Washington-USFS	<u>631</u>	<u>103</u>	<u>381</u>	<u>14</u>	<u>799</u>	<u>141</u>
Subtotal Washington	889	142	569	24	1,141	198
California-USFS	<u>686</u>	<u>71</u>	<u>344</u>	<u>27</u>	<u>823</u>	<u>77</u>
TOTAL OPTION 9 AREA	<u>5,124</u>	<u>611</u>	<u>2,959</u>	<u>171</u>	<u>5,574</u>	<u>1,259*</u>

* 1994 volume under contract contains about 550 mmbf that is unavailable due to appeals, litigation, or protracted delays in consultation with U.S. Fish and Wildlife Service as of 1/1/95.

All figures net merchantable sawtimber

Since the Timber Summit in 1993, the further extension of these management policies has occurred and moved beyond the Clinton Plan area throughout the public forests nationwide. This process assures the country that will there be no return to sustainable timber harvest at modest levels from the federal forests in the near future, and accompanying the expansion of the programs is the callous disregard for communities and people. There continues to be a total disregard for both the economic and human costs in the forest communities of the Pacific Northwest which are bearing the brunt of this disastrous program. The process and these programs have been categorized as scientific and bureaucratic arrogance. The earlier promises in 1993 of modest harvest levels proved to be only the expedient politics of the moment, and there has been no sincere attempt to alleviate the serious problems created by the timber supply crisis. These management policies began in the previous administration and have been accelerated by the current administration and continue today without any letup in sight.

Cost in Community & People Impacts in Option 9 Area

We have not developed a methodology to apply costs to this segment of the problem. We can only point to the magnitude of the situation since 1989. We really need a "Misery Index" in order to properly measure the impacts on the people and their communities.

Mills Closed	166
Direct Job Losses	23,055

There are other factors involved in these traumatic changes that take their toll on the communities and their people. Again, it is difficult to place a price tag on these, but they represent the real tragedy that is taking place.

COST TO THE WORKERS

1. Loss of wages when laid off.
2. Cost of retraining for new job.
3. Loss of value in homes in rural timber communities.
4. Cost to displaced worker of moving or commuting to new job.
5. Lower wages in the new job (which has been the rule).

COST TO THE COMMUNITIES

1. Loss in normal commercial business activity, because of high unemployment in the community.
2. Loss in assessed value of the closed forest product mill as a tax base for local government services.
3. The loss in value as well as curtailment or possible closure of numerous businesses on "main street" which serve the local residents. These situations create additional loss of local employment as well as further erosion of the tax base.

COST TO COUNTY AND LOCAL GOVERNMENTS

1. Loss of timber revenue which ranges from 25% to 50% of federal timber receipts. (Temporarily, part of this loss is made up in the offset in Option 9 area by the federal government safety net. In some cases this timber revenue has made up 35% to 40% of the funds required for local governmental services in an individual county, especially those rural counties whose land base includes large federal ownership.
2. Loss of property tax base for the county needed to support education due to:
 - a. Closure of mill
 - b. Devaluation of residential property.
 - c. Closure and/or loss of value of the numerous small businesses in the area outside of the immediate town as the economy declines.

The effect of these closures is not limited to the specific mill town, but radiates throughout the surrounding area. The loss to a particular local business owner can often lead to insolvency, closure, or bankruptcy, all which have broader community implications. It is difficult to precisely quantify the total impact of all these losses in each locality and region, but they are the real costs attributable to the unrestrained activities of the federal government. The University of Idaho has conducted research on the cost of mill closures in a few specific communities and has quantified some of these losses to communities impacted by the recent mill closures. The analysis shows a far more extensive range of negative economic factors related to these closures in local communities than previously identified.

COSTS TO THE CONSUMER - 20 BILLION DOLLARS IN THREE YEARS.

The impact of the Spotted Owl Management Policies on national and international wood markets has been largely overlooked. The magnitude of the softwood lumber and structural panel shortages caused by the Option 9/Clinton Plan, and related programs, has increased prices of building materials not only in the United States but around the world.

In addition to the shortages of lumber and panel products, we are now witnessing shortages of wood chips for pulp and paper both in the U.S. and Canada. The soaring product prices are creating concern and unrest in the marketplace. Part of the price increase is attributable to temporarily over-taxed pulp and paper plant capacity accompanied by heavy demand. The remainder of the problem is related to the raw material (wood chip) shortage which, along with the other factors, has translated into steep price increases for the consumer as the paper producers try to meet the market demand.

We have limited our analysis to the United States and to softwood lumber and structural panel products only to demonstrate the dramatic price increase paid by the consumer of these products in this country as a result of the abrupt change in federal forest management. We recognize that the inflation caused by this artificially created wood scarcity has had a much broader impact than just the U.S. It has affected Canada and Pacific Rim countries most noticeably. These same market forces have increased prices at the same time for hardwood lumber, hardwood panels, non-structural boards

(i.e., particle board, hardboard, MDF, etc.), as well as the chips and sawdust used for pulp and paper production. The increased cost to the consumer has been all pervasive.

To determine these excess costs to the consumer, we have used the composite price indices for softwood lumber and structural panels published by Random Lengths, the major price reporting source for these products in the United States as the basis for our calculations.

The Spotted Owl management program which later became Option 9 or the "Clinton Plan" began to noticeably impact the industry's timber supply in 1987. This began with the initial litigation and subsequent curtailments of federal timber offerings. The process began to dramatically reflect in the marketplace by mid 1991 when these prices briefly soared to all-time highs. The real sustained level of higher prices did not begin until 1992, and from that time forward, the country has experienced the most dramatic price increases of wood building materials in the history of the United States. Even with recent declines in the market, prices continue to remain at levels well above those prior to 1993. (See attached graph)

Our base for analysis was the period from 1984 through 1994. The period of sharply increased demand for lumber and plywood began in 1984, immediately after the 1980 recession. This demand peaked in 1987 when U.S. lumber consumption reached over 50 billion board feet and structural panel consumption was at a near record high of 27 billion square feet. The 1987 combined record level of lumber and panel consumption has not been reached since.

During the 1984 through 1991 segment of the analysis period, the annual rate of price increase was 2.6 percent for lumber and 2.0 percent for structural panels. The consumer price index increased at 4.6 percent per year during this period. The sustained sharp price increase for wood products began in 1992. To show the premium paid by consumers, we established a normal increase of 5 percent per year for the Random Lengths price index for the years of 1992, 1993 and 1994. We measured the difference between the projected 5 percent inflated price and the actual index price to calculate the excess costs. The annual increases during the three-year period were 25 percent for lumber and 18 percent for structural panel products. This difference between a projected 5 percent increase and the actual price was applied to the total volume of U.S. softwood lumber and panel products utilized each year to arrive at the excess inflated costs paid by the U.S. consumer each year. This calculation shows that the excess premium paid by the consumers of wood products for the past three years has **exceeded 20 billion dollars**. The graphs and charts on the following pages describe the phenomenon that has taken place from 1992 to the present. For the home buyer, this translates into an estimated \$5,000.00 additional cost for an average 1,900 square foot home.

In spite of the market decline, after 14 weeks in 1995, the annual excess cost to the consumer is still at a rate of 6 billion additional dollars per year above the 5 percent inflation rate. The lines on the graph on the following page have been extended to show the present situation through the 14th week of 1995.

As in all such matters where the government is involved, the consumer and/or taxpayer always ends up paying the bill.

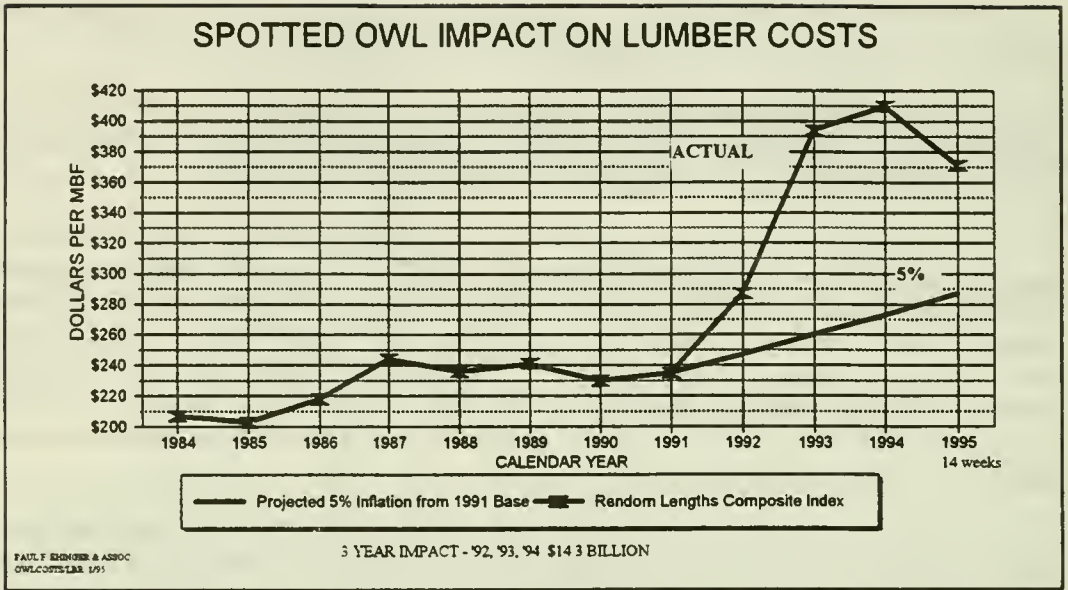


Figure 2

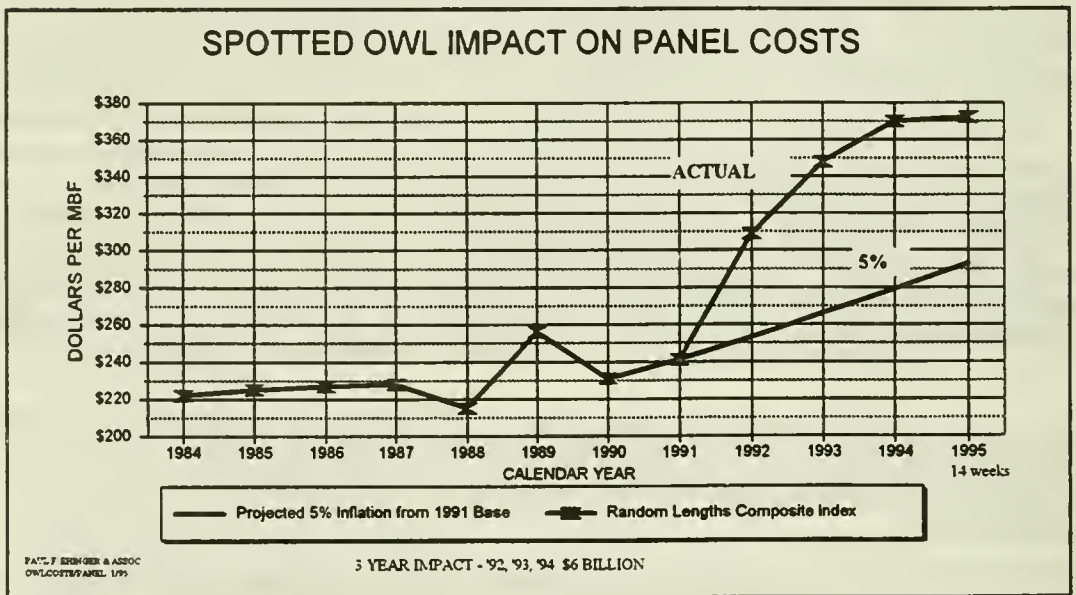


Figure 3

Table 5

**ANALYSIS OF ADDITIONAL COSTS PAID BY THE CONSUMER
FOR LUMBER AND STRUCTURAL PANEL PRODUCTS AS A RESULT OF TIMBER SCARCITY
CREATED BY SPOTTED OWL/OPTION 9 FEDERALTIMBER MANAGEMENT POLICIES**

LUMBER					
	1	2	3	4	5
Year	Random Lengths Softwood Lbr. Index	5% Inflation* from 1991 Base	Difference 1-2	U.S. Softwd. Lbr Consumption Thousand Board Ft.	Penalty Paid by Consumer (3x4)
	\$/MBF	\$/MBF			
1991	\$235	\$235	\$0	42,285,000	\$0
1992	\$287	\$247	\$40	45,736,000	\$1,829,440,000
1993	\$394	\$260	\$134	45,811,000	\$6,138,674,000
1994	\$410	\$273	\$137	46,000,000 (E)	\$6,302,000,000
Total Extra Cost					<u>\$14,270,114,000</u>
STRUCTURAL PANEL					
	1	2	3	4	5
Year	Random Lengths Struct. Panel Index \$/MSq. Ft.	5% Inflation* from 1991 \$/MSq. Ft.	Difference 1-2	U.S. Panel Consumption Thousand Square Ft.	Penalty Paid by Consumer (3x4)
1991	\$241	\$241	\$0	24,265,000	\$0
1992	\$309	\$253	\$56	25,985,000	\$1,455,160,000
1993	\$348	\$266	\$82	26,318,000	\$2,158,076,000
1994	\$370	\$279	\$91	26,500,000 (E)	\$2,415,500,000
Total Extra Cost					<u>\$6,028,736,000</u>
					<u>\$20,298,850,000</u>

* Increased index prices using 1991 as base year with 5% annual inflation through 1994.

Annual rate Consumer Price Index (CPI) 1991-1994 - 4.03%.

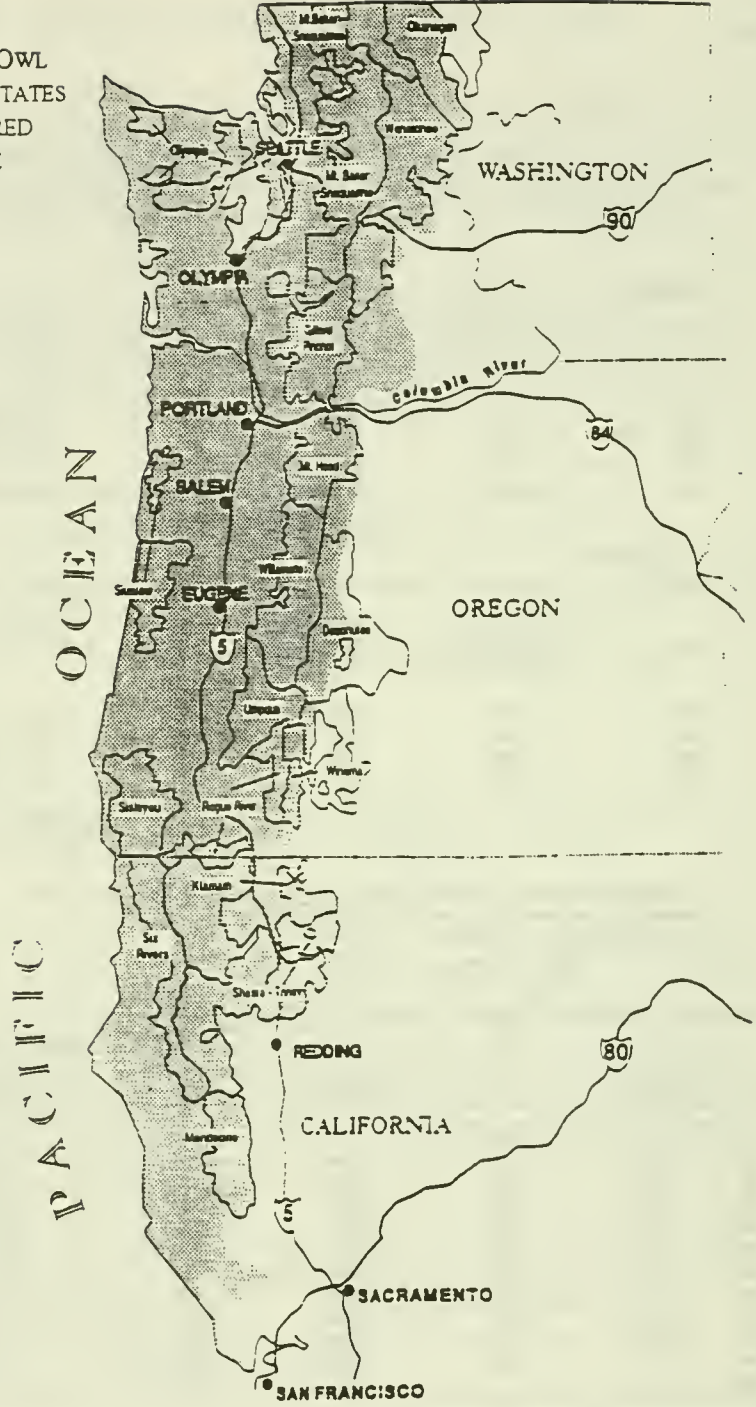
Inflation 1984 - 1991	Lumber	2.6%
	Structural Panel	2.0%
	CPI	4.6%

Related Data						
Year	Housing Starts Thousands Units	CPI	Random Lengths Lumber Composite Index	Random Lengths Structural Panel Composite Index	Softwd. Lumber Consumption Million Board Feet	Struct. Panel Consumption Million Square Feet
1984	1,749	103.9	\$207	\$222	42,832	21,986
1985	1,742	107.6	\$203	\$225	44,240	22,838
1986	1,846	109.6	\$218	\$227	47,492	25,633
1987	1,621	113.6	\$244	\$228	50,557	27,001
1988	1,488	118.3	\$236	\$215	48,513	27,203
1989	1,376	124.0	\$241	\$256	47,966	26,490
1990	1,193	130.7	\$230	\$231	45,003	26,337
1991	1,014	136.2	\$235	\$241	42,225	24,265
1992	1,200	140.3	\$287	\$309	45,736	25,985
1993	1,288	144.5	\$394	\$348	45,811	26,318
1994	1,440	148.3	\$410	\$370	46,250 (E)	26,500 (E)
1995			\$371	\$372		

Compiled by Paul F. Ehinger & Associates OWL/COSTS 3/95

Sources: Random Lengths Publications, Western Wood Products Assoc., APA-The Engineered Wood Assoc., Nat'l. Assoc. of Homebuilders

RANGE OF THE
NORTHERN SPOTTED OWL
WITHIN THE UNITED STATES
AND THE AREA COVERED
BY OPTION 9 AND THE
CLINTON PLAN



Statement of Ernie Niemi

**Vice President, ECONorthwest
99 W. 10th Ave.
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**before the
U.S. Senate
Committee on Environment and Public Works,
Subcommittee on Drinking Water, Fisheries and Wildlife**

Hearing in Roseburg, Oregon, 1 June 1995

A. Introduction and Summary

Mr. Chairman and Members of the Committee, thank you for the opportunity to discuss the effects of the Endangered Species Act (ESA) on the state and local economies of Oregon. I am an economist and vice president with ECONorthwest, an economic consulting firm with offices in Eugene and Portland, Oregon, and in Seattle, Washington. For more than two decades I have conducted studies of the impacts of environmental laws and regulations on Oregon's local and statewide economies. My work specific to the effects of the ESA on the economies of the Pacific Northwest embraces the listings of the northern spotted owl, Snake River salmon, marbled murrelet, the shortnose sucker, and the Lost River sucker. I also am engaged in or have completed work regarding the economic effects of efforts to protect listed species in Alaska and New Mexico.

Much of the opposition to the ESA arises from a belief that the costs, both in dollars and in jobs, are too high. Too often, however, the costs are exaggerated and the benefits are overlooked. Analyses by ECONorthwest and others demonstrate definitively that the ESA's economic effects are multiple and complex. It is inaccurate and misleading to conclude that the ESA has only adverse economic effects, such as the restriction of logging, grazing, irrigation, and other resource-intensive activities. The ESA also has strong, positive economic impacts whenever it helps correct severe market distortions and reduce wasteful subsidies.

Oregon and its communities have taken bold steps to implement economic strategies for achieving sustained growth in jobs and incomes. Oregonians recognize that, to accomplish their goals, they must stop those activities that wastefully degrade the state's environment and, instead, take action to protect and enhance the quality of the state's natural environment. Oregonians know that traditional, resource-intensive industries, such as timber, will continue to play important roles in the state's economy, but that the economic importance of these industries is diminishing because they cannot deliver sustained growth in jobs and incomes.

Implementation of the ESA in Oregon has reinforced state and local efforts to achieve sustained growth in jobs and incomes. By protecting and restoring natural habitat, multiple federal agencies are helping to enhance the natural-resource aspects of the state's quality of life and to reduce the costs that logging and other habitat-degrading activities impose on other industries. Implementation of the ESA in Oregon helps the state attract and retain workers, entrepreneurs, and investors. As a result, the state continues to enjoy robust economic growth in diversified industries.

In short, the ESA's impact on the state's overall economy appears to be positive. Many argue, though, that suspending the ESA is necessary to help rural communities dependent on timber and other resource-intensive industries. The reality, however, is that suspending the ESA will do little to help these communities. This is not to say that one should not be concerned about the welfare of the workers and families whose jobs have depended on logging and other activities that degrade the state's environment. Rather, it says that suspending the ESA and continuing these activities is a terribly inefficient way to express such concern, for these activities diminish the economic welfare of Oregonians, as a whole, and reduce the overall level of job opportunities throughout the state.

B. The Economic Costs of the ESA

There are two general approaches to estimating the costs of the ESA. One is known as the before-versus-after approach. In the case of the spotted owl, for example, one would apply this approach by considering the level of timber harvest and jobs in 1989, before efforts to protect the owl came into effect, comparing these levels with today's timber harvest and jobs, and attributing the difference to the ESA. Such comparisons, however, greatly exaggerate the impacts of the ESA by ignoring all other factors affecting timber harvest and jobs since 1989.

The alternative approach considers two economic outcomes, one with protecting the owl and one without it. The difference between the two represents the incremental economic effect of protecting the owl. This with-versus-without approach differs from the before-versus-after approach because it considers all economic changes that may occur subsequent to protecting the owl. All elements of an economy—workers, families, firms, and communities—will experience an economic future that is different from the past, regardless of actions taken to protect a species. One should attribute to the actions of protecting the species only those changes that would not otherwise occur. When one applies the with-versus-without approach to determine the effects of the ESA on the timber industry, one finds a variety of factors, unrelated to the ESA, have affected timber harvests and employment. Two of the most important factors are the legacy of decades of unsustainable logging, and the timber-industry's dramatic efforts to reduce its employment and payrolls.

1. The Legacy of Decades of Unsustainable Logging

In 1989 researchers at Oregon State University, responding to questions posed by the state's legislature and governor, looked to see if the state's forest lands could sustain recent harvest levels. Their conclusions were unequivocal. (Sessions 1990) They found that the harvest levels experienced in the 1980s on both public and private lands were not sustainable:

Q: Are we currently cutting more than the sustainable harvest?

A: When 1983-1987 is used as the frame of reference, the answer is YES, we are currently cutting more than the sustainable harvest, both in cubic feet and board feet.

It is important to recognize that these findings generally did not come as a surprise. More than a decade earlier, the so-called Beuter Report had similarly warned that harvest levels throughout most of western Oregon would have to decline by about 20 percent before the end of the century because the land could not sustain the then-current levels of harvest. (Beuter et al.1976) In 1976, when the Beuter Report was written, the primary concern was with overcutting on private lands. In the Roseburg area, for example, logging on private lands was occurring so rapidly that the report concluded the level of timber harvest would have to fall by 40 percent by the end of the century. It was assumed at that time that public lands would supply a never-diminishing stream of timber. By 1990, when the Sessions Report was written, it had become clear that, for a variety of reasons

including, but not limited to spotted-owl protection, federal lands could not continue to supply the quantities of timber cut in the 1970s and 1980s.

In October 1991, the so-called Gang of Four Report revealed that the levels of sustainable harvests described in the Sessions Report are, themselves, an overstatement of actual potential harvests by about 15 percent. (Johnson et al. 1991) The Sessions Report relied on assumptions about timber inventory and land-use allocations contained in then-current forest management plans for public lands. One of the most important of the reasons for the 15 percent adjustment was that the harvest-scheduling software being used by the Forest Service at the time could not take into account all standards and guidelines, especially spatial guidelines. Another important reason was that the agency could not find the timber on the ground that was assumed to be in inventory.

There was nothing unique about these studies and their prediction that timber harvests in Oregon would have to decline dramatically before the end of the century. In testimony before the Endangered Species Committee, Richard Haynes, Program Manager with the US Forest Service at the Pacific Northwest Research Station in Portland Oregon, noted in 1991,

There is an inference ... that harvest declines in the Douglas-fir region were not foreseen and that the recent declines have led the industry and the region to the brink of disaster and were the result of an accumulation of capricious public policy choices.

I suggest that view forgets a lot of history. Starting with the Timber Trends Study in 1963, there has been a bitter and often acrimonious debate among the Forest Service, environmental groups, and industry proponents (both the industry itself and its various allies). This debate has been well documented and much of it has focused around the role that public timberlands should play in offsetting the expected decline in timber harvests from private timberlands. The spotted owl issue is just the latest part of this debate.

In essence, we have known for nearly three decades that harvest declines were coming and for the last decade we have known that many of the conventional ways of mitigating them (such as intensive management on public and private timberlands and departures from non-declining even flow on public timberlands) were no longer socially acceptable or would not produce results in the time needed. It is our own inaction that is to blame.

These conclusions have powerful implications for evaluating the economic effects of the ESA. By extracting timber from the state's forests faster than the available land can grow replacements, the timber industry and the state's timber-dependent communities now must live with the inevitable consequences. Policy makers should not assume that we somehow could turn back the clock and return to the harvest levels of the last two decades if environmental constraints were lifted. It is not the ESA, but the mess left from decades of unsustainable logging, that now press most tightly against the timber industry.

2. The Timber Industry's Efforts to Reduce Employment and Payroll

The decline of employment in the timber industry began long before the recent restrictions in timber harvests on federal lands and stems largely from the timber industry's persistent efforts to replace labor with capital. The timber industry is especially

sensitive to business-cycle conditions. Such cyclical changes often obscure long-run, secular changes in the industry. Looking at how the industry changed between 1979 and 1989, the peak years of the previous two business cycles, controls for many of the cyclical influences. Table 1 shows data on timber harvest, employment, and payroll for these two years in Oregon; it also includes comparable data for Washington and for the two states combined, to show that Oregon's experience was not unique. (Oregon Employment Department Various Years; Warren Various Years; Washington State Employment Security Various Years) The data indicate that, even though timber harvest in 1989 was about the same as in 1979, the industry's employment and payroll declined markedly. During the period, employment per unit of harvest declined by about one-quarter, and the real payroll per unit of harvest declined by 38 percent. Real payroll per employee declined by 32 percent in Oregon, 40 percent in Washington, and 35 percent for the two states, combined. Much of this decline is attributable to the adoption of labor-saving technology, although some of it is associated with changes in the mix of products, e.g., an increase in the number of logs being exported rather than being processed into lumber and plywood. (Greber 1993)

Table 1: Indicators of Long-Run Changes in the Timber-Industry's Employment and Payroll

	Percent Change, 1979-1989		
	Oregon	Washington	2-State Total
Timber Harvest	+9%	-3%	+4%
Lumber & Wood Products Industry			
Employment	-17%	-25%	-20%
Payroll (adjusted for inflation)	-32%	-40%	-35%
Employment/Harvest	-24%	-23%	-23%
Payroll/Harvest (adjusted for inflation)	-38%	-38%	-38%
Payroll/Employee (adjusted for inflation)	-18%	-20%	-19%

Source: ECONorthwest with data from Warren, Washington State Employment Security, and Oregon Employment Department, various years

In his analysis of the extent to which investment in capital has displaced labor, Greber concludes that future capital investment does not necessarily have to lead to further reductions in the industry's labor requirements. It is possible, for example, that mills will adopt labor-intensive production processes to increase the recovery of value-added products from the raw material. Although this probably will occur in some firms, it seems highly likely that the industry as a whole will continue to reduce its employment level. The Oregon Employment Division [1993 #4] among others, has concluded that more permanent layoffs are in the making, regardless of what happens to timber supplies,

Where in 1979 it took 4.5 workers to process 1 million board feet of product in Northwest mills, by 1987 it took only 2.7 workers. More recent figures for 'high-tech' mills show the number down to only 1.5 workers needed for the same production. Even if production levels could be held constant, fewer workers would be needed to produce the same output.

This evidence shows that there are powerful factors other than the ESA that are eliminating jobs in Oregon's timber industry, and it is grossly incorrect to attribute all reductions in the industry's employment since 1989 to the ESA. The ESA has had some impact on employment, but the magnitude is difficult to discern. Haynes, among others, has concluded that the primary effect has been to accelerate changes that otherwise would have taken place. In his testimony to the Endangered Species Committee, for example, he states:

One consequence of these recent events [actions to protect the owl] has been to compress changes expected in timber harvests in another decade into this year and next year. Where the transition from an old growth to second growth industry, thought to be about half completed, was expected to continue through this decade, it will be mostly completed in the next 3-4 years.

In sum, most of the layoffs in Oregon's timber industry and most of the mill closures are ultimately attributable, not to the ESA, but to the prolonged failure of forest managers and the timber industry to manage the state's forests at sustainable levels of timber harvest. Suspending the ESA will have no effect on this truth and its legacy.

C. The Economic Benefits of the ESA

The ESA has two major, positive impacts on the economies of Oregon and its communities: it reinforces efforts to protect and enhance the state's quality of life, and it helps reduce the costs logging and other resource-intensive activities impose on households, businesses, and taxpayers. I discuss each of these.

1. The ESA's Quality-of-Life Impacts

Quality of life plays an important role in the economies of Oregon and the other states of the Pacific Northwest. The region's natural resource amenities underlie much of the robust economic growth the region has experienced over the past several decades. There are two major mechanisms of economic growth in this region. In the first, some event creates jobs in a particular location and people move to the location with hopes of finding employment and higher incomes. This is the so-called, jobs-first-people-follow mechanism. In the second, the relationship is reversed, namely, people-first-jobs-follow. In it, workers and households move to the location, with or without prospects of finding employment, and, in response to the influx of workers and consumers, investors and entrepreneurs establish new enterprises or expand existing ones.

The people-first-jobs-follow mechanism seems to be especially important in Oregon and the Pacific Northwest. There are, of course, multiple reasons why workers, households, and employers are moving to, and remaining in, this region. But the quality of life, and particularly the quality of the region's natural-resource amenities, play a major role. Much of the evidence corroborating the economic importance of natural-resource amenities comes from Oregon, where state agencies, business groups, and others have conducted considerable research exploring the factors influencing the state's economic performance. A 1993 survey of recent immigrants to Oregon by the Oregon Employment Division (1993b) found that one-third of those who moved to the state in 1992 did so primarily to take advantage of its quality of life. Another 1993 survey of current residents of Oregon (Oregon Business Council 1993) reinforced the notion that quality-of-life concerns play an important role in the state's economy. For example:

- When asked, "What do you personally value about living in Oregon?" only 2.6% of Oregonians identified the state's economy, whereas one-half identified the natural-resource components of the area's quality-of-life:
 - 36.0% "Natural beauty and recreation."
 - 14.0% "Environmental quality."
- When asked, "Which is more important to economic growth in Oregon? Relax environmental regulations to make it easier for companies to do business or maintain a quality environment to attract people and companies to Oregon?" Oregonians overwhelmingly recognized the economic importance of environmental quality:
 - 75% "Maintain a quality environment."
 - 16% "Relax environmental regulations."

Anecdotal evidence consistent with the survey results is common. Owners, managers, and workers of firms, especially in Oregon's growing high-tech manufacturing and service

sectors, cite the quality of the state's natural resources as an important factor in the future growth of these industries. (Oregon Business 1994)

The importance of natural-resource amenities to the overall economies of the Pacific Northwest is summarized by the following statement, which comes from John Mitchell, an economist with US Bancorp, and Paul Sommers, and economist with the University of Washington's Northwest Policy Center:

Residents and businesses continue to move into the Northwest as more parts of the region are discovered by national and foreign tourists and businesses seeking ... favorable living conditions for employees. If [the northwestern states] can manage to preserve their unique environmental assets ..., the Northwest will remain one of the strongest regional economies in the country. (Mitchell and Sommers 1992)

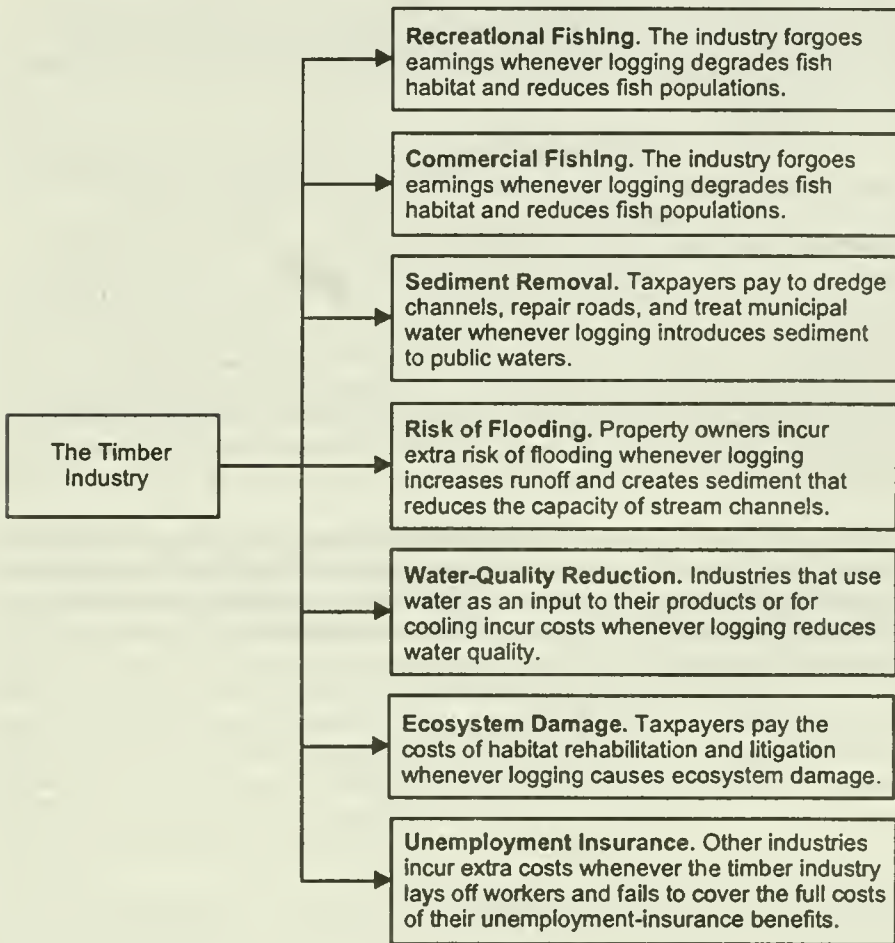
Oregon has explicitly recognized the important role natural-resource amenities will play in shaping the state's economic future. The state's strategic vision of the future includes explicit goals for enhancing the quality of life available to residents and explicit statements regarding the relationship between natural-resource amenities and economic well-being. For example, in its report to the 1995 legislature, the Oregon Progress Board, responsible for developing a strategic vision for the state and overseeing efforts to accomplish the vision, states that, although there is grave concern regarding the contraction of the state's historically important resource-related industries, "Oregonians recognize environmental quality as a central Oregon value, and they regard a quality environment as a key to maintaining a diverse mix of enterprises in the state." (Oregon Progress Board 1994) Actions that enhance the quality of life in Oregon generally are consistent with and reinforce the state's efforts to improve the economic well-being of its residents and, conversely, actions that degrade the quality of life generally impede the state's efforts.

2. The ESA's Impact on the Costs Resource-intensive Industries Impose on Households, Businesses, and Taxpayers

Suspension of the ESA could benefit some firms within the state's timber industry by removing an impediment to logging on some lands. It is important to recognize, however, that the increased logging would impose spillover costs on households, taxpayers, and other industries. Hence, by curtailing the logging, the ESA yields a reduction in these spillover costs. By eliminating the timber industry's spillover costs on others, the ESA stimulates other sectors of the economy, insofar as the firms that otherwise would bear these costs presumably would increase their investment, hire additional employees, and pay owners higher profits.

Figure 1 identifies seven categories of spillover costs that might be avoided because of the reductions in logging. Most of the spillover costs shown in Figure 1 stem from the impacts on streams of logging and related activities, such as road construction. In general, these activities can alter streams by increasing the level of sediment, raising the water temperature, and increasing streamflows during some periods. In addition, they can alter riparian vegetation and the hydrologic structure of stream channels. (Brown and Binkley 1994; Meehan 1991; Reid 1993) These alterations, in turn, can degrade the

Figure 1: Spillover Costs from the Timber Industry that Might Be Avoided Because of the Reductions in Timber Harvest Attributable to the ESA



Source: ECONorthwest

productivity of fish habitat, reduce fish populations, and have an adverse impact on the recreational and commercial fishing industries. Sediment in streams fills stream channels and increases costs to taxpayers, land owners, and water consumers who must pay to remove the sediment. Industries that use sediment-laden water in their industrial processes often incur additional costs to maintain their machinery, remove the sediment, or both. As sediment clogs stream channels, the risk of flooding increases for owners of adjacent land, and this risk is increased further whenever logging leads to increases in runoff.

There is no study that estimates the spillover costs associated with the timber-harvest units that are affected by the ESA. In general, however, the economic costs imposed on others by the runoff of sediment in the Pacific states averages almost \$3.50 per ton of sediment. (Ribaudo 1989) The ESA helps households, taxpayers, and firms avoid these costs insofar as it restricts the logging, road-building, and other activities that otherwise would generate the sediment.

The bottom box in Figure 1 identifies spillover costs that occur whenever the timber industry fails to pay the full costs of labor practices that yield high unemployment for the industry's workers. Virtually all employers must pay an annual premium to provide unemployment insurance for their employees. The unemployment-insurance program, in concept, is designed so that, over time, each firm's premiums would balance the amount of unemployment-insurance benefits paid to its laid-off workers. In the past, however, the amount of benefits paid to workers in the timber industry have exceeded the amount of the industry's premiums. For example, between 1980 and 1991 the unemployment-insurance benefits paid to workers laid off from Oregon's lumber-and-wood-products industry exceeded the industry's total premiums by more than \$221 million (1992 dollars). (Clark 1994) Business owners in other industries, and their workers, bore the burden of making up this difference.

The past behavior of the timber industry indicates that it probably will impose additional unemployment-insurance costs on other industries in the future. The ESA helps to reduce this spillover cost to the extent that it induces the industry to forgo hiring workers and laying them off without bearing the full burden of the costs imposed on the unemployment-insurance system.

D. Suspending the ESA Will Do Little to Help the Economies of Nonmetropolitan Communities

A common theme among the criticism of the ESA is that it imposes inappropriate economic hardship on isolated, rural communities that are highly dependent on timber or other resource-intensive industries. The evidence from Oregon, however, indicates otherwise. The errors in the criticism of the ESA come primarily from two sources: the use of biased and grossly inaccurate economic models; and an exaggeration of the economic isolation of nonmetropolitan communities.

1. Errors Stemming from the Use of Biased and Inaccurate Economic Models

One of the most recent industry-sponsored estimates of the economic impacts of restrictions on the timber industry comes from John Beuter, a leading forester. In January, 1995, he used an economic-base model to assert, "it is not unreasonable to conclude that about one-third of Oregon's employment in 1990 depended on ... the wood products sector." (Beuter, 1995) Statements of this kind have been a part of economic lore in the Pacific Northwest for years, which is surprising since it takes only a little empirical work and common sense to see how seriously wrong they are.

In 1990, Oregon's economy employed 1.25 million workers. By the reasoning in the report, then 416,700 (one-third of 1.25 million) of Oregon's jobs in 1990 depended on the timber industry. Furthermore, when the timber industry's employment decreased by 16 percent between 1990 and 1993, then total employment must have decreased by 66,700 jobs (16 percent of 416,700). But total employment didn't decrease, it increased, to 1.31 million by 1993. In other words, the economic-base model indicates that one-third of Oregon's economy was in free-fall, but total employment grew because the other two-thirds of the economy was skyrocketing. There's no evidence to support this. Even a casual review of the state's economy during 1990-93 fails to find one-third of the state's households, banks and supermarkets in a bust and two-thirds in a boom. Instead, there was growth across the entire state.

The magnitude of the error is seen by comparing the role the economic-base model assigns the timber industry with the role it assigns the high-tech industry. The report argues that, whereas the timber industry supports one in three jobs, only one in a hundred jobs in Oregon depends on the high-tech industry. To put this in perspective, Oregon's high-tech industry employed 51,700 in 1990 compared to the timber industry's 63,600, and each had a payroll of \$1.6 billion. By 1993, however, the high-tech industry's payroll had expanded to \$1.9 billion, while the timber industry's payroll had contracted to \$1.5 billion. And yet the report concludes that the timber industry contributes thirty-three times more to Oregon's economy than the high-tech industry. In other words, it concludes that the impact on the state's economy will be greater if it adds 35 workers at a sawmill than if it adds a new 1,000-employee manufacturing plant in the electronics industry.

The report's author concludes that one-third of Oregon's jobs in its schools, hospitals, engineering firms, banks and other non-exporting firms rests on the shoulders of the timber industry. But he has it exactly backwards. The timber industry, struggling to remain competitive in a global market, cannot generate new jobs and higher earnings. Furthermore, it can succeed in its struggles only if Oregon has world-class schools,

hospitals, engineers, banks, and—in the words of economist Wilbur Thompson—"all the other dimensions of infrastructure that facilitate the quick and orderly transfer from old dying [industries] to growing ones." That is, the so-called non-basic activities that are given such short shrift by this report and others are the cause, not the effect, of a robust, dynamic economy.

Getting the correct economic theory has important practical consequences, because one's understanding of the economy affects one's policies and actions toward it. By Beuter's theory, Oregonians should encourage the state's schools to prepare students to work in timber-related industries rather than in high-tech industries, its banks to invest in lumber rather than computer chips, and its timber industry to ignore the impact that clearcut hillsides and muddy streams have on the state's economy. This conclusion is simply out of touch with Oregon's economy and the process through which state and regional economies grow. Worse, it is a prescription for economic disaster.

2. Errors Stemming from an Exaggeration of the Economic Isolation of Nonmetropolitan Communities

Although there can be no doubt that the economies of many rural communities are changing dramatically, most of this change stems from sources other than the nation's resource-management laws. (Heberlein 1994) Furthermore, changes in technology, transportation systems, and migration patterns are strengthening the economic linkages between many rural communities and metropolitan centers, giving rural residents economic opportunities that were non-existent previously. Because of these trends, those studying rural economies generally have reached the conclusion that the notion of the isolated self contained rural community is a myth. (Heberlein 1994) To understand fully the economic consequences of the proposal to designate critical-habitat areas for the marbled murrelet, one therefore must avoid looking at the adjacent communities in isolation.

Technology has reduced many barriers between rural and urban areas. With advances in telecommunications, for example, rural residents and urban residents have almost equal opportunities gaining access to educational resources, participating in a variety of markets, and providing services to customers. The result is a resurgence of some rural economies and, increasingly, the evolution of a rural economy depends more on the educational characteristics of its residents and the quality of its telecommunication systems, and less on its location. (Heberlein 1994) The growing integration of urban and rural areas resulting from new technologies, greater use of existing technologies, and the increasing mobility of workers, households, and economic activity permit each type of area to take greater advantage of the amenities offered by the other. Urbanites can relocate to rural environments and telecommunicate back to city offices. Rural shoppers can turn on their television and pick up a phone to purchase goods via satellite shopping networks. Farmers can buy and sell cattle and other products from the farmhouse.

Rural residents also are less likely than in the past to be working in timber, mining, and other industries related to resource extraction. Resource-intensive industries, such as the timber industry, historically located processing plants adjacent to the raw material to reduce the costs of transporting the raw material to the factory. Because of technological changes that both allow and require additional processing per unit of final output, raw

materials are a smaller component of costs for most final products, and many manufacturers seek to locate, not near the raw material, but near large markets and a large pools of qualified workers. Most of these industries are no longer dispersed throughout rural areas, however, but have consolidated near urban centers to have better access to both buyers and workers. (Duffy 1994; Heberlein 1994) This is true of the timber industry in Oregon and the Pacific Northwest. More than 80 percent of the jobs in Lane County's lumber-and-wood products mills, for example, lie in or adjacent to the county's urban core, Eugene-Springfield. (Niemi and Whitelaw 1994)

A reduction in rural timber employment does not mean that Oregon's rural communities have been emptied. To the contrary, most of Oregon's rural communities are experiencing population growth that, while perhaps not as strong as the growth in the state's metropolitan centers, is robust nonetheless. An explanation for the economic strength of Oregon's rural communities comes from James Reinmuth, the dean of the University of Oregon's College of Business Administration, who notes (Reinmuth 1994),

Evidence suggests that much of Oregon's recent growth can be attributed to the in-migration of a highly educated class of workers who are either self-employed or work for an employer in another state. These "fax machine yuppies" choose Oregon to live for the obvious reasons: our state's scenic beauty, modestly priced housing, moderate climate and relative personal safety. Furthermore, they tend to choose smaller communities, in many cases offering new life to communities formerly dependent upon the timber industry.

In conjunction with technological changes in manufacturing processes, the development of transportation systems also has reduced economic barriers between nonmetropolitan and metropolitan areas. (Mills 1987) Transportation systems, especially the trucking industry and the interstate highway system, have reinforced the technological changes, allowing many manufacturing firms to locate outside metropolitan areas, but still have ready access to urban customers and a large labor pool. This pattern is evidenced along Interstate 5, which runs through western Oregon.

The migration patterns of workers and households and the locational decisions of firms have important consequences for nonmetropolitan-metropolitan linkages. (Heberlein 1994) Nonmetropolitan areas, which historically have had a higher concentration of elderly persons, seem to be attracting even more. Nationally, the number of persons 65 years and over has increased 60 percent since 1970, and this group now represents approximately 13 percent of the nation's total population. (US Department of Commerce 1992a) During each of the three previous decades, elderly persons exhibited general movement from metropolitan areas to nonmetropolitan areas. (Heberlein 1994) An increasing elderly population in nonmetropolitan areas tends to reduce the isolation of nonmetropolitan communities in several ways, primarily by supporting nonmetropolitan-metropolitan trading networks. Because of national entitlement programs and other factors, the elderly, as a group, now have greater wealth and income than in the past and their expenditure of the transfer payments they receive from pensions and other sources provides an important source of financial support for nonmetropolitan retailers, health clinics, and so forth.

In short, the economic isolation of nonmetropolitan communities is diminishing. Clearly, some communities are more isolated than others, and, within a given community, some residents are more isolated than others. But virtually all nonmetropolitan residents are getting closer, from an economic perspective, to the state's metropolitan centers. Except in rare instances, to see the full economic consequences of the ESA or similar

legislation, one must take into account the economic integration of nonmetropolitan areas with metropolitan centers, near and far.

Even within the timber industry itself, the economic isolation of nonmetropolitan areas has diminished greatly. One should not presume, for example, that, if the ESA were suspended and logging allowed at a particular site, that an increase in timber-industry employment would occur in the adjacent community. Several factors make predicting the location of the impacts very difficult. Loggers travel long distances to find work and mills compete intensely for logs over distances of several hundred miles. Within this environment of region-wide competition, an increase in timber harvest in one locality is likely to result in an increase in timber-industry employment, not necessarily at the closest sawmill, but at the most efficient sawmill in the entire region. Similarly, the timber-harvest increase might affect the paycheck, not of the logger who lives nearby, but of the one who lives several hundred miles away. In short, the distribution of employment impacts that follow from a specific increase or reduction in timber harvest would be complex and dispersed throughout the western portions of Washington, Oregon, and northern California.

The diminished economic isolation of nonmetropolitan areas greatly reduces the likelihood that suspension of the ESA would be an efficient tool for addressing the economic needs of rural residents. Instead, by undermining the strength of the overall statewide economy, such an action would reduce the outlook for all communities in the state. In short, the ESA has reinforced state and local efforts throughout Oregon to achieve sustainable growth in jobs and incomes. Suspending the ESA would injure the economic prospects for Oregonians, rural and urban, now and in the future.

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**BEFORE THE HOUSE OF REPRESENTATIVES
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE**

Statement of the Pacific Rivers Council

**Regarding Protection and Restoration of Aquatic Ecosystems
Under the Endangered Species Act:
Current Implementation on Federal Lands and Key Issues for Reauthorization**

**Thursday, June 1, 1995
Roseburg, Oregon**

Thank you for the opportunity to testify. My name is Bob Doppelt. I am the Executive Director of the Pacific Rivers Council, a regional rivers and fisheries conservation organization with 1500 members. We have offices in Eugene and Portland, Oregon, Seattle, Washington; Bozeman, Montana and Alexandria, Virginia. Our organizational objective is the development of watershed-based protection and recovery strategies which combine healthy aquatic ecosystems with sustainable community development. I have an intimate knowledge of many rivers and streams across the West through my experiences as a professional river outfitter and as an educator on natural resource issues.

In our view, the Endangered Species Act must remain a strong legal tool because it is the refuge of last resort for species and ecosystems that have reached the brink of extinction. The Act must not be weakened precisely because it is the safety net for species and habitat that have not been protected by other laws. By protecting species and habitats, the ESA also protects and creates jobs and widespread economic benefits. We strongly believe that only through full implementation of the Act's current protections (which apply primarily through consultation on federal actions) and through the types of administrative improvements and economic incentives we suggest can our society attain and maintain the ecological health upon which a truly sustainable economy can be built.

I THE ECONOMICS OF ENVIRONMENTAL PROTECTION AND THE ESA

In my five minutes here today, I want to make six points about the Endangered Species Act and its relationship to the economic future of the West:

- *The West (Oregon, Washington, California, Nevada, Idaho, Montana and Wyoming) is facing the unprecedented depletion and loss of our once flourishing native fishery.* This problem is not caused by the ESA. In fact, the ESA is part of the solution.

- *This hearing is not really about the Endangered Species Act.* It is about the failure of our society to care for our natural resources in a manner that prevents the need for ESA listings.
- *The ESA does not pit Jobs against the Environment. The real issues are about "Jobs versus Jobs".*
- *Environmental protections, and the ESA specifically, have not created nationwide economic chaos.* In fact, quite the opposite is true.
- *Environmental protection, and the ESA specifically, have not caused widespread rural poverty and distress.* These are caused primarily by macro economic forces.
- *The public supports the ESA.*

1. The West (Oregon, Washington, California, Nevada, Idaho, Montana and Wyoming) is facing the unprecedented depletion and loss of our once flourishing native fishery.

At least 314 stocks of anadromous salmon (trout, steelhead, salmon and char) are at risk of extinction within the range of the northern spotted owl. (FEMAT, 1993). Over 100 stocks are already extinct. (Nehlsen et. al. 1991). Most of the region's resident fish, such as bull trout and westslope cutthroat trout, are also at risk of extinction. (Warren and Burr, 1994). These losses have created widespread ecological problems and economic hardship. The Endangered Species Act did not cause these problems - unconstrained human development did. However, the ESA is one of the few tools that can help prevent total loss and help rebuild our native fish runs.

Why are we losing the salmon? Many factors have caused the salmon's decline including overfishing, dams, hatcheries and other problems. However, the most universal and pervasive problem is the loss of freshwater habitat - the places where fish can spawn and rear their young. These streams were degraded by inappropriate logging, road building, cattle grazing and other forms of human development.

These activities created a whole series of interrelated problems. Loss of vegetation and soil lead to changes in hydrology which cause higher streamflows in spring and lower flows in late summer. Massive silt problems from erosion smother spawning beds. Loss of riparian vegetation leads to less shade for the streams, fewer pools for fish to rest in, and high water temperatures lethal to fish and other aquatic life. All of this has caused the salmon to collapse.

These problems signify widespread ecological problems which have caused economic hardship. The Endangered Species Act did not cause these problems - unconstrained human development did. However, the ESA is one of the few tools that can help prevent total loss and help rebuild our native fish runs.

2. This hearing is not really about the Endangered Species Act.

It's really about the failure of our society and governments to care for our land, rivers, forests and fisheries with all citizens and future generations in mind. We have failed to provide sustainable stewardship of our most valuable and finite resources so that no species, whether they be owls, salmon or trout is forced into extinction. It is but a delusion to believe the ESA is the problem. The ESA is but a tool of last resort. The real issue that needs to be discussed is what our society needs to do to prevent having to invoke the ESA in the first place.

3. There is a misperception by some that the Endangered Species Act pits 'jobs against the environment' when the real issues are about 'jobs versus jobs.'

There is no better example than the loss of the over 60,000 person years of employment and over \$1.2 billion a year produced by the regional salmon fishing industry as recently as 1988 (PRC, 1994). Today, due in great part to the loss and fragmentation of freshwater aquatic habitat, those numbers have dropped by over 90%. The coho troll fishery alone once generated between 60 and \$70 million dollars per year in *direct* personal income for Washington, Oregon and California. For the Umpqua Basin, site of this hearing, it is estimated that the value of recreational salmon and steelhead fisheries are somewhere between \$4 million and \$12 million. (Botkin et. al. 1995).

Today, the Clinton Administration has declared the coasts of Oregon, Washington and Northern California as 'Disaster Areas' and provided \$15 million in disaster relief. There is no coho fishery, either commercial or recreational, and an ESA coho listing is imminent.

The Endangered Species Act is not about losing jobs. It is about saving and creating jobs which depend on healthy ecosystems. What has become increasingly clear is that while we were supporting unsustainable activities by a few elements of the economy in the west - unsustainable timber and cattle grazing for example -- we are trading off and destroying other key elements - such as the fishing industry, the coastal communities that depend on the fishery, and the spinoff industries such as those that build boats, fishing tackle and many other sectors of the economy.

In effect, one group's "way of life" directly impacted many other peoples "way of life". This is an age-old dynamic. While the timber jobs are short-term, by comparison, the fishing jobs should have been perpetual - the fish should have come back year after year over the eons. What better example of sustainability can there be than salmon returning to their streams year after year?

But the impacts go well beyond the fishing jobs. With the help of ECO Northwest, an economic consulting firm, we have produced some economic analyses that have found that there are both direct and indirect economic costs which are borne by other sectors of the economy from ecologically insensitive management. These costs are borne by downstream flood victims (such as occurred in the 1990 Skagit River Flood and elsewhere in Washington and California), municipal water users, industrial water users, lowland farmers, city and county road maintenance

and construction budgets, commercial fisheries, recreationists, utility costs for reservoir dredging, municipal costs for channel dredging and many others. (Niemi and Whitelaw, 1995).

Other studies have also found the converse to be true: that management measures undertaken to help listed species have helped local economies by reducing the external costs of poor stewardship. For example, improved riparian management has reduced flooding along major Arizona rivers. (McMullin and Sammons, 1994).

The loss of salmon is but one example of why the real issues are almost always jobs in one sector versus jobs and economic health in other sectors, not jobs versus the environment.

It is also symptomatic of the way our society often looks at environmental laws. We often fail to take into account the social, environmental and economic benefits that the laws were designed to create. This is akin to measuring the pain of a hypodermic needle without measuring the benefits of the penicillin it injects.

The problem is generally that we can easily see one set of jobs that we may be told are directly affected by environmental protections (the local mill that shuts down next to a forest when old growth is protected), while the other jobs and economic benefits are generally further away and harder to see. But they are just as real.

These costs are not paid by those that degrade the landscape - they are passed on to these others or to future generations. Economists call these externalities. These examples can be found through any sector of the economy.

Therefore, invoking the Endangered Species Act to protect salmon is just the biological evidence of economic problems already well known. The Endangered Species Act is the only tool available to save the salmon and the jobs associated with them. It is therefore one of the most important economic development tools today in the Northwest.

4. Environmental protections, and the ESA specifically, have not created regionwide economic chaos.

In fact, quite the opposite appears to be true. For example, despite public land protection for the Northern Spotted Owl and some steps for salmon, the regional economy is booming: there is no regional economic crisis.

Further, numerous studies have shown that the ESA has not resulted in measurable reductions in state economic performance. To the contrary, the great majority of economy-wide studies show a small positive effect of environmental protection on overall employment (Institute for Southern Studies, 1994).

Their data found that environmental protection raises employment levels because:

- 1) it makes intensive use of labor and domestically produced materials;

- 2) environmental industries provide some recession-proof stimulus to aggregate demand;
- 3) studies consistently show that those regions where environmental protections are strongest consistently have the strongest economies and continue to draw new people with their capital that create the new jobs.

The data show that environmental regulations are not responsible for the long term decline of manufacturing in the nation - though they are often cynically used as the bogeyman by industries looking for a scapegoat to divert attention away from their anti-community and anti-labor behaviors.

For example, few manufacturing plants have been shut down because of environmental protection - less than 1% of all large scale layoffs. Firms are relocating overseas in poor countries, but the overwhelming reason is lower labor costs, not lax environmental regulations elsewhere. This can be best illustrated in the Pacific Northwest, where timber companies consistently use the spotted owl and salmon as an excuse for closing plants that in fact they had planned to close for years due to decades of unsustainably high levels of timber cutting, inefficiency, outdated equipment, overcapacity etc. These are economic, not environmental, forces.

5. Environmental protections, and the ESA specifically, has not caused widespread rural poverty and distress.

It is true that there may be localized impacts from environmental protection. However, the dominant forces affecting rural community poverty, traditional extractive industries and other industries feeling under siege are also economic, not environmental forces. Numerous studies consistently show, for example, that there is little if any relationship between the levels of rural poverty in the Pacific Northwest and the levels of timber resource extraction.

The recent study by the Department of Rural Sociology at the University of Wisconsin (Heberlein, 1994) is just latest to show that the same pattern and levels of rural poverty existed in the 1980's when timber harvest was at the highest ever, and today, when they are low. Many other factors cause this.

The impacts of the ESA have been so localized that they are not reflected in economic analyses of state economies. A study by the Massachusetts Institute of Technology found that during the period from 1975 until 1990, the data show that endangered species listings have not depressed economic development activity as measured by growth in construction employment and gross state product. (Meyer, 1995). Rather, endangered species listings are associated with high economic growth and its associate population pressures, both of which act to bring development pressures on natural habitats to the forefront.

The contention that the ESA has not hindered states' economic growth should not be surprising given the fact that 99% of all projects which undergo consultation proceed without interference. (GAO, 1992). This figure contradicts any argument that species protection has taken

precedence over economic, social and political considerations. (Meyer, 1995) The overwhelming evidence is that 89% of all consultations are informally conducted, such that the proposed projects proceed on schedule and without interference. (GAO, 1992). Of the 11% of projects that result in biological opinions after formal consultations, less than 10% are ultimately deemed to "jeopardize" a listed species. Of these projects, most ultimately go forward with some changes.

"The evidence is clear: Based on the actual economic experience under the Endangered Species Act, weakening the Act will not spur job creation and economic growth. It will not launch poor rural or western communities on the road to prosperity. It will not save overextended developers from bankruptcy. If "growing" the economy is the top priority of government, then we should focus on policy options that can make a difference." (Meyer at 16).

The fact is that the nation is going through a massive economic restructuring that has caused tremendous upheaval. The traditional ways of making a living are eroding, especially in resource extraction industries. Some people are scared, feel forced into a corner and without alternatives. In a pattern repeated over the eons, scared people tend to want to find some scapegoat to blame for their problems and to lash out - at government, or those with different values, colors or beliefs. Today this includes environmental laws and the ESA.

Short-term, local economic impacts should be recognized and addressed, but they cannot justify weakening the Act, which speaks to the nation's long-term economic and ecological health. This is not to trivialize the short-term, localized impacts of changes in natural resources management. These impacts are very real. They are, not, however, impacts which justify weakening the protections afforded by the ESA. The rational response to local economic distress is to provide economic development assistance, job training grants and other targeted assistance which can help affected communities make the transition away from economic activities which we now know are not sustainable over the long haul.

In sum, both economic theory and widespread evidence provide compelling support for the conclusion that the major forces affecting rural communities, traditional extractive industries and others are economic - not environmental. Changing the ESA will not stop the macro economic changes.

6. Finally, the public supports the ESA and does not want to see it decapitated.

The push to dismantle the ESA is led by those who argue that they should be able to do anything they wish to make a profit - the public and the environment be damned. Their goal is to use the ESA as a scapegoat to divert attention away from their malfeasance, short sightedness and greed. Don't be fooled. The public wants species and ecosystems protected.

7. Conclusions

The ESA is nothing more than the unfortunate messenger assigned to keep bringing us the same message: that we are living beyond our ecological means. From our standpoint, this hearing is asking all the wrong questions. The real questions aren't about putting species on lists and drawing lines around where they live. We can make it harder to put species on a list, but that won't help us to address the underlying problems of habitat degradation and loss. The real questions are about how we can live on this planet in ways which make the ESA unnecessary. What matters isn't changing the words in the U.S. Code, it's changing how we treat our land, air and water. What we need to be talking about is conservation-based, truly sustainable economic development.

The Pacific Rivers Council suggests that some specific changes do need to be made in the way the ESA is implemented. These changes are outlined in the following discussion.

II. CONSULTATION: Observations and Recommendations

PRC has found it necessary to resort to litigation to compel proper implementation of the ESA on federal lands encompassing salmon habitat in northeast Oregon and Idaho. Given this experience, many of our comments today will focus on our assessment of how the various federal agencies have responded to their duties under the Endangered Species Act as it is currently written. We also offer a few suggestions for improvement.

In sum, it is our considered opinion that the federal land management agencies have not complied with the letter or the spirit of the Act. Specific issues for the land managers include: (1) their recalcitrance with regard to consultation on programmatic actions they themselves have deemed "may affect" a threatened or endangered aquatic species; (2) their failure to consistently provide adequate biological assessments to the National Marine Fisheries Service; and (3) their failure to proactively confer at the candidate or proposed-for-listing stage, consistent with the intent of the Act.

Issues for NMFS include: (1) the failure of NMFS to issue biologically defensible jeopardy opinions, and (2) the failure of NMFS to require an ecologically appropriate scope of the action area over which a jeopardy opinion will apply. However, we commend this agency's recent decision to conduct comprehensive status reviews for all salmon and anadromous trout populations in Washington, Oregon, Idaho and California.

Overall, however, we think it is important to recognize that the implementation of the ESA through the consultation and recovery planning process has been much more successful with regard to federally managed lands than it has on private lands. On private lands, new incentives for conservation of critical aquatic habitats are required, some of which can be provided through the ESA itself and some of which can and should be provided through the alignment of programs authorized under other statutes with the priorities which develop from the listing of aquatic species.

A. The Decline of Aquatic Ecosystems and the Critical Importance of the Federal Lands

➤ *From Owls to Fish.* Reform of federal land practices in the Northwest region was defined in the late 1980s and early 1990s by debate over the listing of the northern spotted owl. In the Northwest, and in many other parts of the country, much of this reform focus has now turned to aquatic ecosystems and fish, both anadromous (ocean going) and resident species.

Scientists now estimate that aquatic species are disappearing at a much faster rate than terrestrial species. The Forest Ecosystem Management Assessment Team report (FEMAT) in 1993 stated that 364 species and subspecies of native fish are in need of special management considerations because of declining populations. Since 1910, the legendary wild salmon and steelhead of the Columbia River system have declined by 95%.

➤ ***Federal Lands are Critical to Recovery of Aquatic Systems and Fish.*** Given the current crisis faced by aquatic ecosystems in the West and nationwide, we cannot emphasize enough how critical the full cooperation of the federal land managers is. The federal lands, primarily the national forests, encompass most of the remaining healthy habitat and headwater areas. This fact has lead numerous scientists to recommend that the watersheds containing these areas be protected and restored. For example, the FEMAT, which studied forests west of the Cascade Crest, stated:

Over the last century, federal land within the range of the northern spotted owl has become increasingly important for ensuring the existence of high quality aquatic resources . . . Thus, society's reliance on federal lands to sustain aquatic resources continues to grow. (FEMAT at V-2)

The Forest Service has also recognized the important role of the land under its management nationwide:

In many parts of the country, National Forests provide the only sustainable habitat left in a landscape that has been heavily developed. Because these Forests serve as refugia -- arks for genetic diversity -- the responsibility for conserving these isolated species may well fall to their managers. (USDA, 1993).

The findings of both the Forest Ecosystem Management Assessment Team and the Eastside Scientific Society Panel both led to recommendations for the protection and restoration of a network of ecologically "key" federal watersheds. Given these finding, there can be no doubt that the federal lands must provide the basis for a region wide recovery strategy.

B. The problems have been not with the consultation process, but with a failure on the part of action agencies to consult in good faith.

Pacific Rivers Council has had a good deal of first-hand experience with the consultation process as it has played out between the Forest Service and the National Marine Fisheries Service over Snake River Chinook salmon. We can confirm the observations of others that NMFS efforts to complete timely consultations have been hindered by the Forest Service's failure to provide adequate information in their biological assessments. We can also confirm that political pressure is brought to bear on the content of Biological Opinions, and that this pressure has resulted in inadequate protection for listed species.

➤ ***The Wallowa-Whitman and Umatilla National Forests: An example of foot-dragging.*** A review of some of the events surrounding the listing of chinook salmon in these two forests exemplifies most of our implementation concerns.

1. The Snake River chinook salmon were proposed for listing as a threatened species in June of 1991 and formally listed as threatened in April of 1992.

2. Section 7(a)(4) of the Act directs federal agencies to confer with the National Marine Fisheries Service on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference process offers an early opportunity to eliminate conflicts with endangered species without halting ongoing activities. The Forest Service did not initiate a conference when chinook were listed in June of 1991.
3. In March of 1992, the Forest Service and NMFS entered an Interagency Agreement in which they agreed to (1) cooperate in developing and implementing conservation strategies for the about-to-be listed salmon beginning within one year and to amend affected Forest Plans consistent with these strategies, and; (2) to conduct a biological evaluation of all proposed and ongoing activities in the Wallowa-Whitman and Umatilla Forests at the watershed level. To date, not one of the conservation strategies has reached even the draft stage. The Forest Service has received biological opinions from NMFS on only one of the twelve watersheds largely because of the agency's delays in providing sufficient information to NMFS.
4. When chinook were listed in April of 1992, the Forest Service did not initiate consultation on the existing Forest Plans for the Wallowa-Whitman and Umatilla forests. Two months after Pacific Rivers Council threatened to sue over this inaction, the Forest Service and NMFS attempted to conceal the agency's violation through an exchange of letters that purported to excuse the Forest Service from its statutory obligations. Both the Oregon district court and the Ninth Circuit rejected the agencies' concerted attempt to sidestep the law.
5. Despite the Interagency Agreement and the ESA consultation requirements, in the months following listing the Forest Service proceeded with numerous timber sale and roadbuilding projects without completing consultation on these projects, all of which the agency acknowledged "may adversely affect" salmon. At least 20 timber sales and 10 new roads were completed in the year following listing.
6. Although biological assessments were submitted for some projects, many of these could not be evaluated by NMFS due to inadequate information provided by the forests. Eventually the Forest Service and NMFS agreed to withdraw all but one biological assessment in January of 1993. The Forest Service did not supply adequate assessments to NMFS until late 1993 and, in some cases, spring and summer of 1994. Frequently, the assessments did not even include information about the status or location of salmon populations and spawning and rearing habitat in the project areas, or basic information about the projects -- such as the number of trees to be logged.
7. On May 27, 1993 (almost a year after the chinook was listed), upon learning of these ongoing activities, Pacific Rivers and others moved for an injunction to halt

all ongoing and future logging, grazing and roadbuilding projects that may adversely affect the listed salmon. Future activities were enjoined in October by the district court, but ongoing activities were not enjoined until July of 1994 by the 9th Circuit.

8. On October 6, 1993, the federal District Court issued an order requiring these Forests to initiate consultation with NMFS on the Forest Plans. Although the Forest Service appealed this decision, no stay was granted, meaning that the agency was bound to obey the court's direction to initiate consultation. Nonetheless, consultation was not initiated until ten months later in August of 1994, a full month after the 9th Circuit rejected the Forest Service's appeal.

In sum, as demonstrated on the Wallowa-Whitman and Umatilla National Forests, the Forest Service has consistently failed to meet its legal obligations to perform pre-listing conference or post-listing consultations at both the project and the Forest Plan levels and has consistently failed to provide adequate biological assessments to NMFS based on the "best available scientific and commercial information." Section 7(a)(2); 50 C.F.R. 402.14. The agency has also failed to meet its obligations under the March 1992 Interagency Agreement, in which it admitted that the Forest Plans are inadequate to meet the needs of the listed species.

➤ *The Six Idaho Forests:* We think the pattern of bad faith on the part of the federal land managers is also exemplified by events in the Idaho forests. Despite the fact that the lawsuit in Eastern Oregon had already determined that national forests containing critical habitat for protected fish must submit forest and project plans for consultation, the Idaho national forests failed to initiate this consultation until Pacific Rivers sought a separate injunction for these forests. Consultation on the plans was finally initiated on September 9, 1994, the same day the government was scheduled to respond to PRC's motion for a preliminary injunction. In Idaho, as in Oregon, the Forest Service failed to develop conservation strategies for any of the 36 salmon-bearing watersheds, contrary to the March 1992 Interagency Agreement. The Forest Service also failed to submit to NMFS any biological assessments for ongoing activities in 16 of these watersheds.

The court decision that forced the completion of the consultation on six Idaho Forest Plans did not result in stopping any activities in national forests in Idaho. Although an injunction was issued, a temporary stay of that injunction was promptly put in effect, and subsequently was extended for about 45 days. During this 45-day period, consultation was completed. It is important to further recognize that a draft biological opinion (the crucial step in consultation) had already been completed in December of 1994, so the subsequent delays could not be attributed to anything more than stalling. There was no economic impact from the court's action since no activity was affected by the stayed injunctions.

On the Idaho forests, consultation was well underway prior to the court's action; consultation for Oregon and Washington forests was begun on August 3, 1994. The process for national forests in Idaho was begun September 18, 1994. Consultation for all national forests was completed March 1, 1995. The PRC legal action was initiated out of concern that the agencies

were more worried about turf than about salmon, and we felt that was affecting delays more than anything else.

This consultation was after all the first time the National Marine Fisheries Service was required to review Forest Service planning documents. As fisheries experts, the Service had only limited experience working with national forest plans. Adding to the complexity, the National Marine Fisheries Service was confronted with the consolidation of eight forest plans.

Finally, it is important to recognize that the impacts that confront salmon recovery efforts involve virtually every land use and development activity that occurs in the Northwest. Even on national forest lands alone, the impacts can come from a host of development activities.

Section 7 consultations worked for salmon in Idaho and work for the Endangered Species Act, and as we predicted, in spite of the perceived complexities. A good faith consultation does not need to be prohibitively time-consuming. Additionally, there need be no disruption of economic activity because of the process.

➤ *Failure to Consider Cumulative Impacts and Projects: Panther Creek on the Salmon National Forest.* NMFS has issued a draft jeopardy opinion with respect to proposed activities on Panther Creek based largely on damage done by past mining and grazing activities high up in the watershed. Among the proposed projects is the Bear Track heap-leach gold mine. However, before the jeopardy opinion could formally issue the Forest Service submitted a separate biological assessment applicable only to the Bear Track Mine proposal, which resulted in a no-jeopardy opinion which was unencumbered by the cumulative effects of other activities in the watershed. This situation is an example of the agencies' selective, non-cumulative approach to endangered species impacts analysis. When the agencies wish to push through a project, they readily abandon their own process for evaluation. This pattern of failing to consider cumulative impacts and to issue jeopardy opinions on this basis is confirmed by a recent study which surveyed agency employees who admitted NMFS' reluctance to find jeopardy based on cumulative impacts. (McMullin and Sammons, 1994). This case is currently in litigation.

C. Issues for NMFS: Biologically Indefensible "No Jeopardy" Opinions and Failure to Protect Subspecies

➤ *Jeopardy Question Litigated for the Columbia River Hydrosystem:* The Idaho Department of Fish and Game and the State of Oregon had to resort to legal action against NMFS, the Army Corps and the Bureau of Reclamation to force the issue of whether the Columbia River hydrosystem jeopardizes listed fish. NMFS has consistently issued a "no jeopardy" opinion with regard to an operation that eliminates 90% of juvenile fish and two-thirds of all returning spawners. In separate opinions, the Oregon district court and the 9th Circuit concludes that major modifications to the hydrosystem are required to protect and recover the salmon and comply with the requirements of the ESA and the Northwest Power Act. This case is clear evidence of a case where NMFS opinion had more to do with causing minimal disruption of the hydrosystem than it did with preventing jeopardy to protected species. (McMullin and Sammons, 1994).

➤ *Jeopardy Opinions Selectively, and Inequitably, Issued:* NMFS has been more willing to find jeopardy with respect to tribal and recreational harvest than it has for hydrosystem operations. When NMFS threatened to eliminate the tribal harvest -- a negligible impact in relation to the hydrosystem impacts -- tribal harvesters had to resort to legal action to preserve their treaty rights, forcing a settlement. Similarly, the recreational fishery on all anadromous fish in the Columbia has been shut down, with significant negative impacts on the local economy. To date, it appears that those most dependent on the salmon fishery, culturally and economically, have been impacted disproportionately with other sectors with larger overall impacts on salmon viability.

➤ *Failure to Protect Subspecies Contrary to Intent of the Act: Illinois River Winter Steelhead:* NMFS has interpreted the ESA to require only the protection of "species," which it defines as an "evolutionarily significant unit," in a fairly narrow way. It appears that NMFS' interpretation of species may be used to deny protection to clearly declining subspecies otherwise deserving of protection. For example, the Illinois River winter steelhead were denied protection under this standard.

D. Federal Lands are Critical to Recovery Aquatic Ecosystems in the Pacific Northwest

Aquatic ecosystems in the Pacific Northwest are in crisis. Salmon production in the Columbia River system has declined to less than five percent of historic levels, and at least 106 major populations of migratory salmon and steelhead trout are extinct on the West Coast -- many of these on the East side of the Cascade Range. Sound management of the national forests are critical to the maintenance and recovery of most of the anadromous fish that remain. For example, 14 of the 25 at-risk resident fish species or subspecies in Oregon are found in watersheds within the boundaries or immediately downstream of national forests. This is because the national forests contain the majority of the region's remaining healthy habitat and headwater areas. In light of the findings of the Forest Ecosystem Management Assessment Team and the recent Report of the Eastside Scientific Society Panel, both of which recommended the protection and restoration of a network of ecologically "key" federal watersheds, there can be no doubt that the federal lands must provide the basis for a region wide recovery strategy.

E. Conclusions on Consultation

Some of the implementation problems noted above could be addressed by clarifying the existing requirement in the Act that the reviewing agencies (FWS or NMFS) consider the cumulative effects of all related federal and not-federal activities when consulting or conferring under Section 7 and that the proposing agencies submit adequate information to conduct this analysis. The requirements for individual agency actions would be maintained.

Over time, consultation on Forest and BLM district plans will hopefully accomplish these goals. Currently, consultation tends to look back at what was done before. Consultation on forest plans will require that the impacts of past, current and future activities be considered together.

Also, federal actors could be moved into action earlier if the affirmative conservation obligations under Section 2(c)(1) and 7(a)(1) were extended to Category I and II candidate species (see below)

Even given its problems, consultation has been more successful than the habitat conservation planning. The scope of the consultation requirement should be fully extended to meaningfully include all actions which are carried out in whole or in part by federal agencies or with federal funding.

III. FUNDING AND PRIORITIZATION: Recommendations for Improvement

A. New Funding Options Must be Provided

The implementation of the Act has been hindered by inadequate appropriations for federal agencies, cooperative state programs and local habitat conservation planning. Although reauthorization cannot directly address the problem of inadequate appropriations pursuant to existing authorization, we feel very strongly that the Act should at least set up the framework to establish new funding mechanisms for generating revenues to be dedicated to ecosystem recovery. Targeted taxes, surcharges and user fees should be considered. States and localities should be eligible for federal loans to purchase critical habitat and/or conduct habitat conservation planning. The establishment of a permanently appropriated trust or revolving fund should be explored, perhaps similar to the National Aquatic Ecosystem Restoration Fund proposed in 1993 by the Merchant Marine Committee.

The National Research Council also recommended in a recent report that funding be dedicated to ecosystem recovery through a trust fund mechanism. (NRC, 1995).

B Implementation problems caused by lack of funding will not be solved by proposals to turn over responsibility for endangered species protection to states.

One of the principal reasons that the ESA has not been fully and efficiently implemented has to do with lack of funding. This is a function of weak political will and short-term economic analysis. Turning over endangered species implementation to states will not solve these problems, and will likely make ecosystem-based recovery planning even more difficult than it is now. For example, funding the ESA through block grants to states (Western Governors Association, 1995) will result in fragmented implementation and enforcement of recovery efforts across state lines. Especially for wide-ranging species like wolves and salmon which cross multiple states, state-by-state planning efforts which must be reconciled would be an inefficient use of resources.

This is not to say, however, that increased cooperation between states and federal agencies is not desirable.

C. The Allocation of Scarce Resources Must be Prioritized According to Ecological Priorities.

In this era of multiple listings, along with increasing fiscal constraints, it is critical that the relevant agencies develop explicit recovery priorities which include decision making criteria and guidelines. These priorities should be expressed in agency rules promulgated with full public participation. Regardless of recovery priority, however, all listed species should be protected from further decline and further degradation of critical habitat. Priorities should reflect ecosystem conservation priorities, not solely species-by-species priorities.

D. Amend Act to Place Affirmative Duty on Federal Agencies to Conserve Candidate Species

For many aquatic and riparian-dependent plant and animal species, the federal lands constitute real or potential habitat refuges. In the case of Pacific salmon, where the headwaters of most major rivers are in federal ownership, the protection and restoration of federal lands are critically important to the ultimate survival of the species that remain. Sections 2(c)(1), 7(a)(1) and 7(a)(4) could include language requiring federal agencies to act affirmatively to protect candidate species prior to listing.

E. Listing and Critical Habitat Designation

- ***Listing Should be Streamlined.*** The listing process must continue to exclude economic considerations and should not, as some propose, provide an opportunity for public appeal prior to the issuance of a final listing decision. Any changes to the act which provide for peer review of listing decisions must contain an explanation of the scientific need for the review in order to avoid a review system which can be used to delay listings as well as to address legitimate scientific disagreements. The "warranted but precluded option" should be limited, as suggested by the American Fisheries Society, by allowing a warranted-but-precluded finding only once per species. (AFS Policy Statement, 1994).
- ***Critical habitat should be identified only on the basis of the best scientific information.*** Proposals to analyze the economic impacts of listing a species during the designation of critical habitat are misguided.
- ***Backlog of critical habitat designations must be addressed.*** Less than 20% of listed species have designated critical habitat. We suggest that the designation of critical habitat be simplified to enable speedy completion of this process. For example, agency discretion to designate habitat could be reduced so that, in the first instance, critical habitat is presumed to encompass all remaining habitat of a listed species. This would be a rebuttable presumption.

F. Listing of Subspecies and Vertebrate Populations Must be Preserved as an Option.

This issue is of particular importance to the conservation of anadromous fish. We strongly believe that the Act should retain the flexibility to recognize species as eligible for listing before they are on the verge of extinction in every river and stream throughout their range. Populations and subspecies can be defined on the basis of the best scientific expertise, but because they may lack some distinctions required to define them as evolutionarily distinct species, existing policies which prevent their conservation as "species" for the purposes of the Act should be reconsidered.

G. Implement the National Research Council's recommendation that survival habitat be identified and protected when a species is listed.

In order to prevent delay and to allow immediate action to protect species, we concur with the National Research Council's recommendation that "survival" habitat be designated during the period required to develop a recovery plan. (NRC, 1995). This should part of a greater effort by implementors to differentiate between an action's impacts on "survival" versus "recovery."

IV. RECOVERY PLANNING

A. Recovery Plans: Schedules, Process and Content.

Deadlines for recovery plans should be clearly set forth in the Act: we suggest 18-24 months for adoption of plans after listing. This duty should not be discretionary. Whenever possible, multi-species, ecosystem-based planning should be conducted with the fullest possible participation of state resource agencies. Plans must be based on species status and ecosystem integrity, and should include clear objectives and measurable criteria to assess recovery. Habitat conservation should be given preference over captive breeding in all recovery planning.

B. Multiple Species Approach.

If multiple listed or candidate species exist, as many species as possible should be included in a single recovery plan, which could prevent the need to list candidate species.

- **Signs of Progress: Comprehensive Aquatic Conservation Planning.** Successful recovery planning for threatened and endangered species must take a landscape approach. (NRC, 1995). At long last, with dozens of potential listings looming on the horizon, we are starting to see landscape-level approaches moving forward. For federal land managers, these include Option 9, PACFISH, the soon-to-be released Inland Fish Strategy and the ongoing Interior Columbia Basin Ecosystem Management Project. We are also seeing NMFS and FWS move toward status reviews which address whole ecosystems and multiple species.

- **Opportunities to integrate species and habitat conservation goals into other statutory schemes.** The ESA is the protection of last resort which is activated when other approaches have been inadequate. Especially with regard to non federal lands, there are numerous opportunities to provide both regulatory and economic incentives through the conservation programs of the Farm Bill, the Clean Water Act, the Coastal Zone Management Act and local land use planning.

V. SECTION NINE TAKINGS AND JEOPARDY

- A. **Ecosystem Conservation must be clearly established as coequal with species conservation throughout the Act and, specifically, in the Section 9 definition of "Take."**

Although to many scholars and advocates of the Act believe it currently treats the conservation of species on a coequal basis with the conservation of the ecosystems upon which they depend, some courts have resisted the extension of § 9 prohibitions to the significant modification of habitat despite agency interpretations to the contrary. We suggest that Section 9 be amended to make it absolutely clear that the term "harm" in the definition of "take" includes the modification of habitat.

No other definition is scientifically defensible. In the words of the National Research Council: "the term "harm" biologically should encompass damage to the entire system, including the physical components of the system, through damage to any of its parts. Such is the nature of systems organization . . . harm in an ecological sense applies to damage to the habitat of a species or curtailment of a species' access to a habitat. (NRC, 1995, at 75).

- B. **Set a Jeopardy Standard in the Act.**

The Act should clearly define "jeopardy" as any action that reduces the likelihood of *either* survival *or* recovery of an imperiled species, not necessarily both. (AFS Policy Statement, 1994). It follows that any significant reduction in the integrity of ecosystems supporting imperiled species, which clearly includes the modification of habitat or introduction of non-native species, should receive a jeopardy determination.

VI. TAKINGS OF PRIVATE PROPERTY: The Fifth Amendment Provides Adequate Protection to Private Landowners

We fully support re authorization provisions which authorize financial incentives and technical assistance to landowners who go beyond the requirements of the law to recover listed species or prevent the further decline of candidate species. We also support funding for cooperative management agreements, voluntary conservation easements, land exchanges and outright purchases of private lands of critical import to ecosystem protection and recovery where appropriate. However, proposals which make landowners eligible for "compensation" based on a so-called "taking of private property" which is deemed to occur before Fifth Amendment

compensation would be due threaten to set a dangerous legislative precedent. Any scheme which deems compensation to be due a landowner for mere diminishment of private property values or use undermines the basis of most environmental and land use laws, all of which restrict private rights in furtherance of a greater public good. Of course, where a "taking" of private property based on constitutional standards can be shown, a private landowner can and should take legal recourse to obtain due compensation.

VII. ENFORCEMENT

A. Citizen Enforcement Rights Must Not be Abrogated and Could be Strengthened.

The broad standing provisions of the current citizen enforcement scheme must not be narrowed to include only those who can show immediate or tangible harm. The power of citizen enforcement could be strengthened by waiving or shortening the 60-day waiting period before suits may be filed in emergency circumstances.

B. Violators Should be Liable for Restoration Costs.

Violators of the Act should be liable for restoration costs in addition to civil and criminal penalties.

VIII. INCENTIVES TO ENCOURAGE CONSERVATION BY PRIVATE LANDOWNERS

For some aquatic species, such as Pacific coastal coho, the lion's share of habitat is on nonfederal lands, many of which are in timber and agricultural production. In order to ensure a minimal economic impact on these landowners, PRC supports the use of economic incentives to spur recovery efforts: For example, if folks can receive a tax benefit for careful management of critical streamed land, they may decide to they can afford not to log, graze or farm it. If technical assistance and grants are available to do restoration, we think this will happen too.

PRC especially likes market-based incentives, which are the basis for the PRC's "Stream Care" program. If producers can fetch a higher price for agricultural products which are grown or raised in a way that is consistent with protection of salmon and their stream habitat, then it will be worth their while to protect the salmon. The problem comes when folks have to make the tradeoff between making a living and environmental protection. We don't think they should have to make that tradeoff, because the consuming public is willing to pay for the extra effort required to use conservation-based practices."

We suggest that Congress should evaluate the effectiveness of following types of incentives to encourage aquatic habitat conservation and restoration on private lands:

- *Preferential Treatment for Estate Tax Purposes.* Congress should consider exemptions from estate taxes for the residual value of land subject to conservation easements in

furtherance of an ESA recovery plan or lands on which qualified preventive measures have been taken to avert the need for listing;

- *Federal Income Tax Credits:* Congress should consider income tax credits for costs incurred by landowners to restore land and habitat which supports and threatened or endangered species.
- *Increased Federal Income Tax Deductions Through Current Deductibility of Watershed Restoration Costs:* Would preferential tax treatment for road maintenance and improvement activities which benefit critical aquatic habitat encourage restorative work by private landowners? We suggest that qualified capital costs should be eligible for current-year deductions where their primary value is ecological, rather than business related.
- *Income Tax Exemptions for Conservation-based income:* Congress should consider whether income tax exemptions for income generated through conservation-based -- or "salmon safe" -- farming or forestry practices which exceed otherwise applicable legal standards would be an effective means of achieving the goals of the Endangered Species Act.
- *Property Tax Breaks for Land Dedicated to Habitat Conservation.* If found to be an effective incentive, the current allowance for deduction from taxable income for local and state property tax should be converted to an outright tax credit for properties subject to an approved habitat management plan. The plan could be a long-term contracts (25 years) or a permanent conservation easement. Under certain conditions, local entities may qualify for a "payment in lieu of taxes" to partially compensate them for the decreased property tax revenues.

CONCLUSION

The Endangered Species Act is one of the most powerful legal tools available to protect aquatic species and ecosystems upon which they depend. Under no circumstances should the Act be weakened. There are some areas, however, which could stand strengthening -- a few of which are discussed here. It is Pacific Rivers Council's firm belief that a strengthened Act will strengthen society's ability to attain and maintain the ecological integrity upon which a sustainable economy can be built.

Respectfully submitted,

Bob Doppelt
Executive Director
The Pacific Rivers Council

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Testimony before the Senate Committee on Environment and Public Works' Subcommittee on Drinking Water, Fisheries and Wildlife

June 1, 1995 Douglas County Fairgrounds, Roseburg, Oregon

Submitted by: Michael W. Wiedeman, External Vice Chair, Oregon Lands Coalition on behalf of the one hundred eight thousand members and sixty-nine groups represented by Oregon Lands Coalition

It is an honor to come before you today and give testimony regarding one of the most important pieces of legislation of the twentieth century.

I am also honored to have the privilege of representing Oregon Lands Coalition and the one hundred eight thousand members from the sixty-nine groups that make up the coalition. Oregon Lands Coalition represents the heart and soul of Oregon. Our membership embodies the very foundation of America. We produce the fuel that runs the engine that has made America the envy of the planet. Our membership is as diverse as Oregon, from labor unions to sportsman groups to the Farm Bureau. The common threads running through all the organizations are the importance of the **protection of private property rights and the knowledge that we must be able to benefit from natural resources today... without jeopardizing the ability of future generations to benefit from those same resources.**

Oregon Lands Coalition supports the Endangered Species Act. The concept of protecting the diverse species that inhabit the United States is important to our members. However, the arbitrary regulations and the inconsistent application of the Act are destroying the very fiber that binds America together.

We must recognize that people are a part of nature as well as spotted owls and salmon. If we are to have healthy and diverse populations of creatures then we must have healthy and diverse communities. We can not afford to destroy whole communities for the sake of species diversity. We must reach common ground. In order to do that we must include **local stake holders** in the solutions. The citizens that live, work and recreate in "critical habitat" care about sustaining the diversity that we all strive for.

Most of our members either own or work in small businesses, involved in ranching, mining, farming or wood products. Every day we are forced with make or break decisions involving our livelihood. How can we make these important decisions when the rules keep changing? Every time we turn around some Judge is making a ruling or some quasi "environmental" group is filling a lawsuit that directly effects our lives and the way we do business. How can we plan for the future when we don't even know what tomorrow might bring?

I could spend the entire day telling the horror stories that I have heard from our members but instead I will use my time constructively.

To illustrate the positive attitude that we bring to this process, I would like to give you an

example of one of the efforts that we are very proud of.

This example is key because it addresses one of the most critical deficiencies of the E.S.A., the deliberate exclusion of local stakeholders. This is the story of one community that couldn't afford to wait for the E.S.A. process to deliver a solution. The Wallowa County/ Nez Perce Tribe Salmon Recovery Plan is a cooperative effort by all stake holders in Wallowa County to develop a local plan that would enhance the habitat and insure the recovery of the Snake River Chinook. After two years and thousands of hours of volunteer work the plan was published, subjected to peer review by academia and the affected agencies and deemed ready for implementation. But we have been unable to move forward with the "plan" because at every turn the bureaucrats in Washington, D.C. have placed obstacles in our path or worse, totally ignored our inquiries and attempts to move forward.

You have asked us to strive for consensus. We have done that, and yet the E.S.A. itself is preventing us from moving forward. Now we are asking for your help in moving ahead with this project. We believe the Wallowa County/ Nez Perce Salmon Recovery Plan can be a model for species recovery.

By nature the members of Oregon Lands Coalition are solution oriented. To that end we have compiled a list of our bottom line acceptable changes in the Endangered Species Act for your consideration.

1. Species listing decisions should be based ONLY on verifiable science.
2. A thorough analysis to determine the economic impacts on each local area must be completed prior to listing.
3. Protect private property rights by including appropriate language into the act.
4. Rewrite section 7 so that a "take" which includes "harm" or "alteration of habitat" must be verifiable scientifically and so that the burden of proof is on the appropriate agency. Include language that allows legitimate ongoing activities to continue until such time as "harm" can be scientifically verified.
5. List only true biological species. Delete "sub species and distinct populations" from the current language. Delist those species that are currently so classified. Allow for the option to not list a species based on the determination that the species is irretrievably lost.
6. Insure that legitimate ongoing activities continue until the listing is completed including the delineation of critical habitat and the approval of the recovery plan.
7. Include the public in the recovery plan preparation and prevent the agencies from placing more stringent conditions on private landowners than they do upon themselves.

8. Delineate all **critical habitat** when listing species, regardless of ownership or consequence and then weigh total effect.(In the salmon listing the ocean was ignored even though it is the predominate part of their critical habitat.)
9. Eliminate the provisions allowing citizen lawsuits against private landowners.
10. Empower local elected officials and local citizens to protect endangered species and their habitat through incentives.
11. Eliminate the provisions for “emergency” listings by the federal agency heads. Allow emergency requests only when an activity can be reasonably established as an imminent threat to a species. If the species is adequately protected elsewhere, make it impossible to grant an emergency listing. Such cases must be dealt with on state and local levels, using incentive based rather than punitive measures.
12. Require law enforcement actions to come from local jurisdictions.

Oregon Lands Coalition stands ready to assist you in way we can in moving ahead with improvements to the Endangered Species Act. Working in concert we can protect both endangered species and endangered communities.

OREGON LANDS COALITION

Grassroots leaders founded Oregon Lands Coalition in 1989 to unite natural resource based groups in a quest for responsible environmental decisions. Their goal was to create a communications network between agriculture, mining, timber, recreationalists and others dedicated to putting people back into the environmental equation. United efforts, they reasoned would pack political and public relations clout. Today, 67 grassroots groups belong to the Coalition representing 108,000 people and the Coalition has gained the respect of national politicians and news media.

From the beginning, OLC's working philosophy was distinct from traditional trade associations and other political action groups. The Coalition's two-person office serves as an information clearinghouse and coordination headquarters, but the bulk of the work is done by grassroots volunteers. The goal is to empower and inspire member groups to accomplish objectives common to all natural resource users, while benefitting from what others are learning and doing.

Empowerment in the political arena is a major thrust of the Coalition's efforts. To this end, OLC publishes hot legislative topics in *Network News* and uses it's extensive fax network to alert member groups when vital action is needed. Examples abound of OLC's political effectiveness. Time after time miners have stood with loggers, loggers with livestock grazers, and recreationalists with miners to fight for the multiple use of public land and private property rights.

Putting a human face on the facts and figures related to environmental laws is one Oregon Lands Coalition's greatest success stories. Six years ago the Coalition founded the annual Fly-In For Freedom, empowering working Oregonians to tell their stories to Washington, D.C. lawmakers. In 1990, OLC worked to establish Alliance for America, a national grassroots networking group which now spearheads Fly-In efforts. This powerful grassroots lobbying event draws hundreds of people from across America every year and is extremely effective.

Political objectives are hard to accomplish without public backing. OLC constantly works with member groups to get their stories in the media to gain broad support for natural resource issues. The Coalition's "People Count, Too!" message has been covered by U.S. News & World Report, the Washington Post, the Wall Street Journal, M-TV, ABC, NBC, CBS, CNN, and countless other national and local media. With grassroots leaders at the microphone, the Coalition has scored media victories where even New York public relations agencies have failed.

Six years into it's history, OLC can claim success in its mission to put people back into the environmental equation. Political leaders have credited the group with playing a key role in the timber salvage amendment. The upcoming field hearings on the ESA are also something Coalition members have fought hard to get. The National Journal picked the Oregon Lands Coalition as one of the national land-use movement's top five grass roots groups and the Washington Post's environmental writer said OLC is a prime example of coalition building at work. In a propaganda package called "The Wise Disguise," the preservationist movement listed the Oregon Lands Coalition as one of the nation's most aggressive and effective groups. *We are. And we're not done yet!*

OREGON LANDS COALITION

Minimum requirements to make the Endangered Species Act a successful tool.

- **Insist on verifiable science** when making species decisions.
- **Reward good land stewards** while protecting private property rights. Encourage protection of species with legislation and incentives.
- **List only true biological species.** Delete “subspecies and distinct populations.”. Allow for the option not to list a species based on the impact of that species.
- **Cut lawsuits and limit frivolous appeals.** Litigants must be responsible for costs and private landowners should be exempt from citizen lawsuits.
- **Balance needs.** Social and economic impacts must be considered equally with plants and animals. A thorough economic analysis must be determined on each local area prior to listing a species.
- **Include the public in plan preparation** and provide that the agencies may not place more stringent conditions on landowners than they do on themselves.
- **Empower local elected officials and local citizens** to be involved in the listing process. Encourage reasonable management policies that keep forests healthy.
- **Rewrite take and harm section** so that verified science will be used placing the burden of proof on the agencies. Allow current ongoing activities until **take and harm** can be verified.
- **Use common sense.** Consider the significance of the species, cost and practicality.

Putting People Back into the Environmental Equation

Alternative Livestock Assoc. *
 Assoc. of Western Pulp & Paper
 Workers * Associated Oregon
 Loggers * Blue Mountain Potato
 Growers * Bohemia Mine
 Owners Assoc. * Communities
 for a Great Oregon - Central
 Ore., Mill City, Polk Co., &
 Sweet Home * Citizens to Pro-
 tect Forest, Agriculture, Industry
 Resources * Citizens Natural
 Resource Group * Coalition for
 Responsible Water Planning *
 Columbia River Plywood Co-op
 Assoc. * Communities First *
 Eastern Oregon Mining Assoc.
 * ECOPRO * Gorge Resource
 Coalition * Hood River Grower-
 Shipper Assoc. * Horse Council
 of Oregon * Illinois Valley Re-
 source Coalition * Illinois Valley
 Water Owners Assoc. * Molalla
 Timber Action Committee *
 Nehalem Valley Timber Coalition
 * Northwest Timber Workers Re-
 source Council * Oregon Forest
 Products Transportation Assoc.
 * Oregon Cattlemen's Assoc.
 * Oregon Cattlewomen Assoc. *
 Oregon Farm Bureau * Oreg-
 onians for Survival * Oregon
 Fur Takers * Oregon Horse-
 men's Assoc. * Oregon
 Off-Hwy Vehicles Assoc. *
 Oregon Project - Coos, Curry,
 Douglas Co.'s, & Portland
 Metro * Oregon Sheep Growers
 Assoc. * Oregon Wheat Growers
 League * Oregon Women for
 Agriculture * Oregon Women in
 Timber * Oregonians for Food
 & Shelter * Oregonians in
 Action * Protecting Industries
 Now Endangered * Save Our
 Industries and Land * S. Ore-
 gon Alliance for Resources * S.
 Oregon Resource Alliance - Jose-
 phine Co., Roseburg * Third
 Force for Forestry * TREES -
 Coast, Roseburg * Voters for
 Oregon Timber Resources * Wal-
 lowa Co. Board of Realtors * Wal-
 lowa Co. Cattlewomen *
 Wallowa Co. Stockgrowers *
 Water for Life * West Amazon
 Basin Landowners Assoc. * West
 Oregon Timber Supporters *
 West Valley Citizens for Timber
 * Willamette Valley Miners *
 WOOD * Yamhill Co. Women
 for Agriculture * Yellow Ribbon
 Coalition

MEMBERSHIP ROSTER

Alternative Livestock Association *
 Association of Western Pulp and
 Paper Workers *
 Associated Oregon Loggers *
 Blue Mountain Potato Growers *
 Bohemia Mine Owners Association *
 Communities for a Great Oregon,
 Central Ore., Mill City, Polk County,
 and Sweet Home *
 Citizens to Protect Forest,
 Agriculture, Industry Resources *
 Citizens Natural Resource Group *
 Coalition for Responsible Water
 Planning *
 Columbia River Plywood Co-op
 Association *
 Communities First *
 Defenders of Private Rights *
 Eastern Oregon Mining Association *
 ECOPRO *
 Gorge Resource Coalition *
 Hood River Grower-Shipper
 Association *
 Horse Council of Oregon *
 Illinois Valley Resource Coalition *
 Illinois Valley Water Owners
 Association *
 Malheur Timber Operators *
 Molalla Timber Action Committee *
 Nehalem Valley Timber Coalition *
 Northwest Timber Workers Resource
 Council *
 Oregon Forest Products
 Transportation Association *
 Oregon Cattlemen's Association *
 Oregon Cattlewomen Association *
 Oregon Farm Bureau *
 Oregonians for Survival *
 Oregon State Grange *
 Oregon Fur Takers *
 Oregon Horsemen's Association *
 Oregon Off-Highway Vehicles
 Association *
 Oregon Project - Coos, Curry,
 Douglas Counties and Portland
 Metro *
 Oregon Sheep Growers Association *
 Oregon Wheat Growers Association *
 Oregon Women for Agriculture *
 Oregon Women for Timber *
 Oregonians for Food and Shelter *
 Oregonians in Action *
 Protecting Industries Now
 Endangered *
 Save Our Industries and Land *
 Southern Oregon Alliance for
 Resources *
 Southern Oregon Resource Alliance,
 Josephine County, Roseburg *
 Third Force for Forestry *
 TREES - Coast and Roseburg *
 Voters for Oregon Timber
 Resources *
 Wallowa County Board of Realtors *
 Wallowa County Cattlewomen *
 Wallowa County Stockgrowers *
 Water for Life *
 West Amazon Basin Landowners
 Association *
 West Oregon Timber Supporters *
 West Valley Citizens for Timber *
 Willamette Valley Miners *
 WOOD *
 Yamhill County Women for
 Agriculture *
 Yellow Ribbon Coalition *



RECEIVED

OCT 20 1993

WALLOWA COUNTY
COURT

COURT _____

ACTION _____

FILE _____

October 19, 1993

SEA240.64.PS

Mr. Ben Boswell
Commissioner
Wallowa County Court
101 South River Street, Room 202
Enterprise, Oregon 97828

Dear Ben:

Subject: Wallowa County-Nez Perce Tribe Salmon Recover Plan. August 1993

As I had discussed with you and Commissioner Wortman, I distributed the Salmon Recovery Plan to select CH2M HILL staff in Boise and Seattle for review. Forrest Olson, Dr. Tim White, and Kevin Nielsen were selected to review the plan based on their active roles in assessing fisheries impacts and for implementing fisheries recovery programs in the Northwest. The three reviewers represent disciplines including fisheries biology, forest ecology, and watershed management.

In general, we feel that the Salmon Recovery Plan represents a significant effort of technical quality and thoroughness. The plan is a major step forward in the attempt to plan and implement practical, landscape-level management practices focused on salmon recovery. We appreciate the opportunity to review the Salmon Recovery Plan. Please call me at 509/943-3114 if you have any questions.

Sincerely,

CH2M HILL

Jeff Smyth
Project Manager

cc: Gene Wallace/RLO
Tonja Nash/RLO
Forrest Olson/SEA
Tim White/SEA
Kevin Nielsen/BOI

Comments on the Wallowa County Salmon Recovery Plan (DRAFT)

At the request of Wallowa County, we have reviewed the Wallowa County Salmon Recovery Plan (WCSRP). Our review covered both the technical aspects of the Plan as well as the approach taken to develop it. In general, we were very impressed with the plan. It does not follow the failed "quick-fix" approaches of many other plans that tended to focus only on instream conditions while ignoring the rest of the watershed. The WCSRP has instead combined technical quality and thoroughness with inclusive planning by basin users. This approach will facilitate successful long-term plan execution. We believe this plan is a well-conceived approach that demonstrates knowledge of the complexity of ecosystem-level processes affecting salmon habitat in Wallowa County. The following comments summarize our review of the plan.

The Plan is based on sound technical information and ecological concepts

From the technical standpoint the plan does an excellent job of identifying the factors important to salmon spawning, incubation, rearing, and migration. It extends these factors beyond the immediate riparian ecosystem to watershed conditions that contribute to these habitat needs. It then links these features to practical solutions. As one example, we were particularly impressed with the recognition of impacts of tree density and riparian conditions on water yield and their ultimate impact on instream habitat for salmon. These landscape-level concepts will be the key to successful recovery of salmon habitats. Also, the plan extends beyond the conceptual stage to focus on individual tributary watersheds within the basin and prioritizes problems and solutions in each (see below). Although its conceptual foundation is at the landscape-level, this larger scale will result from the cumulative effects of many smaller projects. Consequently, the plan is dissected into clearly identified tasks thereby allowing it to be executed in well-defined steps.

Interagency/Public Involvement Assures Effective Definition of Tasks and Active Participation by Stakeholders Within the Watershed

Plans of this type are often developed by local or state agencies with a minimum of early input from the general public. In contrast, the WCSRP was developed by a coalition of local, state, and federal agencies as well as local leaders and stakeholders within the affected watersheds. Wide representation of watershed stakeholders during this process ensures the commitment of the public to its success. Participants included representatives from agencies, tribes, and local jurisdictions: the U.S. Forest Service, the Bureau of Land Management, the Oregon Department of Fish and Wildlife, the Nez Perce tribe, Wallowa County; and stakeholders within the watershed: agriculture and grazing interests (e.g., McClaren Ranch), environmental interests (Wallowa Valley Resource Council), large and small private landowners (e.g., Boise Cascade), local businesses, labor, and logging interests (e.g., RY Timber). The range of participants and their connection to the resources within the watershed will facilitate broad acceptance of the plan by the people who will be responsible for its implementation.

Commissioner Ben Boswell

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October 19, 1993

COMMISSIONER BEN BOSWELL

Prioritization provides logical progression of tasks to ensure long-term success

Basin level plans often suffer from inadequate prioritization of the restoration and management tasks associated with their successful execution. As a result, lack of coordination of the multitude of objectives tied to these plans can produce few results in the long-term. This is not the case with the WCSRP. Tasks are prioritized with an eye on the potential effectiveness of each task and the understanding of the relationships between the task and its desired effect on salmon habitat. As mentioned above, the WCSRP goes well beyond "plans for study" of salmon recovery problems to address on-the-ground techniques for achieving the desired end-result. Prioritization includes tasks with low and high urgency for salmon recovery, activities with the potential to contribute to future salmon habitat problems and solutions to them, as well as those tasks needing further study prior to implementation. Ranking of tasks within the WCSRP results in clearly defined tasks and will ensure an organized and cost-effective approach to salmon recovery with the affected watersheds.

Identification of funding sources and mechanisms improves the potential for successful implementation

Often, plans of this nature fall short in terms of financial support for achievement of the plan's objectives. While it is still too early to have secured funding for the plan, the WCSRP clearly has considered this element in detail. The WCSRP has identified 28 state and federal programs with potential financial support for the execution of the plan. In addition, the plan identifies another 6 sources of private support including financial and in-kind assistance. By combining task prioritization with potential support, the WCSRP will position itself to efficiently pursue funding and begin plan implementation.

Recognition of Interdisciplinary Nature of Ecosystem-Level Management Promotes Matching the Right People to the Task

Effective landscape and ecosystem-level plans require coordination and execution of many interdisciplinary tasks. The WCSRP recognizes up-front that ecosystem-level planning and execution is needed for salmon recovery to be successful and, second, that discharge of these tasks will require input from people representing a wide range of expertise. At least 14 disciplines are identified in the WCSRP that will play key roles in the overall recovery of the chinook fishery. In addition to fishery scientists, these professionals include other resource scientists such as foresters, ecologists, wildlife biologists, wetland scientists, soil scientists, agronomists, range and animal scientists, weed

Commissioner Ben Boswell

Page 4

October 19, 1993

COMMISSIONER BEN BOSWELL

scientists, and hydrologists, as well as agricultural, waste water, and solid waste engineers. The WCSRP can serve as a model to demonstrate that fitting the right professional to the solution of individual tasks will produce cost-effective execution of ecosystem-level management plans.

In conclusion, we find the WCSRP to be one of the best plans we have seen in both technical quality and thoroughness as well as detailing practical approaches to fixing the problems affecting chinook salmon in Wallowa County. It represents a major step forward in the attempt to plan and implement landscape-level management practices focused on salmon recovery. Because of its watershed level approach, execution of the plan will, as a result, likely have additional environmental benefits beyond the recovery of salmon. We applaud this effort and encourage final development and acceptance of the plan to ensure its timely implementation.

DEPARTMENT OF
RANGELAND RESOURCES

May 31, 1994

RECEIVED

JUN 03 1994

WALLOWA COUNTY
COURT

Wallowa County Salmon Recovery Plan
c/o Mr. Pat Wortman, Commissioner
Wallowa County Court
101 South River Street, Room 202
Enterprise, OR 97828



OREGON
STATE
UNIVERSITY

Strand Ag. Hall 202
Corvallis, OR 97331

Dear Mr. Wortman:

We have had the opportunity to read the Wallowa County Salmon Recovery Plan, August 1993. We found it to be well written and logical.

Specifically:

- ◆ The breakout by stream section makes sense.
- ◆ The water quantity, water quality, stream structure, substrata, and habitat requirements categories associated with each stream section indicates a high degree of resolution and an attempt at site specific management.
- ◆ Your write-ups associated with each stream section and category seem realistic. Even though we haven't been on each stream, problems, where they apparently exist, were straight-forwardly and unflinchingly addressed.
- ◆ Your review seemed to take biological and physical reality into consideration as well. We were impressed with the fact that you spoke to real, rather than pie-in-the-sky physical potentials.
- ◆ Finally, we agree with your long-term, long-haul approach. We doubt that "quick fixes" work. We believe, as you apparently do, that efforts such as these require a long-term view.

We applaud your ecosystem (holistic, and/or whole watershed) view. You frequently refer to upland forestry, fire, and other management practices. We agree. We would recommend that as you put these proposed practices into effect that you be ever-mindful of this "big picture" approach, of the connectedness of the uplands to the riparian zones, and of vegetation's role in encouraging development of soil resources which are able to capture, store, and beneficially release precipitation.

Sincerely,

W.C. Krueger
Professor & Head

J.C. Buckhouse
Professor

Telephone: (503) 737-3341
FAX: (503) 737-0504

RECEIVED

MAR 16 1994

WALLOWA COUNTY
COURTCOURT ACTION FILE

Oregon

DEPARTMENT OF
FORESTRYSTATE FORESTER'S
OFFICE"STEWARDSHIP IN
FORESTRY"

March 7, 1994

Wallowa County Court
101 South River Street, Room 202
Enterprise, Oregon 97828

The Oregon Department of Forestry has reviewed the Wallowa County-Nez Perce Tribe Salmon Recovery Plan. We believe that the concepts and vision presented in the plan represent a significant step toward enhancing salmon habitat through ecosystem management.

At this time there are many coordination efforts that will be required to fully implement the plan. Developing the necessary partnerships will not be easy, but it is a promising course of action to pursue. It is visionary, action-oriented, and focused on "the right way to do the right things".

This plan has the potential to provide the framework necessary to bring the varied stakeholders together, clarify roles, and minimize competition for scarce resources to address a common objective--salmon recovery. While the implementation processes for some of the action recommendations have not yet been worked out, this plan presents an ambitious but realistic strategic path.

In summary, the Department of Forestry believes that the Wallowa County-Nez Perce Tribe Salmon Recovery Plan is a positive step toward addressing the issue on an ecosystem basis. The plan is flexible enough to accommodate developing policy and improved information that is sure to evolve during the implementation phases. The fact that it is not filled with rigid constraints and definitive expectations is one of its strengths, but it will require continued, enthusiastic leadership and participation to assure implementation. We are confident that the leadership demonstrated in the development of this plan will contribute to its successful implementation.

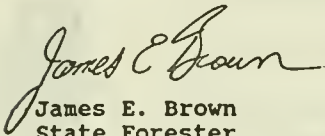


2600 State Street
Salem, OR 97310

Wallowa County Court
March 7, 1994
Page two

Thank you for the opportunity to review the plan. We find this visionary approach refreshing and encouraging. If you have questions regarding our comments, feel free to contact Northeast Oregon District Forester Gary Rudisill at 963-3168 or Wallowa Unit Forester Howard Strobel at 886-2881.

Sincerely,



James E. Brown
State Forester

JEB:JMB:CB

cc: Gary Rudisill, La Grande
Dave Stere, Resources Planning

Oregon

September 15, 1993

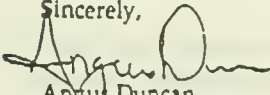
Rolland Schmitten, Regional Director
 National Marine Fisheries Service
 7600 Sand Point Way, N.W.
 Bin C-15700, Bldg. 1
 Seattle, WA 98115

Dear Mr. Schmitten:

We would like to commend the Wallowa County Salmon Recovery Committee for its completed draft of the Wallowa County-Nez Perce Salmon Recovery Plan. This plan was initiated and developed by local volunteers with the participation of the Nez Perce tribe and federal, state, and local natural resource agencies. This committee has dedicated hundreds of volunteer hours to this project. We think it is imperative the National Marine Fisheries Service (NMFS) and other federal, state and local agencies recognize the Wallowa County Salmon Recovery Committee and assist it in completing and implementing its salmon recovery efforts.

The State of Oregon has recently identified the Grande Ronde Basin as one of two watersheds to focus \$10 million towards watershed health. We are hopeful this will increase the opportunity for a cooperative salmon recovery effort within the basin. The Wallowa County - Nez Perce Salmon Recovery Plan demonstrates a truly localized attempt at salmon recovery. Involvement and support by NMFS, federal agencies and the state of Oregon will enhance the results of the project and establish an example of local citizens working with government to save Northwest salmon runs. We think this is the best method for successful salmon recovery. Thank you for your help.

Sincerely,


 Angus Duncan
 Council Member


 Ted Hallock
 Council Member

cc: Senator Mark Hatfield
 Senator Bob Packwood
 Representative Peter DeFazio
 Representative Elizabeth Furse
 Representative Mike Kopetski
 Representative Bob Smith

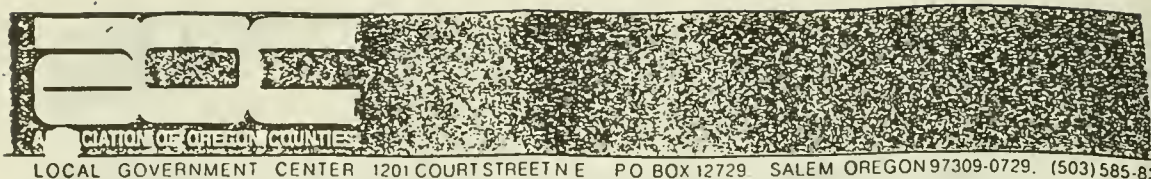
NORTHWEST
 ELECTRIC
 POWER &
 CONSERVATION
 PLANNING
 COUNCIL

Ted Hallock
 Angus Duncan
 Council Members

Barbara Roberts
 Governor



620 SW 5th Avenue
 Suite 1025
 Portland, OR 97204



January 26, 1994

Mr. J. Gary Smith, Regional Director
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

Dear Mr. Smith:

It is my pleasure to state the strong support of the Association of Oregon Counties for the process followed by Wallowa County and the Nez Perce Tribe in developing its Salmon Recovery Plan (August, 1993). This process clearly led to effective results and a plan that deserves your serious consideration.

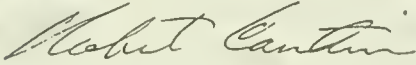
As stated in AOC's policy on water use and allocation, "policies must permit various interests to be expressed and a balanced management of water to be found." The County/Tribe effort was open and inclusive of stakeholders across the spectrum of interests. From the beginning, by design, it sought real, effective, on-the-ground solutions to the subject of salmon recovery. It is precisely the kind of process that Oregon's elected county governing officials had in mind when they voted unanimously to support the AOC policy and to give it the highest priority ranking.

AOC firmly believes that this process leads to recommendations that work. For issues such as this, what is needed most is a site-specific approach agreed to by the full range of stakeholders, who are seeking solutions in good faith. A habitat recovery plan must be dynamic, permitting practice of our increasing knowledge of natural processes. AOC is convinced that at-site solutions, taking into account the conditions distinctly present there, are the ones that work and that last.

AOC respectfully requests that your agency give close attention to the plan. It is exactly the kind of local effort that must be encouraged for the long-term health of the resource, the communities dependent on the resource, and the nation.

If you have any questions, please do not hesitate to call.

Sincerely,



Robert R. Cantine
Executive Director

- c. Wallowa County Court
 - Rolland A. Schmitt, Asst. Admin. of Fisheries, US Dept. of Comm.
 - Merritt Tuttle, Division Chief, NMFS, Portland
 - The Honorable Mark O. Hatfield
 - The Honorable Bob Packwood
 - The Honorable Barbara Roberts
 - Angus Duncan & Ted Hallock, NWPPC
 - Mark Shaw, BPA
 - Bob Horton, GRMWP

MARK O. HATFIELD
SPECIAL DISTRICTS CENTER
727 CENTER STREET N.E., SUITE 305
SALEM, OREGON 97301

MARK O. HATFIELD
ONE WORLD TRADE CENTER
121 S.W. SALMON STREET, SUITE 140
PORTLAND, OREGON 97204

United States Senate

WASHINGTON, DC 20510-3701

September 29, 1994

Mr. Will Stelle, Jr., Regional Director
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way, N.E.
Seattle, WA 98115-0070

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WALLOWA COUNTY
COURT

Dear Mr. Stelle:

Last month, during discussions with Wallowa County officials and residents about the implications of the Ninth Circuit Court of Appeals' emergency injunction on all grazing, logging and road building projects on the Umatilla and Wallowa-Whitman National Forests, it was brought to my attention that neither the National Marine Fisheries Service nor the Forest Service has reviewed or commented formally on the Wallowa County-Nez Perce Tribe Salmon Recovery Plan, published in August of 1993.

The plan was developed in consensus by Wallowa County, the Nez Perce Tribe, environmentalists, resource managers and other local citizens. It establishes a management plan to provide healthy spawning, rearing and migration habitat within the county for the recovery of Snake River spring/summer and fall chinook salmon. Scientists with forestry, hydrology and biology backgrounds have peer reviewed the proposal.

The Wallowa County-Nez Perce salmon plan is endorsed by the Snake River Salmon Recovery Team, the Oregon members of the Northwest Power Planning Council, the engineering firm of CH2M Hill, the Association of Oregon Counties and the National Association of Counties. The proposal is based on the needs of the watersheds and sub-basins within Wallowa County, and establishes a process for involvement, investment, and consensus building at the local level.

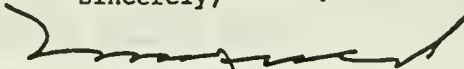
As one who is investing considerable time and effort into both the recovery of wild Columbia Basin salmon runs and the development of consensus- and watershed-based planning efforts, I applaud the dedication and efforts of the citizens of Wallowa County and the Nez Perce Tribe, and strongly urge a formal review of their Salmon Recovery Plan by the National Marine Fisheries Service and the Forest Service at the earliest possible date. The proposal is a template for sound, locally-supported ecosystem management in the Pacific Northwest and nationwide, and should be examined fully by NMFS and the Forest Service.

Regional Director Stelle
September 29, 1994
Page 2

Thank you for your consideration. I look forward to your earliest possible action on this request.

Kind regards.

Sincerely,



Mark O. Hatfield
United States Senator

MOH:dr

CC: John Lowe, Regional Forester, USDA Forest Service
Senator Packwood
Rep. Robert "Bob" Smith
Charles Hayes, Nez Perce Tribal Chair
Pat Wortman, Wallowa County Court

BOB PACKWOOD
OREGON

United States Senate

WASHINGTON, DC 20510-3101

SENATOR PACKWOOD'S STATEMENT ON THE WALLOWA COUNTY/NEZ PERCE SALMON HABITAT RECOVERY PLAN

I rise today to congratulate a very special effort by a group of Oregonians that could serve as a model for this body as we move toward the 104th Congress.

Wallowa County in the Northeast corner of my home state is one of Oregon's smallest counties. Yet, that has not stopped the devastating effects of the sole-purpose Endangered Species Act from being felt there. Just this year alone, two sawmills have closed in Wallowa County, taking away over 100 jobs. This is a significant impact on a population of only 7,000.

Every Senator knows my feelings on the Endangered Species Act, and the critical need that it be changed to reflect the needs of people as well as bugs and plants. I am quite hopeful that we will soon reform this Act so that the families in Wallowa County and throughout Oregon who have been so gravely injured by it can be made whole.

But I will not use my time today to restate my concerns about the Endangered Species Act and the tens of thousands of families whose hopes and dreams it has shattered in my state in the past five years. Instead, I want to focus on the positive response the people of Wallowa County have had to the listing of several species of salmon on the Columbia/Snake River system.

Residents of Wallowa County, in conjunction with the U.S. Forest Service and representatives of the Nez Perce tribe, have developed the Wallowa County/Nez Perce Salmon Habitat Recovery Plan. This plan is a responsible, locally developed effort to protect not only habitat for threatened and endangered species, but also seeks to protect the people of Northeastern Oregon and their economic base. This plan takes into account the deteriorating condition of the Northeast Oregon forests, as well as the need for timber cutting and salvage, species protection, cattle grazing and other uses.

Here, Mr. [Madam] Chairman, is a working example of what Americans asked for when they went to the polls. This is not some huge new bureaucratic effort seeking to manage the public lands of Wallowa County by remote control from Washington, D.C. Instead, the people affected put their heads together, and using the best information available, crafted a workable, meaningful plan. If there was any message last Tuesday, it was a cry for less government intrusion. My friends in Wallowa County have been sending that message for a long time.

PACKWOOD, Page 2

The bureaucracy's response was, unfortunately, predictable. The National Marine Fisheries Service and the Forest Service have made it plain that they believe the Washington, D.C. approved solution -- called "PACFISH" -- is the only possible solution. PACFISH is not site specific, and calls for extensive non-management areas. It certainly was not developed with Wallowa County's specific needs in mind, and reflects now-outdated radical preservationist dogma.

I believe that the citizens of Wallowa County -- who, after all, are the ones who have to live with any final decisions that are made -- deserve a great deal of credit for developing the Wallowa County/Nez Perce Salmon Habitat Recovery Plan. In the New Year, I believe this document should -- and will -- become the lead plan for salmon habitat recovery in Northeast Oregon.

There is hope for the families of Wallowa County next year. I believe we will be able to take strong action to reform this nation's restrictive environmental laws and regulations. Until that day comes, however, the families of Wallowa County are not simply waiting for change. They are promoting change, and sending us a message that is unmistakable. I hope we are all listening.

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WALLOWA COUNTY
COURT

THE PACIFIC RIVERS COUNCIL

P.O. Box 10798 • Eugene, Oregon 97440
(503) 345-0119 • Fax (503) 345-0710

Wallowa County Commissioners
Wallowa County Courthouse
101 South River
Enterprise, OR 97828

December 12, 1994

Dear Commissioners,

This letter is to provide the Pacific Rivers Council's general comments on the Wallowa County Salmon Recovery Plan (WCSRP) dated August 1993. As promised, we have offered a candid review in hopes that the document can be expanded upon and improved.

We commend the county and the participants in the WCSRP for beginning a process to devise a strategy to address the needs of endangered salmon. While at present we believe the document is not a scientifically sound plan to maintain and restore stream ecosystems and salmonids, it does represent a good start. We encourage the committee to continue its efforts to develop the document so that it may eventually become an effective plan.

The salmon recovery plan is aimed at actions within Wallowa County to recover chinook salmon, although it states that potentially other salmonid fishes would be benefitted as well. The plan does attempt to relate potential or real problems in stream segments to activities in the watershed, at least in a general way. This is a start. Some good possible solutions, such as more efficient use of water and riparian fencing, are offered. There are also some solutions offered in the plan that are not scientifically defensible or at least are being debated, such as managing fuel loads for water retention, pre-commercial thinning, the continued use of pesticides and herbicides etc. However, we will not try to address the legitimacy of the specific proposed solutions in this letter. Rather, we believe there are at least ten major areas that need to be focused on.

First, while the plan makes a commendable beginning effort to address chinook salmon, many forms of aquatic species are at risk within the county, and the Grande Ronde basin generally, including steelhead, resident fish like bull trout, etc. All of these species must be addressed, which leads to the need for a comprehensive watershed-based Aquatic Conservation Strategy. We recommend that the WCSRP be broadened to this level.

Second, the document needs a comprehensive, watershed-based approach. The document takes a bottom-up approach, starting by identifying problems in salmon habitat at the stream reach level and linking these problems to general options to implementing solutions in the watershed. Such an approach cannot lead to an understanding of the actual causal problems within the watershed nor to how the watershed needs to function to support salmon, and how to restore that function. A better approach would be to diagnose problems at the watershed level based on the historical template, focusing on how watershed ecosystem function has changed as a result of human activities. Protection and restoration for intermittent streams must be part of a watershed approach. This leads to solutions that restore the function of the watershed and help recover salmon.

New Visions to Restore America's Rivers and Watersheds

Because of this lack of a comprehensive, watershed-based approach, the document cannot address problems in ecosystem function (such as gravity driven water and sediment-related processes). It does make recommendations in these areas, but these are piecemeal, with no sense of how much improvement is needed or what the most efficient actions would be to restore ecosystem function. As a result, there is no way to prioritize actions, either in terms of watershed-wide priorities or in terms of scheduling actions.

The plan was developed only for Wallowa County, which covers the lower watershed. The upper watershed of the Grande Ronde is in Union County and the lower end is in Washington state. A watershed-based approach is not possible when the upper and lower portions are omitted. Proposed protection and restoration actions need to take the entire watershed into account.

Third, the plan is fairly specific regarding possible options at the reach level but needs to make specific recommendations. When it makes the link to watershed management it becomes very generic. As a result, it is really more of a background document than a plan, because it does not have specific actions, priorities or schedules. The stewardship management units would recommend specific projects, but because these units are based on stream reaches and not on whole watersheds, the specific projects they identify likely will address (or attempt to address) site-specific symptoms rather than watershed-level causes of problems.

Fourth, the problem assessments need to be more specific. In addition to the possible site specific impacts, the cumulative impacts of logging, grazing and roads must be assessed. The site specific and cumulative impacts of the loss of soils and soil compaction, etc. must be assessed. In general, the problem identification seems to avoid emphasis on some problems that have been heavily documented by other studies (e.g. grazing impacts, timber harvest, etc.) For example, the USFS Pacific Northwest Research Station documented a 60% loss of pool habitat over the last 50 years in the Upper Grande Ronde. The report said that significant pool loss was found in "managed" streams within the entire Upper Columbia basin, while pool numbers were maintained or increasing in the "unmanaged" (protected) areas of the watershed.

This information, and numerous other studies indicate that anadromous fish habitat, and stream ecosystem conditions in general, have been severely degraded by land use activities in the Grande Ronde in the past 50 years (see: *Ecological Health of River Basins in Forested Regions of Eastern Washington and Oregon*, USFS, and; *Interim protection for Late-Successional Forest Fisheries and Watersheds*, by the Eastside Forests Scientific Society Panel). A scientifically sound plan must fully disclose and discuss the full range of impacts of grazing and timber harvest, for example, when trying to develop a correct understanding of the problems and effective solutions.

Fifth, while the plan identified some problems, it needs effective implementation and enforcement mechanisms. In fact, in a 102 page document, just 1 1/2 pages are devoted to options for implementation. The basic recommendations revolve around "education," "better cooperation," "better coordination," "encouragement," etc. through the consensus group. While these are commendable goals, they are not sufficient implementation strategies for an actual recovery plan. We recommend that you consider amending the Wallowa County comprehensive land use plan to include riparian set backs and many other steps that are needed to develop an effective implementation plan. Specific enforcement mechanisms are also needed.

December 12, 1994

Page 3

Sixth, while the plan offers some possible solutions to various problems, it also needs to discuss whether areas are degraded to the extent that complete rest, deferrals and prohibitions on timber harvest, grazing, etc. are needed to maintain ecosystem and species health and begin recovery. The full range of options must be considered.

Seventh, while it is helpful to point out possible solutions on these federal lands, these lands must be managed and protected under the requirements of federal law. These laws and requirements cannot be amended or modified by local desires or plans. Rather, the non-federal land components should be tiered to the federal lands to develop a comprehensive watershed level plan.

Eighth, a comprehensive monitoring and evaluation plan is needed. Even if solutions are implemented, how will you know if they are effective?


Ninth, a systematic, well prioritized, watershed level (not stream reach) restoration strategy is needed. Restoration starts with and should be built around effective watershed protections. In general, it should start in the headwaters and move down the stream. We recommend that you adopt the restoration strategy that was recently developed under the auspices of Oregon Senate President Bill Bradbury.

Finally, because it lacks a comprehensive system level approach, priorities, schedules, specific actions, implementation strategies, monitoring and any type of enforcement measures, we are sad to say that at best it almost certainly will lead to "tweaking" the status quo rather than making the fundamental changes that will be needed to restore stream ecosystems and all forms of aquatic species including chinook salmon. Nevertheless, it does represent a good start.

Please accept that we offer these candid comments as honest and clear feedback only so that you can improve the plan. We encourage the committee to continue to work on the document so that eventually an effective plan can be developed for the non-federal land areas of the Grande Ronde River basin and Wallowa County.

Sincerely,


Bob Doppelt
Executive Director


Willa Nehlsen, Ph.D.
Salmon Recovery Coordinator

cc: Mac Birkmier
Union County Commissioners
Angus Duncan
Ken Witty



WALLOWA COUNTY/NEZ PERCE TRIBE SALMON HABITAT ENHANCEMENT PLAN

BACKGROUND

The circumstance in Wallowa County, Oregon which motivated the conduct of the project was the decrease in the number of anadromous fish returning to the county. Fish runs had dropped to 10 to 15 percent of historic numbers. This situation caused concern to the citizens of Wallowa County because of their desire to have viable fish runs return to the county and their realization that natural resource extraction activities on public land might be curtailed, causing a negative impact on the socio-economic health of the community. The Nez Perce Tribe was concerned about continuing access to historic fish runs granted by treaty rights and about the continuing multiple uses of National Forest lands. The project was begun before the May 22, 1992 listing of the Snake River Chinook salmon as threatened under the Endangered Species Act.

MISSION STATEMENT

"To develop a management plan to assure that watershed conditions in Wallowa County provide the spawning, rearing, and migration habitat required to assist in the recovery of Snake River salmonids by protecting and enhancing conditions as needed. The plan will provide the best watershed conditions available consistent with the needs of the people of Wallowa County, the Nez Perce Tribe, and the rest of the United States, and will be submitted to the National Marine Fisheries Service for inclusion in the Snake River Salmon Recovery Plan."

PARTICIPANTS

A committee of Wallowa County citizens, representatives and members of the Nez Perce Tribe and Oregon State and United States agency professionals was established to prepare the Plan. The members of the Wallowa County Salmon Recovery Strategy Committee represented the following interests:

Agriculture/Grazing, Agriculture/Timber, Business/Community,
Environmental, Land Owner, Oregon Department of Fish & Wildlife,
USDI Bureau of Land Management, USDA Forest Service

PLAN COMPONENTS

Desired Habitat Conditions

Desired instream habitat conditions for Chinook salmon were identified and adopted. These include stream substrate and structure, water quality and quantity, food availability and protection from predation. In the county, salmon adults migrate upstream and spawn, eggs incubate and hatch, fry emerge and feed, and juveniles overwinter before migrating downstream. The acceptable ranges of desired instream habitat conditions are based on limits within which salmon can survive and function. It was recognized that the entire watershed needs to be considered to maintain desired instream habitat within those ranges.

Stream Analysis

Major streams in Wallowa County were selected for analysis. Each stream was subdivided into segments (reaches) for analysis based on channel characteristics such as gradient and structure, and on ownership and management patterns. Each reach was analyzed for instream problems and watershed conditions that contributed to instream problems. The analysis factors included water quantity, water quality, stream structure, stream substrate and habitat requirements.

Problems and Solutions

Problems were identified as those characteristics that did not fall within desired habitat conditions or which contributed to conditions outside the acceptable range. Examples of problems include compaction of soils, low flow, elevated water temperature, excess fine sediments, channelization, fuel loading, and predation.

Management prescriptions were identified as potential solutions to each problem. Management approaches have been developed to facilitate options for land managers in implementing the solutions. These include:

Water Management	Weed Management
Forest Management	Road Management
Livestock Management	Campground Management

Examples of solutions include upstream impoundments, commercial thinning, exclusion fencing, controlling weeds, removing woody material, rotating grazing, surfacing roads, and relocating campgrounds.

Implementation

Wallowa County will be divided into stewardship management units based on watersheds. A consensus group will conduct area analyses which will result in baseline data of existing conditions. The data will be made available to land managers with recommendations for improvements. Encouragement and assistance will be offered in project implementation. It is intended that the projects be adaptive and that they be monitored. Project results will be incorporated in the area analyses so that implementation moves ahead in a positive manner. The specific end goal should be maintaining and enhancing salmon habitat and providing an overall healthy ecosystem and economy.

TANGIBLE RESULTS

The tangible results of the project have already been partially manifest in having the Plan considered by the National Marine Fisheries Service for inclusion in the Snake River Salmon Recovery Plan and by the Eastside Ecosystem Management Project Environmental Impact Statement. If the Plan is included in these documents it would serve to enhance all natural resources, including salmon habitat in tributaries of the Snake River. Additionally, it would result in the continuation of the traditional uses on the public lands in Wallowa County. Several Federal agencies, including the Forest Service, Bureau of Reclamation, Bonneville Power Administration, and others have responded to the Plan by allocating funds for salmon habitat enhancement projects.

Of course, one of the intangible results of the project was enhanced understanding among the members of the Nez Perce Tribe and citizens of Wallowa County. The Nez Perce no longer live in the county but return often for hunting, fishing, berry and root gathering and for festivals, such as Chief Joseph Days. The current residents of the county, along with the descendants of the former residents, have gained an increased understanding of each others' cultures by working together on this project.

COST OF THE PROJECT

The cash cost of planning and facilitating the project amounted to about \$5000, which included writing and printing the planning document. Committee members volunteered time and expenses to the project at no cost. The cost of promoting the plan amounted to about \$2100, which included travel expenses for team members to go to Washington DC to present the Plan to Congress and the Federal Agencies. Total cost of implementing the recommendations of the Plan will be about \$19 million.

SOURCES OF FUNDING

The sources of funding included contributions from the participating individuals and agencies to cover the costs of printing. It is estimated that about \$6000 worth of in-kind contributions were donated by committee members. This included voluntary time and travel expenses for all planning team personnel to attend meetings in Enterprise, Oregon. In order to fund the implementation of the Plan's recommendations, thirty-five (35) potential funding sources have been identified.

INNOVATION

The innovative nature of the project is expressed in both the product and the process of the Plan. No other fisheries habitat management plan has been prepared which considered fisheries habitat from ridge-top to ridge-top as this one does. The team felt that only by addressing the habitat with a holistic approach could all environmental elements be adequately considered. Another unique feature is that each stream was analyzed reach by reach. Never before has such a comprehensive plan undergone such small-scale analysis.

The process by which the Wallowa County Court and the Nez Perce Tribe initiated the project is innovative in that it seemed natural that those who love the Wallowa country should band together to solve its problems. It is especially appropriate that salmon are what brought the groups together as the name Wallowa comes from the Nez Perce word for the wooden fish traps that were used to capture salmon in earlier days. As the groups worked together it became obvious that the goals of each are the same when it comes to using the resources of the earth with respect. It has also been discovered that the voice of a local government and that of a Native American Tribe is stronger when joined together than when either one is used alone.

SUSTAINABILITY

The sustained leadership demonstrated by Wallowa County officials and Nez Perce Tribal leadership to the goals of the program is evidenced by the forward to the Plan:

"This document is intended to be dynamic, designed to change rapidly with new knowledge and changing conditions in a manner that will promote understanding and cooperation among all parties involved."

Success of the Plan is directly related to the commitment of the members of the communities involved to continually updating the Plan.

TRANSFERABILITY

The transferability of this project to other counties is dependant on one factor; the dedication to the process by the volunteer participants. It is estimated that such a project conducted at actual cost by a State or Federal agency would require over \$50,000, and would probably not be funded. Upon being reviewed by several professionals in natural resource management, the Plan has received as much positive comment for the process as for the product.

COMMENTS OF REVIEWERS

"In our opinion, the work of the drafting committee is commendable, and we look forward to working with you to implement a new level of coordinated and cooperative resource stewardship." Lloyd Swanger, Ranger, Eagle Cap District, USDA Forest Service

"Also beneficial is the direct involvement of Wallowa County citizens and members of the Nez Perce Tribe that provides unique insights not available from agency personnel and provides an excellent opportunity for them to become involved in shaping the management of their community and most importantly implementing solutions." Susan Broderick, Fisheries Biologist, Denver Office, USDI Bureau of Reclamation

"To my knowledge, [the plan] is the first county effort in the state in comprehensive eco-system management. The plan's interdisciplinary approach and multi-jurisdictional recommended actions should serve as a model for creating a framework to address complex habitat protection problems." Greg Wolf, Program Development Manager, Oregon Department of Land Conservation and Development

"We applaud your ecosystem (holistic, and/or whole watershed) view. You frequently refer to upland forestry, fire, and other management practices. We agree. We would recommend that as you put these proposed practices into effect that you be ever-mindful of this 'big picture' approach, of the connectedness of the uplands to the riparian zones, and of vegetation's role in encouraging development of soil resources which are able to capture, store, and beneficially release precipitation." Dr. W.C. Krueger & Dr. J.C. Buckhouse, Department of Rangeland Resources, Oregon State University

"The WCSRP is a major step forward in the attempt to plan and implement practical, landscape-level management practices focused on salmon recovery. The Plan has combined technical quality and thoroughness with inclusive planning by basin users. We applaud this effort and encourage final development and acceptance of the plan to ensure its timely implementation." Forrest Olson, fisheries biologist; Dr. Tim White, forest ecologist; Kevin Neilsen, watershed hydrologist; CH2M-HILL Engineering

Testimony of

**Mark Hubbard
Conservation Director of the
Oregon Natural Resources Council**

on reauthorization of the Endangered Species Act

before the

**Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries and Wildlife
United States Senate**

in

**Roseburg, Oregon
June 1, 1995**

I wish to thank the subcommittee for the opportunity to testify. My name is Mark Hubbard and I am Conservation Director of ONRC, the Oregon Natural Resources Council. ONRC has extensively invoked the federal Endangered Species Act to protect salmon and other species. While ONRC brought the first administrative appeal of a Forest Service timber sale raising the issue of the fate of the Northern Spotted Owl in 1978, we were not the first to raise the issue. A biologist from the US Fish and Wildlife Service warned a group of government and industry biologists in 1972 about the danger to the spotted owl caused by logging old growth forests. Scientists first began studying the spotted owl in 1966. Yet it took until 1990 until it was formally protected under the Endangered Species Act. The time it took between when the threat to the species was identified, and when significant corrective actions were begun, was far too long. This must change if we are going to achieve the goals of conserving and restoring the web of life. We must be concerned about the entire web of life, not just the charismatic megafauna, if for no other reason than the fact that biodiversity saves lives.

Protecting Life-saving and Life-giving Species

We are presently sitting in the Umpqua Basin. I won't talk today about the devastated salmon, the diminishing cutthroat trout, or the declining western pond turtle, even though Douglas County is in the heart of the range of all these species.

I will talk about an obscure little tree that is scattered along the Pacific Coast, but that reaches its highest density in Douglas County. A tree that was until recently considered worthless; a weed. The Pacific Yew depends upon ancient forest. As these forests were cut down and replaced with a monoculture of young Douglas-fir, no provision was made for the Pacific Yew. It was on its way toward ecological extinction, and would eventually have qualified for protection under the Endangered Species Act.

But along came the spotted owl and some scientists from the National Cancer Institute. Saving ancient forest habitat for the spotted owl also helps conserve the Pacific Yew. It also helps the Pacific Salmon and 1000 other species found to need the old growth forests. But most importantly, scientists found that this obscure little weed tree contained taxol, a compound we are finding beneficial in fighting ovarian and other human cancers.

Taxol was first isolated in the Pacific Yew. Today, the human need for taxol is being met primarily by partial synthesis from other yew species. But the scientist who isolated the taxol molecule noted that it was so complex, that only a tree could have originally thought of it.

If the Forest Service had been here a century earlier, or the National Cancer Institute not come for another 100 years, we might never have known of taxol. To those who say we don't need to conserve every species, I ask how can we humans know which species can be sacrificed. The attention in recent years has been on the spotted owl. But protection for that bird also helps protect other life-saving and life-giving species, some of which we don't even know about yet.

Economics

The Endangered Species Act is one of the most important economic development laws we have on the books.

First, it is designed to conserve species and ecosystems; many of which are recognized to have economic value right now, such as the Pacific Salmon and most recently the Pacific Yew. It also is designed to conserve nature's storehouse until the time that we humans possess enough knowledge to use it to help ourselves. Numerous examples can be cited where scientists have discovered new substances and processes from obscure species that help solve real human problems.

Second, while an unintended effect of the ESA, the law has accelerated economic diversification in the Pacific Northwest. When the old growth was eventually logged off and gone, the timber industry as we have known it would

have been gone too. Now that the remnants of ancient forest have some protection from logging, our economy has moved on for the better. Because of the intense political controversy over one endangered species, the government provided economic assistance to a region already in economic transition primarily due to over-exploitation of trees and automation of production.

Third, the Endangered Species Act, as now written, considers economics at every turn, except the first: listing. The determination of whether a species is in trouble or not should be purely a scientific, not social matter. It is a social matter of whether to, and how much to expend recovering the species. From the designation of critical habitat to the development of the recovery plan, from consultation to takings, economics pervades the Endangered Species Act. If that's not enough, then the Endangered Species Committee can be invoked, as it was for several ancient forest timber sales right here in Douglas County. Hearings were held, and an exemption for certain sales granted.

Fourth, the Endangered Species Act is a recognition by Congress, that certain societal values aren't well addressed in market economics, but have economic value nonetheless. Endangered species, along with clean air, clean water and safe streets have economic benefit, even though it doesn't directly "pay" in a market sense.

I want to conclude with some specific recommendations to improve the Endangered Species Act that can make it more effective in meeting the societal goals of conserving and restoring the web of life, and at the same time, more just to those caught in its web.

1. Enact an Endangered Ecosystem Act. Keep the ESA; it is equivalent to an emergency room at the hospital. But the Congress also needs to address preventative medicine to minimize emergency room use. The National Academy of Sciences should be charged with developing a conceptual conservation and restoration plan for the nation's ecosystems. Its recommendations should be incorporated into an Endangered Ecosystem Act, designed to address entire ecosystems earlier, rather than just individual species later.

2. Besides regulation to achieve the purposes of the Act, provide incentives to private landowners to conserve species habitat. Tax credits can be an effective way to do this.
3. Address farm, range, timber and mining subsidies for activities that presently harm endangered species. Withdraw them if possible, saving the treasury and species. If not, condition existing subsidies on conserving the habitat of diminishing species.
4. Fully fund the Land and Water Conservation Fund. Revenues from offshore oil leasing are supposed to go for habitat and open space acquisition, but are now being primarily used to offset the deficit. A billion dollars annually doesn't do much to hide our fiscal deficit, but would do much to pay down our ecological deficit. If the public wants endangered species protected (and it does), then we should pay for it. Buying habitat is the most effective way to do this.
5. Address issues of economic fairness in the Endangered Species Act. In response to economic impacts to certain segments of society, some say it is too expensive to conserve declining species. While is not too expensive for society as a whole, (indeed it is too expensive not to) it may be too expensive for some segments of our society to bear alone. The short-term economic costs of species conservation should not fall disproportionately on some segments of society when conservation will achieve long-term benefits to all of society. How do we achieve this economic balance? By providing education and job training for current and future generations, and by providing economic assistance and opportunity that will help diversify local economies.

In the Pacific Northwest, these short-term economic impacts often fall disproportionately on an undereducated workforce and on rural areas. Such people are already disadvantaged by the modern economy well before endangered species issues become an additional concern. While it may be growing overall, this economy is leaving some Americans behind. That is wrong. In their hurt and anger, these Americans are lashing out at what they can see: public policy to conserve and restore species. This does not have to happen if people are given the education, training and economic opportunity to change with the marketplace.

Issues of economic justice must be addressed directly by ensuring that none are left behind as the economy moves forward. As the Congress restrikes the balance in the Endangered Species Act, it is necessary to not achieve this balance by weighing some species against some people. Rather the balance can and must be struck by helping those people negatively affected by the ESA, not by hurting the species that need the ESA's protection.

In reauthorizing the Endangered Species Act, the most crucial balance to be struck is not between competing interests of the present occupants of this nation, but rather between the present generations and those to come. We are not so poor that we must drive species into extinction, nor so rich that we can afford to.

PARADISE CREEK RANCH
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1 June, 1995

The Senate Committee on Environment and Public Works,
Subcommittee on Drinking Water, Fisheries and Wildlife,
Roseburg, Oregon, Hearings.

Dear Members of the Subcommittee:

We appreciate very much your coming here to Roseburg for these hearings on this most important subject. We appreciate the distance you have traveled but also I hope you appreciate how great an impact the Endangered Species Act has had and could have in the future on our Douglas County people.

Introduction

My name is Bill Arsenault. My wife, Joan, and I bought a ranch near Elkton, Douglas County, Oregon in 1971. The ranch is 355 acres in size with approximately 250 acres in woodlands, 55 acres in improved pastures and the rest in home site and hillside. We have a fish bearing stream running for over a mile through the property with fish bearing and non-fish bearing tributaries. Although we did not move to Oregon until 1976, we started a feeder cattle operation and started managing our woodlands soon after the purchase in 1971.

Since the ranch operations could not fully support us, I worked full time in Roseburg for 15 years in the forest products industry. Joan managed the ranch during the week with both of us working there on weekends and holidays. I retired from my regular job in June of 1992 and devoted full time to operating the ranch.

During this period I became active in woodland issues outside of the ranch. I am currently President of the Douglas Small Woodlands Association, a chapter of the Oregon Small Woodlands Association (OSWA), and a Vice President of OSWA. Joan and I also have attended many woodland and riparian educational activities and I recently completed a course presented by the OSU Extension Service leading to my becoming a Master Woodland Manager (MWM).

As part of the MWM course, we were required to list our management objectives for our woodlands. In June of 1993 we listed the following:

1. Provide supplemental retirement income by harvesting on a sustained yield.

2. Organize enterprize and manage financially such that property can be passed on to our children.
3. Manage in a manner that will continue to provide an aesthetic setting for living.
4. Improve riparian area for bird and fish habitat.
5. Develop trails for hiking and horseback riding.
6. Provide an example of a responsibly managed treefarm.

We are continuing to work on these objectives.

Regulatory Threat

Private woodland owners operate under a variety of regulations and restrictions. We can do virtually nothing on our lands without first notifying the Oregon Department of Forestry. There are regulations on how we build roads, harvest our trees and restock our lands. There are very stringent regulations on how we operate near streams, both fish bearing and non-fish bearing. The point is that we live with regulation. And for the most part, we support these regulations because we participated in developing them. As an example, the recent riparian revisions were develop by an advisory group to the Department of Forestry with representatives from private industrial and non-industrial (small woodland) groups, environmental groups and state agencies. These regulations are very expensive to the private landowners but we support them because we participated in developing them and they are scientifically based. We do feel it is unfair for private landowners to bear the full costs of protecting species and we lobby for compensation for our losses.

What we were not prepared for was the Scoping Notice and associated proposed regulations issued by the Department of the Interior in December of 1993. These proposed regulations, intended to protect the Northern Spotted Owl, were issued under Section 4(d) of the Endangered Species Act. It took us a while to recover from the shock upon learning of the proposal. We did get re-oriented after a while and started to learn what 4(d) was all about.

We learned that a 2 inch long paragraph in a 20 page, 3 columns per page document gave the Secretary of the Interior the power to take peoples livelihood away, take their retirement away, bankrupt them, make criminals of them for doing nothing more than what they have been doing for decades, if not generations, on their own private land. This paragraph, Section 4(d) of the ESA reads"--, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species." As I read it, Congress has given the Secretary of the Interior unlimited power to take private property through regulation without accountability to anyone. This is government by fiat. This is government by bureaucracy. I call it "the new eco-socialism" (see attached copy of editorial).

The scoping notice defined, among others, three Special Emphasis Areas (SEA) which heavily impact private lands in Douglas County (see attached map with owl circles). Within these SEA's, 4766 acres (a circle of 1.5 miles radius) was designated as the home range of a nesting pair of owls and within this home range 40% of the "suitable" habitat would be set aside for the owls. Because of prior logging activity and the fact that much of our land in these SEA's is agricultural, the 40% suitable habitat meant that for some private owners 100% of their forest would be taken.

Paradise Creek Ranch is within the South Coast SEA and the edge of an owl circle is within a few hundred yards of our property line.

Needless to say this put great uncertainty in our minds. We felt that for the most part we landowners had been good stewards of the land. We wondered, if we had been such bad managers of the land, why all those owls were nesting on our lands (see attached map with owl circles). What became obvious was that good stewards of the land were going to be punished because they had really been growing owl habitat.

Economic Perspective

As I contemplated the situation, several realizations came to my mind. From an economic perspective, Joan and I had made conscious and sub-conscious decisions over the past 20 years knowing that we had standing timber on our lands.

1. I felt I could retire with some peace of mind, knowing that if retirement income were not quite enough, we could periodically harvest some trees to make up any deficit.
2. We purposely did not take out expensive long term care insurance for we felt that if one or both of us needed to be confined we could help bear the cost through periodic harvesting.
3. We basically self insured on life insurance. If something happened to one of us, the other could depend on the assets sitting on our hills to carry on.

These decisions were made knowing there is no ultimate certainty in life, nor in forestry. Disease and fire are always a threat. But we were willing to take these risks knowing we had some, though limited, control over these factors.

As long as no adverse situations arose, the trees would continue to grow and provide ever improving habitat. We would continue to manage for the health of the forest and for some occasional income.

Response to Regulatory Threat

The one risk we had not considered was that our government might take our land. After several

initial contacts with government people, including several high administration appointees, I was convinced that these people were dead serious. They were going to "hammer" (their words) landowners with 4(d) and if we didn't comply, they would prosecute. The carrot being held out was if we went along with them, they would work with landowners through Habitat Conservation Plans (HCP's). One look at this process convinced many of us small woodland owners that we were in for many months of delay, expensive consulting services, piles of paper work, a period of public review and uncertain results anytime we wanted to carry out an operation. We were also convinced that USFWS did not have the resources to process thousands of HCP's that might result each year.

We felt at this point we had only one alternative. We needed some certainty. In fairness to our family and to ourselves, we needed the money in the bank and in 1994, we clearcut two parcels. One we had already scheduled for a selective cut and the other we probably would have selectively cut in several years. We clearcut instead.

It is difficult to say how many other small woodland owners have cut trees out of fear of regulation. Certainly good log prices motivate many. But woodlot owners have a wide range of objectives and most are very environmentally conscious. Many prefer to enjoy leaving their trees standing, until perhaps some economic need arises. But certainly the threat of regulation has raised their awareness and has given to many second thoughts.

The Oregon Committee and The Oregon Plan

Upon issuance of the Scoping Notice by USFWS in December of 1993, non-federal landowners in Oregon rallied together and collectively asked the U.S. Fish and Wildlife Service to come to the table and discuss what they were trying to accomplish and why it was needed, with the idea that the landowners were in a much better position to carry out the task and hopefully with far less onerous consequences. As part of this effort we approached our Oregon Congressional delegation for help, specifically asking that they ask that the rulemaking process be suspended and that the Department of Interior make a much greater effort to develop a 4(d) rule acceptable to the landowners.

This letter was sent on March 17, 1994, to Secretary Babbitt with the unanimous consent of the delegation. Later in the process a second letter was sent to the Secretary asking that in issuing the final 4(d) regulations, Oregon be left out of the process until an Oregon Plan is developed in cooperation with the Department. For this help from our Oregon delegation we are ever grateful. **We believe that the cooperative effort now going on would not have happened and landowners would not have had anything to say concerning their future had not our delegation acted on our behalf.**

The Oregon Committee, consisting of the Governor's Natural Resources Office and non-federal landowners in Oregon, is carrying out meetings and technical sessions with USFWS with the intent of better developing the science involved and generating the data necessary to make sound decisions. For example, a task force is working on defining nesting, roosting and foraging habitat

along with dispersal habitat. The forest industry through the Oregon Forest Industries Council is financing a project to inventory various types of habitat throughout Oregon using multi-spectral satellite photography.

The Oregon plan will evolve through the development of a better data base of habitat, better definitions of suitable habitat and a re-analysis of contributions of habitat by the federal government under Option 9, currently in place HCP's and the Oregon Forest Practices Act.

SPECIFIC RECOMMENDATIONS TO MODIFYING THE ENDANGERED SPECIES ACT

After working with the Endangered Species Act for over 1 1/2 years, working with small woodland owners and with the USFWS, I have the following recommendations for changes to the Act:

There must be sound, verifiable science in order to list a species

Currently only "best available" science is the criteria. This criteria, unfortunately, includes no science. .

Require peer review of listing proposals by independent outside experts

USFWS currently only reviews material it receives in making a listing, does little independent investigation. An independent review could bring out additional data, suggest additional investigation and objectively analyze submitted data. As an example, we have learned that the Anderson-Burnham population computer model has many biases in it and it over stated the population decline of the Northern Spotted Owl. Yet the predictions from this model were a major factor in listing the owl as endangered

Confine listings only to species that are troubled in their core habitat

Every species is rare at the edge of its range. The marbled murrelet, relatively abundant in Canada and Alaska, is "threatened" in Oregon near the end of its range.

Require that all federal resources be utilized in protecting and recovering a listed species before any private land is regulated.

Currently under Option 9, habitat and owls will be "taken" on federal lands and private land will be used to mitigate. This puts private land on the trading block at the whim of the regulators.

Local stakeholders must be part of the process in developing recovery plans. Top down dictates must stop.

Listings come from the federal government, regulations come from the federal government, prosecution comes from the federal government. Responsible land managers suffer and the listed species suffer. The Oregon plan is an example of how landowners should be involved. This cooperative venture would not have happened if it had not been forced on Interior.

If private property must be used in recovery, incentives and voluntary programs should be developed first. Regulation must be used only as a last resort and landowners then must be compensated for their losses.

Currently, responsible managers are punished. Carrying out long rotations and selective cutting practices creates NRF (nesting, roosting and foraging) habitat, which the government then confiscates. Other branches of government pay for taking private property. Power companies pay for rights of way. Highway departments pay for taking property for roads. Only the environmental movement confiscates private lands without just compensation.

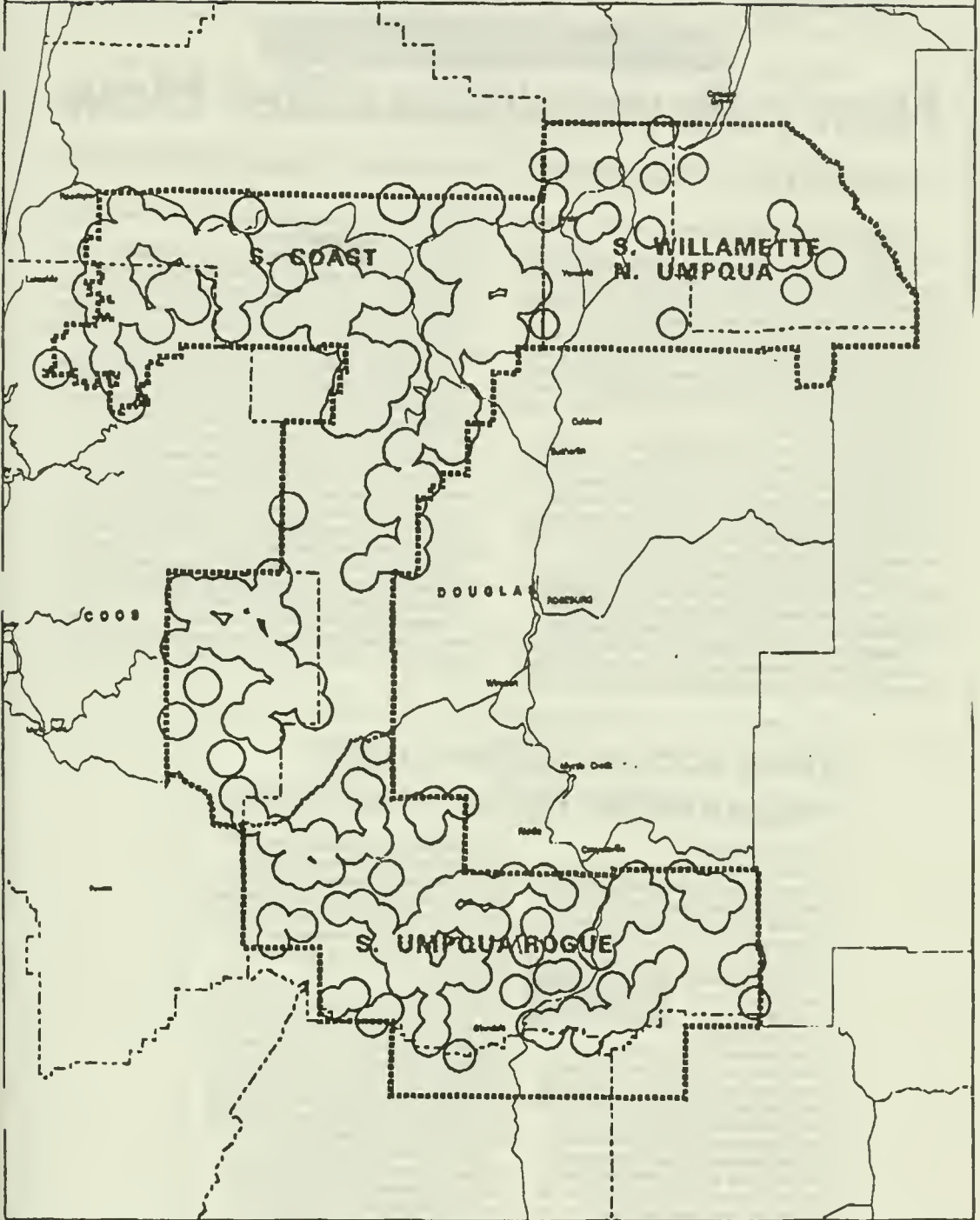
I thank you for the opportunity to testify before this subcommittee and to submit this written statement.

Sincerely,

Bill Aisenault

SPECIAL EMPHASIS AREA IMPACT - 4(d)

Prepared By Advisory Committee, January 1994



NEWS-REVIEW EDITORIAL

New rule would be bitter blow

Pressure could ease extent of proposed private timber rule

Things just keep getting tougher for the timber industry in Douglas County.

Option 9, President Clinton's forest plan, already threatens to lock up most federal timberland in the county. Now comes a new proposal that could curtail logging on many private lands intermingled with federal parcels.

The administrative rule being developed under Section 4(d) of the Endangered Species Act has energized a community weary from court injunctions, conservation plans and mill layoffs. It also has brought small woodland owners into the forest debate along with a new set of issues over private-property rights.

Last April, President Clinton pledged to never forget the human and social dimensions of the forest issue. So far his promise has been nothing more than empty rhetoric. No one knows when federal-timber sales will resume and how much will be sold. There are more questions than answers about economic programs the administration says will offset additional job losses in the timber industry.

The president and his advisers should focus their time and energy on these issues. Instead, they have set their sights on private lands in Douglas County to ensure the long-term genetic integrity of the northern spotted owl.

Understandably, county residents are outraged by this latest assault, which threatens economic livelihoods and retirement incomes. If not changed, the proposed 4(d) rule

will spawn more lawsuits against the federal government and lead to further polarization.

There are numerous reasons why this proposal is ill-conceived. One of the most important is it would reward landowners who "cut and run" and punish those who practice good management. It's hard to blame landowners who decide to liquidate their timber assets now instead of risking being tied up as federally protected owl habitat.

Various suggestions have been made for fighting the proposal, ranging from writing "letters to the editor" to taking to the streets in civil disobedience. There have been countless marches and rallies during the last five years. Many have received considerable media coverage, but they haven't had much effect in shaping the outcome.

Seeking help from Oregon's congressional delegation doesn't offer much more hope for success. Considering the White House bypassed moderates like Rep. Peter DeFazio, D-Ore., in developing Option 9, it's unlikely our congressional representatives are going to have much influence.

What county residents need do is to apply pressure directly on the White House, particularly on Tom Tuchmann, the administration's forest policy coordinator in Portland. Top administration officials are the only ones with enough power to overrule biologists intent on providing maximum protection for wildlife without considering the economic costs.

New eco-socialism hurts responsible timber managers

By BILL ARSENAULT

The Clinton administration's recent announcement that large areas of private land in Douglas County and other selected areas of Oregon will be utilized in the recovery plan for the northern spotted owl strikes at the heart of responsible forest management.

Many private woodland owners have been converting brushland and understocked land to new forests. Others have been carrying out selective cutting practices carrying trees to maturity, operating on a sustained yield basis. These good stewards of the land are now finding they have only been growing old habitat which will now be confiscated by the U.S. Fish and Wildlife Service to be utilized for their own purposes. How can we ever encourage another person to spend a dollar to plant another tree?

Many small woodland owners, with faith in our country and faith in the future, have borrowed money to purchase

and rehabilitate understocked lands. Indeed, several of our private Douglas County industrial owners have done the same on a much bigger scale. These people may now face an economic crash due to prohibitions in harvesting, and these land values, the basis for these loans, may go to zero.

The federal government is carrying out this plan under Section 4(d) of the Endangered Species Act in spite of the fact that over 50 percent of the forest land in Oregon, including over 50 percent of the forest land in Douglas County, is already owned by the federal government and 90 percent of the owl habitat and 95 percent of the owls are on these federal lands.

This proposed taking of private land without compensation is precedent setting and, if successful, will set the pattern for action on the recovery of future endangered species. This is the new eco-socialism and no landowner is immune.

Bill Arsenault of Elkton is president of Douglas Small Woodland Association.

**GUEST
OPINION**

PUBLIC COMMENT

SENATE COMMITTEE ON ENVIRONMENT & PUBLIC WORKS'
SUBCOMMITTEE ON DRINKING WATER, FISHERIES, & WILDLIFE
DICK KEMPTHORNE, CHAIRMAN

BY

PENNY AND JOHN LIND
1931 STRICKLAND CANYON ROAD
ROSEBURG OREGON 97470
(503)679-5981
MAY 30, 1995

My name is Penny Lind. I have been asked to give public comment on the Endangered Species Act, in reference to private property.

I am from Roseburg, Oregon. My husband John and I live on 206 acres of forested property on the edge of the Lookingglass Valley, a part of the Umpqua Watershed. Our property is bordered on two sides by government property and on two sides by private property. We have many friends and family members that live in the local area, including three children and one granddaughter. We came to Roseburg from Michigan and have lived on our property for twenty-six years.

A. IMPLEMENTATION OF THE ENDANGERED SPECIES ACT ON PUBLIC & PRIVATE PROPERTY (INCLUDING COORDINATION OF AGENCIES AND PRIVATE ENTITIES)

The implementation of the Endangered Species Act in the region we live in has been a slow, tedious, painful process. The build-up of fear that government agencies, private industry, environmentalists, and friends and neighbors portrayed as a total doom and gloom outcome began in the late eighties for us. The constant threat of "job losses, property losses, economic devastation, and social holocaust", was a daily onslaught. During the pre-listing of the Northern Spotted Owl, the trees in the forest continued to fall victim to what we now know as the era claiming fame to the most accelerated cut of the northwest forests.

This saga has contained the "God Squad" intervention, through the 318 ACT that allowed this heavy cutting to continue even in areas where known owls resided. My husband & I would attend the local 318 advisory board meetings, and to our disappointment, would often be the only public audience. The importance of the process did not fill people's minds as much as the "impending doom theories".

During this period of time, automation also moved in and contributed to the fear. In 1990 the Northern Spotted Owl was listed as a threatened species. The divisions in the communities became extreme. In the Roseburg area, the majority of residents would not accept what the scientists, economists, and environmentalists predicted. When the 318 Act had lived out its days, the courts were then an option to force a different kind of management.

During this time the fear was heightened by "locking up the woods" rhetoric, while day after day trucks of raw logs made their way to area mills and to the coast for foreign buyers and bigger prices, reducing the habitat more and more.

The division grew larger and louder until national attention was alerted. Forest plans were being touted on a weekly basis coming from every extreme possible. The management of the federal agencies appeared to drag their feet with predictions of plans to be put in place in ten years. The Clinton administration committed large resources of time, staff and dollars, forcing the development of the

current Clinton Forest Plan. This plan intends to include regulations that should help conserve habitat for the threatened Owl, as well as incorporating fish habitat health. We have yet to see this plan be practiced to its full potential.

It's my hope that the current plan for the public forests will not return to "business as usual", by playing the role of agent for one interest. In this region, that would be the timber industry and would be a form of failure.

In the decades John and I have lived on our property, we have seen the many ups and downs of the wood products industry. The timber dependent communities are not strangers to this roller-coaster environment. We have many friends that work in the woods, in the mills, and in the government agencies that administer the public forests. We have also lost friends to wood products accidents, and to philosophical differences.

Douglas county has had a heavy dependency to the timber industry through O&C receipts & jobs. This has been a double-edged sword with the prosperity of a particular kind on one side, and a lack of economic diversity on the other.

In the interest of history, I have given you a brief summary of how we have come to where we are today. By listening to our interpretation of the steps that took place with the owl listing, you may be better prepared for future listings. We would recommend early intervention from all federal agencies supporting their specialists and educating

the community. The resources this would cost would be heavily outweighed by a more informed public. Public responsibility and agency respect would develop the "two way street" relationship.

B. THE CHECKERBOARD LAYOUT (INCLUDING HABITAT CONSERVATION PLANS)

The "checkerboard" layout of the Bureau of Land Management public lands requires that trust and respect be built between private property owners and management. This was not the usual standard for many rural property owners in the past. The perception of a closed federal agency had fostered a distrust and contributed to yet another layer of divisiveness. The industry continued to have an open door with the agencies while individuals felt alienated by lack of knowledge. I feel this was a dual responsibility and am committed to keep a dialogue with our local agencies and encourage others to do so as well.

I am the President of an Oregon non-profit, volunteer organization called Community Trail Volunteers (CTV). CTV has worked with the Oregon Parks Department and the U.S. Forest Service for the past three years building trails and recreation destinations. After a stormy beginning, we are developing a working relationship with the Bureau of Land Management to work on volunteer recreation projects with their staff. Through this partnership, our volunteers have

dedicated thousands of hours strengthening public ties with the agencies.

I am also a board member for Umpqua Watersheds (UW), an Oregon non-profit, conservation organization. UW board members dedicate their volunteer hours to monitoring the forest of the Umpqua Basin for sound watershed management, educating the community, and communicating with public agencies.

As private property owners that border forested public lands, John and I have a keen interest in what develops on these border properties as well as other public lands. We have considered a habitat conservation plan with the Bureau of Land Management by working on developing a recreational trail in an area planned for logging that has now proven to have owl activity within the original sale. If the responsible use of this land could protect owl habitat while offering recreation opportunities this habitat conservation plan would have a successful outcome.

The property that we live on was logged (not clearcut) nearly 60 years ago. The constant flux of this forest has been right outside our door for twenty-six years. We have a portable saw mill and do produce lumber for our family's needs. We would like to continue to do this while sharing a healthy habitat plan with our neighbors. Many of our neighbors already do this. Some are frightened that if they don't act now they will lose resources. We need to be personally responsible by reaching out for new knowledge,

listening, and accepting new ideas and helping others feel secure in their choices.

We do not support the transfer of the O & C timber lands from federal to state control without understanding all the details in regard to protecting the watersheds and the species within the forest. The pressure to disregard sound management would lay heavy on the state & local government, the inequities amongst counties would be divisive, and the Oregon State Forest Practice's Act would need to show a better track record of enforcement and protection of resources before we were swayed.

C. INCENTIVES AND DISINCENTIVES OF COMPLIANCE TO THE
ENDANGERED SPECIES ACT

We currently have laws in place to run interference for the Endangered Species Act. The Clean Water Act, the Clean Air Act, the Clinton Forest Plan, the Oregon Forest Practices Act and many more specific to regions across the nation. If these laws are not funded or enforced, the burden falls to the Endangered Species Act when warranted.

When all of the above does not work, I do not support placing the lion's share of the burden of paying for the mistakes of mismanagement of the forest onto the individual private property owner. I do not want to be the taxpayer that owes more taxes and fees to support industrial property owners for their losses which have been preceded by their gains.

The development of alternative logging techniques is gaining in popularity. Helicopter logging, ecoforestry, horse logging, & thinning as opposed to traditional clearcutting and stripping the soil should bring incentives not higher costs.

The property we live on is our home, is our children's heritage, and will assist John and I in our retirement. Our water comes from the Earth, our heat comes from wood products, we make beautiful products from the wood of our forest, we gain peace and serenity just outside our backdoor when ever need be. We revel in sharing these luxuries with familv & friends which is a growing list. This is incentive to be a good land steward. It's not something to be punished for.

"Only after the last tree has been cut down. Only after the last river has been poisoned. Only after the last fish has been caught. Only then will you find that money cannot be eaten."

CREE INDIAN PROPHECY

SUMMARY

TO: SENATE COMMITTEE ON ENVIRONMENT & PUBLIC WORKS'
SUBCOMMITTEE ON DRINKING WATER, FISHERIES, & WILDLIFE
FROM: PENNY LIND, 1931 STRICKLAND CANYON RD. ROSEBURG. OREGON
DATE: JUNE 1. 1995
LOCATION: DOUGLAS COUNTY FAIR GROUNDS, ROSEBURG. OREGON

My name is Penny Lind. I have been asked to give public comment on the Endangered Species Act, in reference to private property.

I am from Roseburg, Oregon. My husband John and I live on 206 acres of forested property on the edge of the Lookingglass Valley a part of the Umpqua watershed. We are bordered on two sides by government property and on two sides by private property. We have many friends & family members that live in the local area, including, three children and one granddaughter. We came to Roseburg from Michigan and have lived on our property for twenty six years.

Senators, I speak to you today in hopes that this hearing will heighten communications and responsibility to communities across the nation in favor of re-authorizing the Endangered Species Act.

As members of this committee, I understand, you are charged with the responsibility to help our nation establish the process

that will determine the outcome for habitat: including the human community and plants and animals.

I hope to fulfill my responsibility to the committee by answering the following question:

*As a private property owner, why do I support the ESA?

The simple answer is that nationally, similar situations, requiring the act in 1973 still exist in 1995 and will continue to exist in the years ahead.

In 1973 the ESA was put into law due to accelerating loss of our wild animals and plants. The U.S. Fish and Wildlife Service determined the following threats were responsible:

- #1 Habitat destruction
- #2 Exploitation for commercial or other purposes
- #3 Disease
- #4 Predation
- #5 Inadequate conservation law
- #6 Pollution
- #7 Introduction of non-native species
- #8 a combination of the above

Habitat destruction remain the primary cause of loss of plant and animal species.

So what does all this mean to private property owners? That's a lot to digest while your raising your family, enjoying your home, doing your job, and planning your live in general.

Like many citizens, I have to turn to scientists, economists, and legislators to help me understand the details of what all this means. In addition, like many citizens, I turn to

my emotions to help me make choices. The emotions that steer the actions of many private property owners, when they hear ESA, is FEAR & ANGER. Fear & anger that they will lose their property? Fear & anger that habitat & species will be lost? Both intertwined in all ways in communities across our country.

Our communities made a commitment in 1973 to share the responsibility of implementing the ESA, by allocating funding, modifying activities, when warranted and setting up a real safety net for threatened species. The successes that have been reached are proof of the effectiveness of the Endangered Species Act. If the U.S. Fish & Wildlife have experienced failures with recovery of species those are the lessons to research when considering changes in the Endangered Species Act, not the convenience of industry & communities.

I recommend that your committee call for a strong Endangered Species Act. I would like to see public agencies, industry, and individual property owners work together, to avoid the need of enforcing the act, by halting activities of destruction and developing habitat conservation plans.

The Endangered Species Act is that, the "Endangered" Species Act not the "Species" act. It's not meant to be a front-runner for salvation of all species, bug by bug. It's the safety net or last ditch effort put into action with many checks and balances. If local, state or other federal laws are either not in place.

not implemented, or not enforced, a species decline does bring this safety net into play.

The Northwest has been a regional battle ground for the Endangered Species Act. Many resources have been committed to understand how to balance out the threatened species recovery or continued decline.

If the efforts of our communities to gain footholds where warranted, threatened, or endangered species become the burden of the private property owner the ANGER & FEAR will be due to failure. Failure of the communities to be responsible. Private property owners shouldn't be punished for sound forest management nor should they be rewarded for destroying their water, their soil, their view shed or their heritage for generations ahead.

I need to be personally responsible by reaching out for new knowledge, listening, and accepting new ideas. I would like everyone here to commit to that responsibility also.

Thank you for allowing me this opportunity to volunteer. I invite you to tour Oregon while you're here to see first hand the importance of the decisions you are making.

TESTIMONY OF MR. CURT SMITCHE, ASSISTANT REGIONAL DIRECTOR FOR THE U.S. FISH & WILDLIFE SERVICE, BEFORE THE SENATE SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE ON THE ENDANGERED SPECIES ACT.

June 1, 1995

I would like to thank the members of the Subcommittee for the opportunity to discuss the Endangered Species Act (ESA), one of the most important conservation laws in the history of this nation, and probably the world. Despite the importance of this law, whose stated purposes are to conserve the ecosystems on which endangered and threatened species depend and to provide a program for their conservation, this subject seems to be generating much more heat than light in the past several months. Recent media coverage has focused almost entirely either on the Act's vaunted success stories (such as bald eagles, grey whale, and whooping cranes) or on reported horror stories (e.g. surrounding the California fairy shrimp and Stephens' kangaroo rat). While some of these stories are valid, others are clearly exaggerated or false. The point is that neither success nor horror stories tell the real story.

What has actually been happening over the past two years, much less publicized, is a quiet revolution in the implementation of the Act. This is a revolution brought about by this Administration in an attempt to do something that had not been accomplished in the past 12 years -- to make the Act work better for both species and the public. Our key objectives are based

on a common sense approach to the Act and a concerted effort to solve legitimate problems while preserving the core goal of protecting our nation's priceless biological heritage. These objectives include: relaxing burdens for small landowners; encouraging large landowners to enter into voluntary agreements to manage their land to protect species, as a substitute for regulation; increasing certainty and predictability for private landowners and local governments; expanding the role of states; reducing socio-economic effects of listing and recovery; and making sure good science and the most accurate data available are being used in all ESA decision making.

As successful as our efforts to date have been, more could be accomplished through changes Congress could make to the existing statute that would make it possible to achieve all of the Administration's 10 point plan announced in March of this year. These changes would result in a major reform of the way the ESA is administered. Congress could enact changes that would:

- provide greater flexibility in the conservation of threatened species as originally intended by the Act;

- provide certainty for landowners who develop habitat conservation plans or improve habitat for endangered species on their lands that their actions will not be subject to further restrictions under the ESA;

- exempt residential homeowners and most small landowners whose activities affect less than 5 acres from the incidental take prohibitions of the Act; and

-- give the states a much greater role and enhanced flexibility in the Act's implementation.

In addition, the land management agencies are working together to formulate proposals to further reduce delays and uncertainties associated with the consultation process under the Act.

These changes would be significant and go to the heart of legitimate problems associated with the Act. But just as important, they would be consistent with our fundamental principles for any ESA reauthorization we will support. These include:

1) The reauthorization must be consistent with the overall purposes of the ESA which are widely supported by the American people. That support remains strong despite recent controversy as evidenced in a recent Lou Harris poll in the Northwest, which found that citizens support reauthorization of the ESA by over a 2 to 1 margin, with 71% of those polled responding that the ESA has been effective in protecting plants and animals from extinction. The reauthorization, therefore, must not undermine the basic requirement that endangered and threatened species be conserved -- with the goal being to recover species and remove them from the list.

2) It must make the Act more workable, efficient and less costly to implement for the government and property owners -- not more bureaucratic, costly and unworkable.

3) Finally, the reauthorization must reduce administrative, economic and regulatory burden on small landowners while providing greater incentives to conserve species.

Our basic message, and the point behind the 10 point plan is that much has been done and still can be done under existing authority, using flexibility in the law and creativity seldom exploited in prior Administrations. Additional flexibility can be gained through a moderate, sensible, centrist program of amendment in the reauthorization process - - without throwing out the Act.

I would now like to highlight some of the areas of the law we have been working to improve, and how our 10 point plan could greatly reduce current problems associated with the ESA.

Relief for Small Landowners

Early this year the U.S. Fish and Wildlife Service (USFWS) proposed a "special rule" under section 4(d) of the Endangered Species Act to release about 80% of all the private forest land in Washington State (and substantial amounts in California) from virtually all logging restrictions that would otherwise apply on account of the northern spotted owl. This private landowner "dividend" was possible because the President's Northwest Forest Plan places the burden for conservation primarily on federal forest land to meet most of the conservation needs of the owl and

other old-growth dependent forest species.

The proposed special rule would, for the first time, also provide a "small landowner exemption" effective across both states. Owners of 80 acres of forest land and/or less located anywhere in Washington or California (even in the non-released areas) would be exempt from the logging restrictions.

Secretary Babbitt will soon issue a proposed rule to exempt on a generic basis most current landowners who use their property as a residence, want to develop less than five acres of land, or who undertake development activities that have a minimal impact on the species overall. The exemption would pertain to virtually all "threatened" species, but would not apply where cumulative impacts to habitat from many adjacent small landowners might be severe.

Our 10 point proposal asks Congress to provide the Fish and Wildlife with the same kind of flexibility to extend such an exemption for endangered species, which is not possible under existing law.

Voluntary Agreements With Large Landowners

In the 1982 amendments to the Act, Congress reconciled conflicts

between private development and endangered species by allowing the development of voluntary "Habitat Conservation Plans (HCP's)." An HCP, when accepted by the USFWS, supplants the regulatory prohibition of the Act that private landowners cannot "take" threatened or endangered species on their property. The plans identify management techniques to protect listed species and/or set-asides of "reserve" areas in which habitat is protected; in exchange, permission for development of the rest of the property is granted.

From 1982 to 1992, fourteen HCP's were completed. Since then, we have completed more than sixty additional HCP's, and more than 150 additional HCP's are currently being negotiated nationwide.

As a result of the new "no surprises" policy for HCP's announced by Secretary Babbitt late last summer, landowners with approved plans will be exempted from any additional requirements for species covered by the plans (both listed and not yet listed) for the life of the plan - - in some cases as long as fifty years. Thus landowners receive a significant degree of certainty and protection against future regulation. These multi-species HCP's are advantageous to both parties, and may help keep additional species off the endangered species list.

In the Southeast United States, USFWS has signed cooperative management agreements with three major timber companies to manage

their lands to protect red cockaded woodpeckers: Champion International (Texas), Georgia-Pacific (Arkansas), and Hancock Timber (Virginia). Four more such agreements, as well as ten HCP's, are currently under negotiation, including several that will cover many small landowners.

For the Sandhills region of North Carolina, the USFWS recently developed a "safe harbor" HCP to provide incentives for private landowners to preserve and enhance red-cockaded woodpecker habitat. The agreement promises that success in attracting more woodpeckers to their property will not limit future development even if the woodpeckers are later compromised. A similar process has been proposed for the Pacific Northwest to encourage timberland owners with emerging owl habitat not to "panic cut" their lands before owls may be found there - - guaranteeing future logging of these lands will not be blocked by owls attracted to the improving habitat in the meantime.

In the Pacific Northwest, to complement the President's Forest Plan, a team of biologists has been established in the USFWS's Olympia, Washington, office to negotiate HCP's with large landowners. Agreements have been concluded with Weyerhaeuser for its holdings in Oregon, with Simpson Timber, and with Murray-Pacific Corp. More than a dozen additional HCP's are currently under development including prospective agreements with the States of Oregon and Washington, the Seattle Municipal Water

District, and private industrial timberland owners.

Most of these will be "multi-species" HCP's, designed to protect dispersal habitat for owls, riparian areas necessary for spawning salmon (both runs that are listed and runs that may be listed in the future), and other plants and animals. The riparian protection being incorporated in these plans are "state of the art" for private industry and are intended to meet both federal and state regulatory requirements well into the future.

HCP's or cooperative agreements have also been signed or tentatively approved in the past year with states (e.g., Utah, to protect the Virgin River spinedace), and counties. Examples of HCP's include Clark County, Nevada (Las Vegas), and Washington County, Utah (St. George), to protect key populations of desert tortoises; Riverside County, California, for the Stephens' kangaroo rat; and Bakersfield County, California (multi-species).

In February the Plum Creek Timber Co. signed an innovative agreement with the USFWS, Forest Service, and State of Montana to manage nearly 300,000 acres of private, state, and federal lands in the Swan Valley of Montana for grizzly bear protection. Plum Creek is the largest private landowner in Montana.

In addition, the Congress could provide additional certainty to landowners who develop approved habitat conservation plans that

protect non-listed species as well as listed species. Landowners who have satisfactorily demonstrated that they will protect candidate species or the significant habitat types within the area covered by a habitat conservation plan should be assured that their land use activities will not be disrupted if the candidate species or additional specific species not covered by the plan but dependent upon the same protected habitat type are subsequently listed under the ESA.

Greater Involvement Of States and Local Government

A major focus of criticism and frustration with the ESA has been the lack of adequate consultation, involvement and flexibility for the states in the implementation of the ESA. A critical component in our 10 point plan deals with this issue and was developed in concert with the Western Governors Association, National Governors Association, International Association of Fish and Wildlife Agencies (representing state fish and wildlife departments), and many others.

The leading model for Habitat Conservation Planning spearheaded by state and local government is the Natural Communities Conservation Planning (NCCP) process now underway in several Southern California counties. In a special rule under the Endangered Species Act first proposed in the Spring of 1993, the USFWS delegated to the State and counties in Southern California the opportunity to use existing planning processes to protect

habitat for the California gnatcatcher, as a substitute for federal regulation.

This devolution of authority has spurred Orange and San Diego counties, working with local municipalities, developers, and environmentalists, to develop several county-wide multi-species plans that would protect habitat for groups of species including many that are not now on the federal list. If approved, these plans will in effect plan for the open space, riparian, recreation, and habitat needs of these counties well into the 21st century - - and suspend Endangered Species Act regulation for almost all species that could conceivably be listed in the coming decades.

Federal as well as state, local, and private funds have gone into the planning effort, and the federal government will eventually contribute toward land acquisition necessary for any preserves, as will developers and state and local governments.

Final plans are expected to be proposed before the end of 1995. In the meantime, interim guidelines permit subdivision and development of up to 5% of key habitat for listed species if targeted in less sensitive areas. This allows a "safety valve" rather than the complete halt in development that would have occurred if strict regulatory provisions of the Act had been applied.

The Administration's "ten point plan" of March 1995 identifies a series of legislative changes that could be adopted to guarantee broader state involvement in administration of the Endangered Species Act, and make delegation to state and local governments like that achieved in Southern California easier to structure in future cases.

We suggest, for example, that States all be given a formal opportunity to review the scientific basis for future listing proposals, and that States be allowed to assume responsibility for development and implementation of recovery plans and for issuance of habitat conservation planning permits. Recovery plans should also be developed jointly between the federal and state agencies affected.

We also suggest that where a State, in concert with other land stewards, develops its own conservation plan that would achieve the objectives of a recovery plan, the USFWS be authorized to suspend the effects of the species' listing (or several species, if the state plan is multi-species) in that State, letting the State implement its plan through state regulation and other means. USFWS would monitor that plan and review its effectiveness periodically.

Ensuring The Use of The Best Science

Another concern expressed by critics of the Act is that there is

insufficient outside review of listing decisions made by USFWS. We have adopted a policy acquiring three independent scientific peer reviews of all listings, and suggest that this requirement be written into the law. In addition, we support requiring that special consideration be given to State scientific knowledge and information. We propose that petitions be sent to each affected State fish and wildlife agency and that the Secretary be required to accept a State's recommendation against proposing a species for listing or delisting unless the Secretary finds, after independent scientific peer review, that listing is required under the ESA.

Better Cooperation Among Federal Agencies

Several of the apparent "train wrecks" attributed to the Endangered Species Act in the past resulted primarily from the failure of federal agencies to (1) obey their own statutory mandates, and (2) work together toward a common goal. Simply getting federal agencies working together has produced a Forest Plan for the Pacific Northwest that will provide a sustainable long-run timber harvest while protecting the old-growth forest ecosystem, owls, salmon habitat, and more than 1400 species dependent on this biologically-rich and threatened ecosystem.

Our work in the San Francisco Bay/Delta contrasts with the conflict and delay that can result from the failure of Federal agencies to cooperate and listen to communities. Federal

agencies jointly produced a plan for water allocations in the San Francisco Bay/Delta that would comply with the Endangered Species Act and Clean Water Act this cooperation produced an agreement in late 1994 that was joined in by the State of California, urban water users, agricultural interests and environmentalists - - achieving landmark consensus that has eluded policy-makers on these issues for almost 15 years.

The Administration is considering other possible actions that would eliminate redundant review of federal plans and actions on federally-managed land - - allowing a single "screening" of plans or guidelines to protect species that, once adopted, would guide federal land managers without requiring duplicative reviews of every timber sale, recreation development, or watershed restoration project.

Taking Account of Socio-Economic Factors and Trade-Offs

The Administration continues to support basing the listing of species solely on science, not politics. But the changes detailed above are intended to provide much greater flexibility, and therefore more opportunities for consideration of costs and of socio-economic impacts, in how we go about recovering listed species.

The use of Habitat Conservation Plans, and the greater involvement of state and local governments, will necessarily

involve more balancing of protection with economic costs. In addition, by policy the Administration has now directed that species recovery plans explicitly minimize any social and economic impacts of recovery. The Administration supports including such a requirement in the law.

Ultimately, the changes that have already been adopted in the Administration's strategy recognize that the central goal of the Act is protection of habitat for endangered species; that the most valuable habitat usually supports a rich mixture of species; and that the efforts to protect such habitat inevitably will involve weighing costs and benefits.

Our approach to the Endangered Species Act is intended to recognize these trade-offs and balance decisions, taking the long-term, not the short-term, view. If good science and wise management of our natural resources guide our actions, we will benefit not only threatened and endangered species, but the human species as well.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

North Pacific Coast Ecoregion
 Office of the Assistant Regional Director
 3773 Martin Way E., Bldg. C, Suite 101
 Olympia, Washington 98501
 (360) 534-9330 Fax: (360) 534-9331

Mr. Chairman, if it is appropriate, I would like to provide examples of several points I raised in my testimony which was previously submitted to the Committee. Thank you.

Voluntary Agreements With Landowners

We have been employing three types of voluntary agreements to address landowner concerns about ESA in this region of the FWS: 1) HCPs, 2) Cooperative/Conservation agreements, and 3) Take Avoidance Agreements.

- Attachment #1 contains the information on these agreements. In addition, I have included a map which shows where the HCPs are located in Washington and Oregon.
- Attachment #2 describes the regional policy for the development of cooperative/conservation agreements for listed species with private landowners.
- Attachment #3 is a copy of Secretary Babbitt's "No Surprises" policy.

Streamlining of Section 7 Consultations for the President's Forest Plan

In addition to addressing ESA concerns on non-federal lands, the federal agencies involved in the implementation of the President's Forest Plan are working closely together to reduce the amount of time required to conduct Section 7 consultations under the ESA. The intent of the agreement is "to complete informal consultations within 30 days and formal consultations within 60 days after submission of agreed-upon BA [Biological Assessment]. Attachment #4.

Curt Smitch
 Assistant Regional Director
 U.S. Fish and Wildlife Service
 June 1, 1995

May 30, 1995

HCPs, CONSERVATION AGREEMENTS,
AND TAKE-AVOIDANCE PLANS

U.S. Fish and Wildlife Service
North Pacific Coast Ecoregion

Applicant	State	Size (acres)	Status
Habitat Conservation Plans			
Murray Pacific Owl	WA	55,000	Completed
Coast Range Conifers	OR	109	Completed
Weyerhaeuser Millicoma	OR	209,000	Completed
Elliott State Forest	OR	93,000	Underway
Weyerhaeuser Willamette	OR	400,000	Underway
Mid-Columbia PUDs	WA	(5 PUDs)	Underway
Murray Pacific Multispecies	WA	55,000	Underway
WA DNR Westside Lands	WA	1,300,000	Underway
WA DNR Experimental Forest	WA	264,000	Underway
PlumCreek Timber	WA	170,000	Underway
Seattle Water Department	WA	90,000	Underway
Arlecho Basin	WA	1,800	Underway
Longview Fibre Columbia Gorge	WA	21,000	Underway
Weyerhaeuser SW Washington	WA	102,000	Underway
Yakama Nation	WA	1,300,000	Underway
Stinson Multispecies	WA	985	Underway
Boise Cascade	WA	Unknown	Potential
Rayonier	WA	170,000	Potential
Simpson Timber (Washington State)	WA	250,000	Potential
Northwest Oregon (Dept. of Forestry)	OR	600,000	Potential
WA DNR Eastside Lands	WA	500,000	Potential
City of the Dalles	OR	1,200	Potential
OSU MacDonald Forest	OR	12,000	Potential

HCPs, Conservation Agreements, and Take-Avoidance Plans, continued:

Applicant	State	Size (acres)	Status
<u>Conservation Agreements</u>			
Port Blakely R.B. Eddy Tree Farm	WA	8,000	Underway
Grant Gibbs	WA	43	Underway
Ross Frank	WA	100	Underway
Lost Creek	WA	500	Underway
Marshland Multispecies	WA	135	Underway
Port Blakely Spotted Frog	WA	1,200	Underway
Salmonberry Creek	OR	Unknown	Potential
Thayer	WA	137	Underway
<u>Take-Avoidance Plans</u>			
Camel Timber Sale	WA	70	Completed
Aloha Lumber	WA	23	Underway
Port Blakely	WA	21,000	Completed
Malarkey Silverspot Butterfly	OR	65	Completed
Stubbe	WA	7	Completed
Cartwright Silverspot Butterfly	OR	5	Completed
Reiner	WA	40	Completed
Waterhouse Trust Property	OR	140	Underway

Status of Agreements:

Potential: Early discussions have been held with applicant and an agreement may be developed in the future.

Underway: The process of completing an agreement is now underway.

Completed: Agreement completed.

There are currently 39 agreements in various stages of processing: 9 have been completed, 8 are potential agreements in early stages of discussion, and 22 are underway and being processed. Of the 39, 23 are HCPs, 8 are conservation agreements, and 8 are take-avoidance plans. A total of 5.5 million acres are under consideration for some type of agreement; potential agreements total 1.5 million acres, while agreements that are underway or completed encompass 4 million acres.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE. 11th Avenue
Portland, Oregon 97232-4181

MAY 08 1995

Memorandum

To: Assistant Regional Directors, Region 1

From: Regional Director, Region 1 *Michael J. Spear*

Subject: Guidance on Fish and Wildlife Service Private Landowner Cooperative Agreements and Threatened and Endangered Species

The U.S. Fish and Wildlife Service (Service) has received various inquiries from private landowners concerning restrictions that might result from actions they undertake that attract threatened or endangered species to their property. This guidance is intended to clarify a process to encourage cooperative efforts between the Service and private landowners that benefit listed species. The guidance will be used and modified, if necessary, after several projects have been completed and the process actually tried in the field. An example letter to a participating landowner is attached for your use.

Section 1. Purpose. The purpose of this guidance is to clarify procedures for section 7 consultations on agreements between the Service and private landowners who, in cooperation with the Service, create, restore, or manage their lands to benefit threatened, endangered, and other animal or plant species.

Section 2. Background. The Service conducts several programs that provide technical, financial, and management assistance to private landowners who are engaged in land management activities to create, restore, or manage fish and wildlife habitat on private property.

Landowners who otherwise might be interested in managing their lands to benefit threatened and endangered species of fish, wildlife, and plants have expressed concerns about restrictions that might result from actions they undertake that attract listed species to their property. Specifically, they have expressed concern that the section 9 "taking" prohibitions of the Endangered Species Act (ESA) would apply to their property and land management activities if they undertake initiatives that create, restore, or manage habitat that attract listed species to their property. In some cases these initiatives may not be intentionally designed to provide benefits for listed species, but do so anyway.

The Service currently conducts intra-agency section 7 consultations on proposed conservation agreements, conservation easements, or cooperative agreements (collectively referred to as Agreements) it enters into with private landowners that may affect listed species. This document is intended to provide guidance to Service personnel involved with agreements with private

landowners on using the consultation process to authorize private landowners to "take" listed species incidental to activities under the Agreement.

Section 3. Guidance. The Service can enter into Agreements with a private landowner for the purpose of obtaining significant conservation benefits for animal or plant species. The Service can also conduct intra-agency consultations on the Agreement between the Service and private landowner who proposes to manage his or her lands in such a way that may benefit threatened, endangered, proposed, or category 1 candidate species. A biological opinion resulting from an intra-agency consultation on an Agreement will include an incidental take statement that authorizes the private landowner to incidentally take listed species covered by the Agreement.

- 1) **Agreements.** Agreements must have clear conservation benefits for animal or plant species. The term of the Agreement must be long enough to allow the landowner to return the land covered under the Agreement to the baseline conditions if the landowner so desires, or the term of the agreement extended and consultation reinitiated.
- 2) **Intra-Service Section 7 Consultations.**
 - A) **Process:**
 - 1) The consultation will include: a) a general description of the program/project, including the environmental baseline of the affected lands, b) the type of activities the landowner expects to implement on behalf of the subject species/habitat, c) an analysis of the known and expected effects of the program/project on the species, d) restrictions, if any, that apply to the environmental baseline or enrolled lands (see following definitions), e) how enrolled lands affect species recovery goals, f) how the program/project might affect non-participating landowners and how potential problems will be resolved, and g) an incidental take statement pursuant to Section 3., Part 2.B., below.
 - 2) The environmental baseline for the biological opinion will reflect the population size, distribution, and abundance of any threatened, endangered, proposed, or Category 1 candidate species, and the quality and quantity of habitat capable of supporting these species that occur on the affected property before project implementation.
 - 3) Proposed or candidate species known or likely to occur on the private property proposed for enrollment in the program/project, and addressed in a proposed Agreement may be addressed in a combined biological opinion/conference report pursuant to section 7 of the ESA and Section 3., Parts 2.A.1&2 above, or in the biological opinion prepared for listed species pursuant to Section 3, Parts 2.A.1&2 above. Should proposed or candidate species be listed subsequent to the issuance of the biological opinion and signing of the Agreement, consultation will be reinitiated pursuant to Section 3, Part 2.F., below.

- 4) "Environmental baseline" means those areas of the landowner's lands that are permanently or seasonally occupied by the species, or that otherwise represent potential habitat for the species (if agreed to by the landowner), at the time the Agreement is signed. "Enrolled lands" means all lands which, as a result of management actions undertaken by the landowner, become occupied by the species subsequent to the time the Agreement is signed and are expressly exempt from the section 9 "take" prohibition pursuant to the biological opinion.
 - 5) To streamline the process, a programmatic consultation can be conducted to analyze the proposed effects to listed species over a relatively large geographical area which may include multiple landowners.
- B) If a biological opinion concludes that the Agreement is "not likely to jeopardize" the continued existence of listed species, but anticipates incidental take, the Service will:
- 1) include in the biological opinion, an incidental take statement authorizing, as appropriate, take in excess of the environmental baseline, in accordance with the Agreement;
 - 2) condition the Agreement so it is consistent with the terms and conditions of the incidental take statement;
 - 3) sign the Agreement; and
 - 4) include a copy of the intra-Service biological opinion as an attachment to the signed Agreement.
- C) If the landowner complies with the terms and conditions of the incidental take statement, the incidental take statement will allow the landowner to return his or her property to the conditions documented in the environmental baseline after the agreed upon conservation benefits to the species have been realized.
- D) Nothing prevents a participating landowner from implementing management actions not described in the Agreement or the Service's biological opinion so long as such actions do not result in incidental take in excess of the environmental baseline not otherwise authorized.
- E) If, subsequent to issuance of a biological opinion on the Agreement, unanticipated federally listed species occupy lands enrolled under the Agreement, and, in the Service's judgement, are present as a direct result of landowner actions implemented under the Agreement, the Service will:
- 1) work with the landowner to amend the Agreement to reflect the new species; and,
 - 2) reinitiate the consultation to address the presence of such species on enrolled

lands and, if the resulting biological opinion concludes that implementation of the revised Agreement is "not likely to jeopardize" the continued existence of the affected species, but anticipates incidental take, the Service will provide an incidental take statement in excess of the environmental baseline pursuant to Section 3., Part 2.B.1-4, above.

- F) The Service will encourage landowners to participate in this program on behalf of proposed and Category 1 candidate species as well as listed species. If a landowner implements management actions on behalf of proposed or candidate species, the Service will:
- 1) enter into an Agreement with the landowner to enroll affected lands into the program, except that intra-Service consultation will not be initiated unless such species are subsequently listed;
 - 2) upon the listing of such species, initiate intra-Service consultation pursuant to Section 3., Parts 2.A. and 2.B., above, to authorize incidental take for the lands covered under the Agreement.

Unless the Agreement permanently protects the habitat of threatened or endangered, or proposed or Category 1 candidate species, if subsequently listed, benefits to species may not count toward recovery, particularly if landowners return their land to the baseline conditions.

Section 4. NEPA Compliance. The Service must prepare the appropriate NEPA documentation for the Federal action of entering into the Agreement with the landowner. To streamline the process, programmatic NEPA documents are encouraged.

If you have any questions, please contact Vicki Finn, Chief, Division of Consultation and Conservation Planning, at 503-231-6241.

Attachment

cc: Regional Solicitor, Portland, OR (Attn: Ron Swan, Diane Hoobler)
Regional Solicitor, Sacramento, CA (Attn: Lynn Cox)
Division of Endangered Species, Washington, D.C.

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IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue
Portland, Oregon 97232-4181

Dear :

We have received your inquiry regarding the position of the U.S. Fish and Wildlife Service (Service) on Endangered Species Act (ESA) restrictions pertaining to habitat creation projects on private lands. The concern is that a private landowner would enter into an agreement with the Service to create fish and wildlife habitat where currently no listed species under the ESA are found, and then, subsequently, listed species move into the created habitat. If so, would the private landowner then be subject to the prohibitions against "take" of the listed species should the landowner desire to modify the area for other uses at a later time? We recognize the importance of this question, and understand the reluctance of landowners to enter into agreements that might create limits on land use. As such, we wish to assure you that we appreciate your desire to work cooperatively with the Service for positive fish and wildlife results, and that we accept our responsibility as your partner in these endeavors.

When a habitat cooperative agreement, with benefits for fish and wildlife habitat conservation, is developed between the Service and a landowner, the Service may assure the landowner that if the habitat is created, the landowner will be able to modify the habitat in the future even though the modification may result in "take" of a listed species. Certain levels of "take" could be authorized during the term of the agreement so the landowner could return the land to the original condition if he or she desired. Benefits to the listed species would be the habitat provided during the term of the agreement.

We believe this to be a sound biological approach to conservation of listed species. Listed species are considered near or on the brink of extinction and, therefore, are in need of immediate actions to improve existing biological circumstances. Through the creation of habitat of value to these species under a cooperative agreement, we believe actions are being taken in a timely manner, and conservation of these species will be enhanced. Through positive actions such as private landowner cooperative agreements, the species may begin to show a slowing or halt in their decline and hopefully, improvement in their population levels. The conservation value of these actions would offset the impacts of "take" associated with the habitat modifications that may occur if the landowner chooses to return the land to its original condition. The Service has pursued this approach in agreements with private landowners in Oregon for the Oregon silverspot butterfly, and in Hawaii for the Hawaiian stilt. These efforts have been well received

by private landowners.

I hope this addresses your concerns and you will continue to work with the Service for the betterment of fish and wildlife through partnership agreements. If you have further questions, please contact me or my staff.

Sincerely,

Assistant Regional Director
Ecological Services

NO SURPRISES

ASSURING CERTAINTY FOR PRIVATE
LANDOWNERS IN ENDANGERED SPECIES ACT
HABITAT CONSERVATION PLANNING

U.S. FISH AND WILDLIFE SERVICE

NATIONAL MARINE FISHERIES SERVICE

AUGUST 11, 1994

"The Committee intends that the Secretary may utilize this provision (on HCPs) to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

. . . .

"It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances."

*H. Rep. No. 835, 97th Cong., 2d Sess. 30-31 (1982)
(1982 ESA Amendments Conference Report)*

PURPOSE: The purpose of this policy is to provide assurances to non-federal landowners participating in Habitat Conservation Planning (HCP) that no additional land restrictions or financial compensation will be required from an HCP permittee for species adequately covered by a properly functioning HCP in light of unforeseen or extraordinary circumstances.

SUPPLEMENTARY INFORMATION: The HCP process under the Endangered Species Act (ESA) promotes endangered species conservation and habitat protection within the context of land use or development. Where appropriate, HCPs contribute to the long-term conservation of federally listed and unlisted species, while providing predictability and economic stability for non-federal landowners.

Species receive a variety of benefits under a properly functioning HCP. Private financial resources supplement limited federal funding, essential habitat areas are often preserved or managed differently, and comprehensive conservation programs are developed and promptly implemented. Although landowners must ultimately demonstrate that a species has been covered adequately under an HCP, the major benefit from the HCP process from the perspective of the development community or land manager is certainty. In exchange for adherence to long-term conservation commitments, an HCP permittee is provided assurance that development or land use may move forward despite the incidental taking of protected species.

Significant development projects often take many years to complete, therefore adequate assurances must be made to the financial and developmental communities that an HCP permit will remain valid for the life of the project. In authorizing the HCP process, Congress recognized that, within the constraints of the best available scientific information, permits of 30 years or more may be necessary to trigger long-term private sector funding and land use commitments for species conservation. Congress also recognized that circumstances may change over time, generating pressure to reconsider the mitigation commitments in an HCP agreement. Often referred to as "unforeseen" or extraordinary circumstances, Congress intended that additional mitigation requirements not be imposed upon an HCP permittee who has fully implemented his or her conservation commitments except as may be provided for under the terms of the HCP itself.

POLICY: In negotiating "unforeseen circumstances" provisions for HCPs, the Fish and Wildlife Service and National Marine Fisheries Service (Services) shall not require the commitment of additional land or financial compensation beyond the level of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, the Services shall not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances.

A. General Assurances Provided to Landowners

- * If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning HCP, the primary obligation for such measures shall not rest with the HCP permittee.
- * If extraordinary circumstances warrant the requirement of additional mitigation from an HCP permittee who is in compliance with the HCP's obligations, such mitigation shall limit changes to the original terms of the HCP to the maximum extent possible and shall be limited to modifications within Conserved Habitat areas or to the HCP's operating conservation program for the affected species. Additional mitigation requirements shall not involve the payment of additional compensation or apply to parcels of land available for development or land management under the original terms of the HCP without the consent of the HCP permittee. The Services retain the right, as authorized by section 5 of the ESA, to acquire endangered or threatened species habitat by purchase when additional conservation measures are necessary for a listed species included under an HCP.
- * The Services shall not seek additional mitigation for a species from an HCP permittee where the terms of a properly functioning HCP agreement were designed to provide an overall net benefit for that particular species and contained measurable criteria for the biological success of the HCP which have been or are being met.

B. Determination of Extraordinary Circumstances.

- * The Services shall have the burden of demonstrating that such extraordinary circumstances exist, using the best scientific and commercial data available. The Services findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species.
- * In deciding whether any extraordinary circumstances exist which might warrant requiring additional mitigation from an HCP permittee, the Services shall consider, but not be limited to, the following factors:
 - the size of the current range of the affected species
 - the percentage of range adversely affected by the HCP
 - the percentage of range conserved by the HCP
 - the ecological significance of that portion of the range affected by an HCP
 - the level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP
 - whether the HCP was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the HCP
 - whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild

C. ADDITIONAL CONSERVATION AUTHORITY

- * Nothing in this policy shall be construed to limit or constrain the Services or any other governmental agency from taking any additional actions at its own cost with respect to the conservation or enhancement of a species which is included under an HCP.



United States Department of Agriculture Forest Service	United States Department of Commerce National Marine Fisheries Service	United States Department of Interior Bureau of Land Management	United States Department of Interior Fish and Wildlife Service
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Reply to: 2670

Date:

Subject: Streamlining Consultation Procedures Under Section 7 of the Endangered Species Act

To: USDA Forest Service Supervisors (OR/WA, ID and CA); USDI Bureau of Land Management District Managers (CA, ID, OR/WA); USDI Fish and Wildlife Service Project Managers (OR/WA, ID and CA); USDC National Marine Fisheries Service Project Managers (OR/WA, ID and CA)

On March 8, 1995, agency heads of the Forest Service (FS), National Marine Fisheries Service (NMFS), Bureau of Land Management (BLM) and Fish and Wildlife Service (FWS) issued a joint letter directing that consultation procedures for forest health and salvage projects be streamlined to occur within shortened time frames.

We have broadened this direction to include all consultation efforts.^{1/} Our success will be determined by a number of factors--especially important will be the amount of interagency involvement during the earliest phases of project development and the degree to which consultation can be concluded at the field level without additional reviews or oversight.

To accomplish this goal, we are chartering two interagency field teams: Level One Teams and Level Two Teams (Enclosure 1).

Level One Teams will consist of interagency biologists with the experience and expertise to make biological determinations and bring consultation to conclusion at the field level. Level One Teams will coordinate with FS District Rangers, BLM Area Managers and their staffs in the early phases of project planning and promptly raise issues they cannot resolve to Level Two Teams (Enclosure 2).

Level Two Teams will consist of FS Forest Supervisors, BLM Ecosystem/District Managers, and NMFS and FWS personnel with decision-making authority. Level Two Teams will establish priorities, secure resources, monitor performance, and resolve issues elevated by Level One Teams. Issues that cannot be resolved by Level Two teams will be forwarded on to us for resolution.

A regional interagency technical staff will be available to assist field teams, if requested (Enclosure 3). In addition, each regional office has appointed an individual to serve as a Key Contact with the responsibility to monitor accomplishment, facilitate issue resolution, and keep us informed of progress and issues that require our involvement (Enclosure 4).

We expect the following:

1. Recognizing that consultations have already occurred on the Northwest Forest Plan, PACFISH, and the eight eastside Land and Resource Management Plans with critical habitat for listed salmon stocks, we expect consultation to be rapidly concluded on projects that comply with the standards and guidelines of these programmatic plans and the provisions of their Biological Opinions.



USFS Supervisors, BLM District Managers
USFWS Project Managers, NMFS Project Managers

2

2. Level One Teams will agree on information, documentation, format, and timeframes before proceeding with the development of Biological Evaluations/Assessments (BE/BA) and Biological Opinions.

3. The Section 7 consultation process will be simplified and streamlined (e.g., batching similar projects in same area or with similar timing needs; combined interagency consultations, etc.) to complete informal consultations within 30 days and formal consultations within 60 days after submission of agreed-upon EA.

4. Issues, barriers, or disagreements that would preclude meeting these timeframes will be promptly elevated to the appropriate level for resolution.

5. Performance will be assessed regularly by each team to evaluate progress and make adjustments as needed.

We will be conducting workshops to ensure our expectations are clear and to discuss more fully the concepts behind this strategy.

Achieving our goal will require unprecedented interagency cooperation and bold new ways of doing business. It will require an interagency work environment based on professionalism, trust, mutual respect, and accountability. We will build on our interagency successes of the past to make this new, more streamlined and effective consultation process a reality.

/s/ John E. Love
JOHN E. LOWE
Regional Forester, Region 6
USDA Forest Service

/s/ William Bradley for
ELAINE Y. ZIELINSKI
State Director, OR/WA
USDI Bureau of Land Management

/s/ James Caswell for
JOHN HUGHES
Regional Forester, Region 1
USDA Forest Service

/s/ Jack B.L. Sept for
MARTHA MAHN
State Director, ID
USDI Bureau of Land Management

/s/ Joek Blackwell for
DALE BOSWORTH
Regional Forester, Region 4
USDI Forest Service

See footnote 1/ /s/ Ed Haste
ED HASTEY
State Director, CA
USDI Bureau of Land Management

/s/ James Lawrence for
C. LYNN SPRACUE
Regional Forester, Region 5
USDA Forest Service

/s/ Michael J. Spear
MICHEAL J. SPEAR
Regional Director
USDI Fish and Wildlife Service

/s/ William Stelle Jr.
WILLIAM STELLE, JR.
Regional Director
USDC National Marine Fisheries Service

HILDA DIAZ-SOLTERO
Regional Director
USDC National Marine Fisheries
Service

Enclosures (4)

1/ For public lands managed by the BLM in the State of California, this direction will only apply to Section 7 consultations involving forest ecosystem activities.

Testimony of

ALLYN FORD

ROSEBURG FOREST PRODUCTS CO.

Before the Committee on Environment
and Public Works

Subcommittee on Drinking Water,
Fisheries and Wildlife

ESA Field Hearing

June 1, 1995

STATEMENT
OF
ALLYN C. FORD
BEFORE THE
SUBCOMMITTEE ON
DRINKING WATER, FISHERIES AND WILDLIFE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

INTRODUCTION

Mr. Chairman, as other have before me, I too want to thank you for bringing the subcommittee to Roseburg.

My name is Allyn Ford, Executive Vice President of Roseburg Forest Products Co., a family-owned wood products company located in Roseburg, Oregon. Roseburg Forest Products is one of the largest wood products manufacturers in the State, with over 3,000 people employed at six different geographic locations.

The company was established by my father approximately sixty years ago, and has continued to be a very dynamic force, both within the industry and our local community. Our success has been based on the availability of government timber, both BLM and Forest Service, which has represented 70% of our historical wood base. In the western United States, Roseburg has been one of the largest purchasers of government timber - both BLM and USFS.

Based on a sustained and reliable supply of old-growth timber, we have established ourselves as the premier manufacturer of high value panel products, and presently produce 60% of the sanded and 75% of the plywood siding manufactured and sold in the western

United States. Since 1980, we have invested over \$150 million in order to keep our facilities at peak efficiency. Some of our plants are among the largest in the nation, and are world class both in terms of capacity and efficiency.

IMPACT

As applied to the Spotted Owl and Douglas County, the implementation of the Act has resulted in a string of disasters. When the application for listing was made in 1983, there were 2,500 known Spotted Owl pairs, the species was thought to be solely dependent on old-growth timber for its survival, and there was a scientific prediction of eminent extinction within a twenty-five (25) year period.

Eight years later, 4,500 pairs have been identified, the species is now known to adapt to a wide range of timber types, and there is a growing debate as to the degree of threat to the bird. As the body of information has grown and the eminent threat of extinction has been reduced, mills have closed, and the lives of thousands have been turned upside down.

At the time of the initial listing, there was an annual harvest of approximately 800MM' from the two BLM districts and one national forest upon which we largely depend. In the last five years this volume has been reduced to an annual harvest of 25MM', a drop of almost 95%. The listing process triggered a whole series of legal and regulatory responses which has led up to the gridlock of recent years. Throughout this period attempts at any long term land management have been impossible. Federal land management has been pre-empted by the Dwyer decision, and the more recent attempt by the Clinton administration in the Option 9 planning process has been a total bust.

If that hasn't been enough, we are seeing the same cycle take place in the case of the Marbled Murrelet, whose listing has effectively eliminated any harvest of mature second-growth timber in the Oregon coastal area. With the 1993 listing of the Murrelet, we are now

seeing a similar trend take place with the inventory within eighteen months increasing from 6,500 to 10,000+, and the restriction of harvest activity increasing at a similar rate. If this wasn't enough, Douglas County is now facing an additional listing of the Cutthroat Trout which has effectively stopped any planned harvesting on 50% of the Umpqua National Forest. **Put simply, the more we know, the more birds we find, the broader the habitat becomes, and the law grows even more restrictive.**

Once the listing process is triggered, it is almost impossible to modify its course. The people in Douglas County have attempted to provide input in alleviating some of the more onerous restrictions by the Fish and Wildlife Service. We have provided comment at the time of listing, the definition of critical habitat, and the proposed 4(d) Rule. In addition, the County appealed for an exclusion under the 4c Clause, actively supported the convening of the "God Squad", and developed a comprehensive research plan, "The Douglas Project", for application to unique local conditions of the area. While most reasonable people would interpret that the impact of the listing on our area is extreme, our pleas have effectively been ignored.

The application of the Act to private lands has been similarly arbitrary. Our company owns approximately 150,000 acres of forest land which is concentrated in Douglas County. Over the years, we have practiced intensive forest management, utilizing such capital intensive programs as thinning, fertilization, and genetic selection. Growing trees in this area is a long term commitment, with a cycle of approximately sixty (60) years.

The biggest threat to these young stands is not fire, insects or disease, but rather government interference and regulation. If the Fish and Wildlife Service has its way in implementing the system of large SEAs (Special Emphasis Areas), we are facing the potential loss of harvest on almost 60% of our lands over the next thirty year period. In addition to losing the control on these lands during this long period, the expropriation of our lands has tremendous impact on our financial base. Many companies, including ourselves,

utilize the forest asset as a method of collateralizing borrowing in order to finance our manufacturing operations. If the proposed 4(d) Rule is implemented by the Fish and Wildlife Service, we would be limited in our ability to maintain a healthy capital investment program.

Our company and most of the industry in our local area have not sat passively while our wood supply was eliminated. Since almost all of the operations in our area are privately owned, we do not have the ability to diversify away from this threat. We have moved aggressively by increasing the utilization of each log by 10%, bought a great deal of wood from private landowners, purchased wood from out of state, and we are importing significant amounts of veneer to replace the old-growth wood that has been the backbone of our industry.

In spite of our efforts, we have seen a continued collapse in our local industry. Over the last seven years employment has dropped by approximately 30%. With the existing trends, we will see at least an additional 20% drop within the next two years. As law and policy makers, you should ask yourselves whether this pain and human suffering has been necessary. The question is not whether we are dealing with an obsolete industry, since our plants are efficient, and the product is broadly demanded both domestically and internationally. Our people are skilled, well-paid and established in what was originally healthy, rural communities.

In addition to the 4-d threat, our ability to manage our private forest lands in Douglas County has been subject to bureaucratic wrangling and red tape. The Fish and Wildlife Service has been unresponsive to the request for standards and definition of "take". The State of Oregon though its Forest Practice Act, which is respected throughout the nation, has been forced to fill this void with its own set of rules.

The nature of land ownership in western Oregon is rather unique, due to the patchwork ownership pattern alternating between private and federal timberlands. Access to these

lands is a critical issue for any land manager, and has become a means of blackmail by the federal agency. If a private owner wishes to develop access through federal lands over an existing or a new road system, they must comply with a consulting process with the Fish and Wildlife Service which is slow, unresponsive, and applies requirements that are above and beyond the existing Forest Practice Act. Once again, the federal agency is unwilling to establish reasonable and clear standards that are consistent and reasonably compatible with existing management techniques.

RECOMMENDATIONS

I am sure you will agree that what has happened in Douglas County is something you do not want to see duplicated throughout the rest of the country. We need to make some changes:

First, the current Endangered Species Act, can not be fine-tuned to address it's major problems. A new mind-set is needed.

Secondly, a huge dose of reality is needed in preparing plans to protect species. We can not use as a starting point, an animal's historic range, or the pre-settler era in North America, as a habitat goal. What seems to be forgotten is the 240 plus million Americans in our country, the tens of thousands of miles of freeways and roads, the millions of homes and buildings. These are facts - they are here - and have to be taken into account.

Third, man can help. We need not stand aside. We can do many things, ranging from, breeding programs, to habitat improvements. Waiting for mother-nature to take its course is a lofty goal, but why wait, when so many good things could be done.

Fourth, the administrative aspects of any new law need to be simple and straight forward. The courts should not be allowed to dictate day to day land management actions.

Fifth, people and communities are part of the process too. We have to work together, private property rights have to be protected, our State and local governments have to have a meaningful role, and a persons well-being has to be taken into account.

Sixth, we have to realize our limits and capabilities. We cannot bring back every species in the numbers and in all the areas we would like. We have to understand we are in an ever changing landscape and what works today may not tomorrow. With that in mind, we have to put the best science and the best minds to work.

Lastly, we have to talk to each other, not at each other. We have to have a law that is understood and supported by those who will bear the brunt of its implementation. In my opinion that will be the key test of any legislation that is proposed.

I want to thank you for your commitment in coming to Roseburg, and providing me with the opportunity to testify to the sub-committee. I appreciate your effort in spending the time to deal with this complex, emotional issue, and would be willing to provide any information or answer any questions you have.

LEGISLATIVE RECOMMENDATIONS - THE ENDANGERED SPECIES ACT

It is imperative that workable procedures and positive incentives be developed in the Endangered Species Act which promote conservation of wildlife in a way that considers economic factors and respects the rights of private property owners.

Experience and common sense has taught us what some of the major problems are with the current law. Disincentives for landowners to manage for species recovery; no recognition of costs to landowners or society; no workable delisting mechanism; indifference for the rights of property owners; and the cavalier use of science.

Among these and other defects, there are a number of critical areas which Congress should address to fix the Endangered Species Act:

1) The law does not ensure best science. The federal agencies generally conduct little independent research on proposed listings, but merely review material it receives and relies on assumptions and computer models. Changes must be made which require peer review of listing proposals by independent, outside experts.

2) The law neither ensures prompt and accurate consultation on federal project nor provides adequate protection for federal permit applicants. Consultations on federal actions must be prompt and accurate and applicants for federal permits must be given meaningful rights to participate in the process.

3) The existing law does not provide private landowners reasonable compliance and relief procedures. There has been growing interest by the U.S. Fish and Wildlife Service for private landowners to prepare Habitat Conservation Plans. An alternative to the lengthy, expensive, and ineffective habitat conservation planning process must be developed. And the government should compensate private property owners when they are deprived of economically viable use of their property.

4) Enforcement is now based on speculation rather than fact. Prohibited activities must be defined in a way that avoids arbitrary enforcement. Lawful land management activities should not be classified as a take of a species.

5) The existing law provides no incentives for private landowners to work cooperatively with the government to protect listed species. In fact, the proposed 4(d) rule created a real disincentive for landowners to create owl habitat. Even the most responsible landowners are considering a rapid harvest of young stands to make certain owls cannot find suitable habitat.

TESTIMONY OF THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON
BEFORE THE SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE
CONCERNING REAUTHORIZATION OF THE
ENDANGERED SPECIES ACT

Roseburg, Oregon
June 1, 1995

Mr. Chairman and members of the Committee: My name is Nelson Wallulatum and I am chief of the Wasco Tribe and a lifetime member of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. I am here today to testify at your request on behalf of the Warm Springs Tribal Council concerning our Tribe's experience with the Endangered Species Act. I believe that my comments also reflect the views of the other Columbia River treaty tribes; the Yakama, the Umatilla and the Nez Perce Tribes. Each of those tribes has submitted written testimony for your consideration describing their experience with the Endangered Species Act. In addition to our Tribe's written comments, I respectfully request that the written statements from the Yakama, the Umatilla and the Nez Perce Tribes be made part of the hearing record.

The Warm Springs Indian Reservation is in many ways a microcosm of the Pacific Northwest. Our 1,000 square mile reservation spreads east from the crest of the Cascades to the Deschutes River and includes large stands of old growth timber and the principle spring chinook spawning area in the Deschutes Basin. Like many northwesterners, the Warm Springs people are dependent on

our natural resources. Our tribal forest provides jobs for tribal members in the woods as loggers or in the tribal sawmill processing our timber into finished wood products. In addition, some of our people raise livestock and engage in irrigated agriculture, which requires the use of the same water that supports the spawning chinook salmon populations on the reservation. Finally, our people are true to their historic roots as Columbia River Indian people in that we depend on the salmon from the Columbia River, as well as from the streams in our ceded areas such as the Deschutes, John Day and Hood River systems, for our treaty-secured ceremonial, subsistence and commercial needs.

Because our economic livelihood and our cultural and spiritual way of life depend on the forest and fishery resources of our reservation and our off-reservation treaty-secured areas, we are like many northwesterners in that we have had considerable experience over the past several years with the Endangered Species Act. We know that northern spotted owls inhabit some of the old growth timber stands on our reservation. We also know that certain Snake River salmon stocks may be taken incidentally in our Columbia River ceremonial, subsistence and commercial fisheries.

Our Tribe has maintained a consistent position with respect to how the Endangered Species Act relates to tribal activities. Our view is that the Tribe's inherent sovereign authority to manage its own land and its own resources - a right secured by the Treaty of 1855 and legally protected by the federal government's trust responsibility to the Tribe - means that federal authorities must

defer to tribal authorities and acknowledge our on-going efforts under tribal law to protect the owls and salmon listed under the Endangered Species Act. Put another way, we do not believe that the Endangered Species Act limits our inherent tribal sovereignty or our treaty-secured rights. Nothing in the present language of the Endangered Species Act conflicts with this tribal position, and we believe that the Act can and should be administered by the federal government in a manner entirely consistent with this position.

Our experience with the Endangered Species Act is that the Act itself is not the problem, rather it is how it has been implemented. With respect to the northern spotted owl, for example, the U.S. Fish and Wildlife Service has nearly made the mistake of attempting to impose federal restrictions on tribal lands that not only violated the Tribe's sovereignty and treaty rights, but were totally unnecessary. As part of our Integrated Resource Management Plan for the Warm Springs reservation timber lands, the Tribe has taken thousands of acres of prime timber land out of production in order to protect fish and wildlife habitat, including spotted owl habitat, as well as to protect tribal cultural and aesthetic values. Nonetheless, several years ago the Fish and Wildlife Service proposed restrictions on tribal lands as critical owl habitat. The areas proposed for protection by the Fish and Wildlife Service were not even the areas where owls are located, and most importantly, the proposed designation failed to recognize the already extensive tribal actions taken to protect

owls and other species. Once we pointed this out, the Fish and Wildlife Service dropped its proposed critical habitat designation of reservation lands.

More recently, the Fish and Wildlife Service has again failed to acknowledge the Tribe's extensive conservation actions by not including the reservation in a proposed rule under Section 4(d) of the Endangered Species. This proposed rule generally exempts non-federal land in California and Washington, but not Oregon, from owl conservation restrictions. The Fish and Wildlife Service has mistakenly lump the Warm Springs Reservation into the general category of private land in the State of Oregon, and in the process, completely ignored the Tribe's extensive owl protection actions and also ignored the government's trust responsibility to recognize and protect the Tribe's sovereign, treaty based authority to manage reservation natural resources. We expect that the proposed Section 4(d) rule will be revised to acknowledge the Tribe's special status.

These problems with the spotted owl listing have nothing to do with the wording of the Endangered Species Act, rather they have everything to do with how the Fish and Wildlife Service has administered the Act in an awkward, insensitive and possibly illegal manner with respect to the Warm Springs Tribe and the timber lands of the Warm Springs Indian Reservation.

With respect to the Snake River salmon listings, we have had a similar experience. Once again, there is nothing in the Endangered Species Act itself that creates a conflict between the

Tribe's treaty rights and sovereign authority and the mandates of the Act. If the National Marine Fisheries Service would undertake to administer the Act in a manner that is consistent with the Tribe's treaty rights, the statute's promise of protecting and ensuring the continued existence of listed species and the government's trust responsibility to protect and secure the Tribe's 1855 treaty rights can both be fulfilled. But that has not always been the case. The National Marine Fisheries Service's improper application of the Endangered Species Act to tribal activities has brought us on several occasions to the very brink of federal court intervention in the issue of treaty rights and the Endangered Species Act. Wisely, the National Marine Fisheries Service recognized the danger of such litigation and we were, accordingly, able to settle the disputes on terms acceptable to both the Tribes and the federal government.

We are hopeful that the National Marine Fisheries Service will finally learn a lesson and undertake future activities with appropriate regard for the Tribe's treaty rights. Particularly, we believe that the National Marine Fisheries Service should act consistently with the rebuilding programs that were initiated just prior to listing, including the Columbia River Fish Management Plan under U.S. v. Oregon, the Northwest Power Planning Council's Fish and Wildlife Program, and the Pacific Salmon Treaty. These programs were designed to be consistent with one another and the National Marine Fisheries Service should extend that consistency to its actions.

There are other examples of how the National Marine Fisheries Service has improperly administered the Endangered Species Act with respect to Snake River salmon. There has been much discussion about amending the Endangered Species Act's definition of a "species," with particular emphasis on the "distinct population segment" portion of the definition. In our view, the problem is once again with implementation rather than legislative language.

The National Marine Fisheries Service has taken the "distinct population segment" portion of the definition of "species" in the Act and created the concept of an "evolutionarily significant unit." This is a complex scientific concept based primarily on genetics, which in our opinion results in the arbitrary classification of various salmon populations as distinct species protected under the Act. This ESU policy, which is only an interim policy and not even an agency regulation, has also prevented the National Marine Fisheries Service from undertaking necessary recovery actions such as using compatible hatchery stocks to supplement and help recover the endangered wild stocks. The Tribe, as well as the other Columbia River treaty tribes, firmly believe that the ESU concept is so misguided that, unless it is changed, it will not only prevent the recovery of the listed stocks but will perhaps allow them to go extinct. The Endangered Species Act, of course, was intended to do just the opposite.

In the Tribe's opinion, there are far better scientifically based classifications of "distinct population segments" with respect to salmon stocks than the ESU concept employed by the

National Marine Fisheries Service. These other definitions could be adopted by the agency, once it discards the ESU concept, and greatly improve its administration of the Act. The ESU is an interim policy that should be reevaluated in a fair manner with appropriate notice, comment and peer review. Reconsideration should take into account the recent findings of the National Research Council with regard to distinct population segments. No change in the legislation is necessary to do that. Once again, the problem is not with the legislation, it is with the implementation of the Act.

In conclusion, like many northwesterners, the people of the Warm Springs Reservation have had mixed feelings about the Endangered Species Act. We see it as a strong and necessary law protecting vital natural resources on which the Tribe's treaty rights and Indian way of life depend. However, we also fear that if not properly administered and implemented by the responsible federal agencies, it could do great damage to the Tribe's sovereign authority and treaty-secured rights. We think we are making progress in convincing the agencies that there is a better way to administer the Act. Although much more work needs to be done, we think the agencies should be shown the way to properly administer the Act before the Act itself is fundamentally changed.

Thank you.

From: Bob Allen
 P.O. Box 171
 Roseburg, OR 97470
 (W) 673-6641 - after 5 p.m.
 (H) 672-2384 - day

To: c/o Laura Cleland
 Office of Senator Bob Packwood
 101 S.W. Main St.
 Suite 240
 Portland, OR 97204
 503-326-5389

Senate Committee on Environment and Public Works
 Subcommittee on Drinking, Water, Fisheries & Wildlife

Thank you for allowing me to present this testimony. My father was a fish cutter for the 40 Fathoms Fish Co. in Boston, Massachusetts. As a child in the 1950's I saw and ate fish every day. While free for us, they were cheap and plentiful for everyone. The abundant New England Fisheries of that and historic times are no more. The New England fisheries are collapsing and Atlantic Salmon are seen rarely in the rivers there. What Happened? Overfishing, poor management, degradation of water quality in the rivers, and not paying attention to the warning signs. For the U.S. and Canada, the costs to save these fisheries, in the billions of dollars, will far exceed the value of the catch. What can we learn from their experience? We need only to pay attention, listen to our scientists and natural resource managers, count and compare the numbers, decide what must be done, and act.

Action on the Federal level is essential in these issues of fisheries protection and restoration. Using the example of Coho Salmon, no one agency: state, local or federal takes responsibility for them. While in fresh water Coho receive only ancillary protection from federal, state, and local laws. But many of these have not been enforced correctively or adequately. Many oppose listing of the Coho Salmon and the potential effect on commercial interests but 35 Coho stocks are at risk of extinction in the near term in Washington, Oregon and California. 15 stocks are already extinct. Coho populations are extinct in 55 percent of their historic range in the lower 48 states, endangered in 13 percent, threatened in 20 percent and "of special concern" in 5 percent. Coho populations are known to be extinct, declining, depressed, or facing imminent, irreversible threats in 93 percent of their range. Would it be better to wait until the proportion reaches 99 percent? How long can we wait before taking action to protect the economic, social and ecological interests of the Pacific Northwest?

THE UMPQUA RIVER flows by this very building. It runs from the snows of Crater Lake to the sea, entirely within our county. It is our river; a world-class river, beautiful, productive, deteriorating in terms of water quality and fisheries. The famous runs of Spring Chinook Salmon, Winter Steelhead, Coho Salmon and Sea-Run Cutthroat trout are in decline. The status

of wild fish stocks are a good indication of overall watershed health. The true effects of environmental degradation on these fish are often masked by hatchery production. Many are only marginally self-sustaining. Hatcheries are expensive and tend to weaken strains over time. A quick review of the status of our wild, anadromous fish stocks reveals a wide-spread and large decline in many of these extremely valuable fish:

Coho Salmon - once formed the basis for a major fishing industry. Harvests averaged 100,000, occasionally 250,000 fish out of a run of possibly a million fish. Since the 1920's we have seen a 90% decline in naturally produced Coho in the South Umpqua River which flows by this very building. Much of the once productive stream habitat is no longer suitable due to degraded conditions. In fact the wild North Umpqua Coho strain may be extinct.

Spring Chinook - In the SOUTH UMPQUA native runs of these economically and spiritually important fish have declined from 5,000 fish to a few 100's or less and face an imminent threat of extinction. Why: decline again of stream and river habitat, overfishing, possible loss of genetic viability due to non-adopted hatchery fish.

Winter Steelhead - These relatively healthy stocks nonetheless represent an 80% decline from historic runs. Again, hatchery introductions mask the true severity of their decline.

Sea-Run Cutthroat - We have observed a huge decline in abundance and distribution throughout the Umpqua Basin. It is the only "species" or stock presently proposed to be listed under the E.S.A. The National Marine Fisheries Service has determined the status to be so in jeopardy that the proposal is for "ENDANGERED".

What does the Federal E.S.A. do to change the situation? Certainly it causes improved accountability for land and water use on Federally-managed lands. It encourages and stimulates state agencies to be responsible resource managers and furthermore takes away the states almost exclusive mandate to manage fish populations; giving Federal agencies at least equal authority. Our state has had this responsibility for over 100 years and look where we are!

Until recently the state's answer to the obvious need for maintaining and restoring aquatic ecosystems has been that forest and agriculture management is OK (denial) and responding with half-baked-fixes like hatcheries and simplistic stream improvements.

Applying the E.S.A. to anadromous fish runs is only very recent. Redfish Lake Sockeye were the first listed in the E.S.A. and that was only 3 years ago. Not even one generation! By far the major change in the Federal E.S.A. that needs changing is an "early warning system" that gets listened to and evokes responses before a species gets to a hopeless status. This will require more, not less, Federal influence early in the process.

I support other modest changes in the ACT, such as promoting financial incentives for property owners to promote conservation of species; a federal fund to finance habitat protection plans; and moving in the direction of ecosystems planning to provide landowners with greater certainty over

time.

It is clear that our inland and coastal fisheries are in serious peril, the Endangered Species Act has been and should continue to be a tool for us to preserve and protect all species; but especially those with whom our whole region identifies and contribute greatly to our well-being and economy. We must begin eradicating our ignorance, not our neighbor species.

Before the

SENATE

TASK FORCE ON ENDANGERED SPECIES

The Honorable Dirk Kemthorne, Chairman

Submitted by The Oregon Cattlemen's Association

June 1, 1995

Roseburg, Oregon

Mr. Chairman, Members of the Committee:

The purpose of this testimony to the U. S. Senate hearing is to relate impacts of the Endangered Species Act on both our resources and our people. We thank Senator Kempthorne and the Committee for their interest in our views regarding the effect of the Act on people in our industry and their intent to address our concerns in future legislation. For the first time since the passage of the Act we feel there is a real opportunity to get the awful burden of its rules off the backs of the people who live and work and husband the public and private natural resources of this great country

Because we have worked within the confines, or, as we view it, under the oppression of, BSA for many years now we have had many occasions to conclude that we are NOT going to be able to sensibly continue to produce livestock by harvesting native forage on public and private lands unless the Act is changed.

It is now obvious that many of our Congressmen and Senators who voted on the original bill to adopt the ESA did not have a clear understanding of its potential for budget busting, for taking of private property outright or through regulation, and for actual species and habitat loss because the law provides the means to gridlock any kind of management at all. It also provides the means to draw political conclusions about scientific questions. They now publicly state they would not have voted for it had they known it would bring us to this tragic point.

We have read that Section 7, the consultation requirement in the act that has caused our industry people so much grief, was "drafted by a legislative aide, an avid environmentalist, in a form to avoid it being recognized as a substantive road-block statute" that we now know it to be. That must be changed.

We know that you know that the costs of the ESA are in multi-billions of dollars and are accelerating, that the program costs are totally out of control and that no rational decisions about allocation of available resources for endangered species can be made under the law as it is now written. The very substantial costs imposed on the private sector, or losses to communities, are never included in the figures used for listing species and recovery plans. The total cost of recovery seems irrelevant because in the 20 plus years since the inception of the Act "not a single endangered species has legitimately been recovered and delisted as a result of the ESA" according to the National Wilderness Institute in a study entitled *Going Broke* published in 1994. NWI publications are available to you and we believe are an excellent source of factual information on which to base a decision to change the ESA.

Specific changes needed in the BSA have been given you from the Coordinating Council of which National Cattlemen's Association is a member and which we strongly support. Those changes have been included in some of the re authorization bills. Our intent is to relate how the Act has become impossible to deal with for our industry people in North Eastern Oregon and how our economy will be in grid-lock, our ranches and families and communities at risk, and the threatened and endangered salmon forever lost unless some balance, reason, and verifiable science is injected into the process. We offer the minimum amendments required.

In Northeastern Oregon we see up close and personal a very important strategy of the preservationist groups which is, of course, enabled by the ESA. They are attempting to dictate land management through the courts, nit-picking fine points in the law in order to immobilize land use or management. Some groups buy land and act as a conduit, at tidy profits, to get the purchased land into federal ownership. Some have lists of private land they want the government to buy or regulate in order to "protect" it for future generations. Usually the same groups are the harshest critics of government land management. Even so, the message they send is that government ownership is good and protects land resources and private ownership is bad and destroys resources. They promote the perception to their public that the mere act of listing a species somehow protects it and if its not listed it is doomed.

About the time the Snake River and Columbia River salmon were listed the Oregon Cattlemen's Association, with partial funding from the Department of Environmental Quality in Oregon, began our Watershed

Workshop Program specifically for our ranchers on sub-watersheds whereby we hold workshops aimed at total landscape management of our own ranches and stimulating awareness of how they fit into the whole. It gives a new perspective to people in management positions in a non-threatening atmosphere because it is put on with the help of experts in the land management business (ranchers), and University people, selected for their academic integrity. The program has been extremely successful because after the initial meeting the ranchers continue to meet and have speakers and work on plans and gather history of their own combined sub watershed. One reason it is so successful, we believe, is because it does not attempt to tell anyone what should be done, or must be done but rather shares ideas from other areas that have been beneficial. The scientific principles thrown in are probably the most helpful and the most trusted because they essentially validate what we have always known or sensed to be true. We can actually see some very positive changes in attitudes and practices concerning watershed and ecosystem management. One of the most important being that some agencies in Oregon are learning that the management of private land may be best left to the private land owner. Some have learned that we are very aware of our responsibility to our land, our water, our families, of how they fit into to a more global picture and that our care and nurturing of them will assure they are sustained into future generations just as they have been from past generations.

We strongly believe that the OCA Watershed Workshop Program, put on with so little money, will, in the end do more to save endangered species, and endangered resource jobs and endangered communities and families, than all our money spent by the Federal Government and all the laws and rules and court cases, all the governments written plans and environmentalists appeals of plans, combined. We have a track record of success, the ESA has not.

Still preservation groups continue to vomit lies, attempting to scare the public into donating money to their organizations as the last hope for saving the planet from the exploiters of the public lands and resources, the greedy land barons who are interested only in despoiling the land and water while taking massive profits. Who will tell our story, that most of the wildlife spend most of their lives on private land and have increased hundreds of percent because of us not in spite of us, that the average annual income of the cattle rancher is about \$23,000, that we feed 120 people besides ourselves on a sustained basis and that we invariably leave our land to the next generation in better condition than we received it? The American people can be glad that those involved in agriculture still are in touch with the responsibility that freedom brings. That is why the ESA seems such nonsense to us. We protect all Gods creations, appreciate them for what they are, care for them, nurture them; we do not worship them. We seem to do what we do not to amass fortunes but rather, like our forefathers, to fulfill our faith.

Mato argued that good people do not need laws to tell them to act responsibly, while bad people will find a way around the law. This particular law was passed and rules made at the behest of the elite, they pretend a procedure for protecting threatened and endangered species but it has succeeded only in humiliating and intimidating honest people while providing cover and protection for their own twisted agenda.

Now is your opportunity to evaluate the accomplishments of the act. Over the past 20 years we have seen created a symbolic altar where-upon we've placed listed species and before which we've built the sacrificial fire upon which we heaped tons and tons of money, countless working hours and volumes of paper plans; tens, perhaps hundreds of thousands of productive jobs; businesses, communities, families and individuals. It is time to deny the elitists the laws that extend the reach of the government, and thus the increase of their own powers, to abridge our freedom.

The preservationist groups have a vested monetary interest in threatened and endangered species. Make no mistake they do have a vested interest because they have spent a lot of money to raise money so their leadership can prosper. They put out tons of bogus reports extrapolated from bogus models designed by pseudo scientists in order to scare the average citizen; but the average citizen is beginning to catch on causing desperation in the ranks of the preservationist groups who are having to compete for the same dollars. This desperation is causing more radical behavior, witnessed by the increased activity of the Earth First! eco terrorists who are supported by many other main stream preservationist groups. Their members are suspected of killing cattle, burning ranchers property, ruining water systems, bombing Forest Service offices, splking trees, because they have

advised in writing how to do these things and justification for doing them. They are no less an abomination than the people who bombed the Federal building in Oklahoma City!

Now that "habitat conservation plans" (HCP) have been a failure, having caused more problems than they have solved the newest term is "ecosystem management" on a grand and non-voluntary basis (unlike OCA's program). This prospect leads to more centralized natural resource planning and exposes landowners to even more restrictions and less predictability and control of their own property. It is a bad, bad ideal.

Probably the most expensive and far reaching listing of an endangered species is that of the salmon in the Pacific Northwest. It will likely be the most visible species whose extinction will be expedited by political and judicial process. Our fear is for the other casualties who will accompany the salmon. At risk is the entire economy of the state of Oregon; fishing, ranching, agriculture, mining, timber and their supporting businesses. Agricultural business alone, including its processing, and other support services totals about \$10 billion a year. Farmers and ranchers employ about 100,000 people, more than all our high tech industry combined. Of the over 200 commercial products raised by Oregon agriculturists, 50 of which gross over a million dollars, cattle and calves is the highest grossing commodity with sales of \$389 million, some \$40 million higher than the second place commodity.

Remembering that about 60% of Oregon is in public domain, on which the cattle industry relies for grazing. Add to that the stockmen's vast holdings of private land and it is no stretch to say the cattle industry has a profound interest in the who, how, and what efforts are made to save the salmon. The pastures and rangelands we use and own are some of the least disturbed most natural lands in the country and provides habitat for many species both listed and abundant and yet the current laws provide nothing but disincentives to us who have the greatest opportunity to protect the species. It does not recognize our contribution nor that property rights and protection of the environment are complementary goals.

We strongly believe that verifiable science is the salmon's only hope. Instead we see opinions by decision makers being changed as a result of phantom research and no new data. The decision to do spills at the Columbia and Snake River dams may be the tragic example. National Marine Fisheries Service reversed its long standing policy on gas supersaturation without benefit of change in the data base, now saying that allowing an increase of supersaturation from 110% of barometric pressure to 130% is acceptable, even though in 1971 NMFS own scientists said, along with state fisheries specialists, that gas supersaturation would virtually eliminate salmon from the Columbia River within a few years unless something was done quickly. An appointed task force proposed a limit of 110% and by 1976, 5 years after adopting the limit the problem was over. Last year the NMFS Scientific Review Panel in their report said "Effects above 110 percent are uncertain but in the direction of damage. More recent reviews suggest that more stringent levels of TDG are advisable for full protection."

Never the less NMFS now call for spills and will place this years salmon runs at risk. Worst of all no estimation of in-river smolt mortality from Gas Bubble Disease was made in the 1994 experimental spill and probably won't be done. Scientific experts on GBD are pleading with NMFS to implement adequate monitoring measures now that the spills are taking place so that the fishes deaths do not go undocumented. It is hard to miss the legions of gulls gorging on baby salmon stunned by their plunges over the opened spillways of the dams.

The spills of an additional 30 feet will cost between \$8 and \$12 million in lost hydropower generation, according to a Clearwater Power Company spokesman. The fisheries service says this increase will improve threatened Snake River fall Chinook survival by 40% which if true will mean that for each additional salmon saved the cost will be \$1 million.

Livestock permits have been put on notice in some forests that their ten year permits expire at the end of 1993. They are warned that environmental assessments must be completed before permits can be reissued. "A part of the process involves determining the potential impacts on species that are proposed or listed as threatened, endangered or sensitive, such as bull trout and salmon." Then, of course, the product must be made available to public review and appeals and administrative reviews, etc. and the inevitable gridlock that ensues. Unless the law is changed our future becomes dimmer and dimmer.

Margaret Thatcher's words would apply when she was discussing the responsibility that goes with freedom and societies without moral foundations: " They would do well to look at what has happened in societies without moral foundations. Accepting no laws but the laws of force, these societies have been ruled by totalitarian ideologies like Nazism, fascism, and communism, which do not spring from the general populace, but are imposed on it by intellectual elites." It is no leap logically to add environmentalism to that list.

In the spirit of eternal vigilance as a price of freedom we ask that you change this awful law and others like it, or repeal it, in order to restore the blessings, and responsibilities of freedom to us all.

To summarize the minimum reforms needed should you decide to re authorize and reform the act rather than repeal it, in our opinion, would be:

1. Base listing decisions, including delineation of critical habitat, solely on verifiable science and including fulfilling sufficient data requirements and an economic analysis prior to listing a species.
2. Protect private property by incorporating appropriate legislation (Like the Pombo bill) into the act.
3. Rewrite Section 7 so that "take", including "harm", or "alteration of habitat", etc, must be verifiable scientifically and that the burden of proof is on the appropriate agency. Incorporate language that allows legitimate ongoing activities to continue until harm can be verified. Delete it as a road-block statute.
4. List only true biological species. Delete "sub-species and distinct populations" from the language and delist those so classified that have been already listed. Allow for the scientific decision to not list a species based on the determination that such species is irretrievably lost. Include economic analysis in the decision so that costs of heroic efforts are known before the decision is made.
5. Insure that legitimate ongoing activities continue until the listing is completed including the delineation of critical habitat and the recovery plan.
6. Include the public in plan preparation and provide that the agencies may not place more stringent conditions on landowners than they do themselves.
7. Delineate all critical habitat when listing species. (In the salmon listing the ocean was omitted even though most of their lives are spent there. Many scientists believe that's where the major difficulty lies barring their recovery.)
8. Eliminate the provisions allowing citizen lawsuits against private landowners.
9. Enfranchise local elected officials and local citizens to protect endangered species and their habitat through incentives. At the local level the motivation to save a species should supplant the economic threat that now exists when one is found.
10. Eliminate the provisions for "emergency" listings by the Secretaries. In cases where an emergency has been requested it must be shown that the species is not adequately protected elsewhere or no emergency will be granted. Such cases will be dealt with locally, will be incentive based rather than punitive.
11. Require law enforcement actions to come from the local jurisdictions.

Numbers 3 and 5 should eliminate the need for the failed "habitat conservation plans".

Again, thank you, most sincerely,

The Oregon Cattlemen's Association

Mack Birkinmaier, President
Sharon Beck, Endangered Species Committee

Enc. An "Environmentalists Anonymous" letter to the editor that is a familiar malady predominantly afflicting urbanites. The good news is more and more are seeking cures..

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
DEPARTMENT OF POLITICAL SCIENCE

Project on Environmental Politics & Policy
Stephen M. Meyer, Director

30 March 1995

ENDANGERED SPECIES LISTINGS AND STATE ECONOMIC PERFORMANCE

Our most recent working paper, *Endangered Species Listings and State Economic Performance*, examines the allegation that the Endangered Species Act has "trashed" the economy. Analyzing the periods 1975-1980, 1980-1985, and 1985-1990 the paper compares state growth rates in gross state product and construction employment against their corresponding number of federally listed species. The data clearly show that the Endangered Species Act has had no measurable economic impact on state economic performance.

Controlling for differences in state area, economic size, and extractive industry dependence the study finds that states with the highest numbers of listed species also enjoyed the highest economic growth rates and the largest increases in economic growth rates between the three periods. A closer look at the data suggests that population growth is the common link: states with booming economies attracted larger numbers of new residents, which in turn put increasing pressures on habitats. From a conservation biology perspective this implies a larger likelihood of human-wildlife collisions that result in a new listing. From a political perspective it implies more opportunities for environmental activist intervention and NIMBYism to halt habitat destroying projects, again producing larger numbers of new listings..

Working Paper No. 4



**ENDANGERED SPECIES
LISTINGS
and
STATE
ECONOMIC PERFORMANCE**

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March 1995

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ENDANGERED SPECIES LISTINGS and STATE ECONOMIC PERFORMANCE

by
Stephen M. Meyer¹

INTRODUCTION

For most Americans mention of the Endangered Species Act conjures up images of a triumphant Spotted Owl perched atop an enormous Douglas Fir, while below a group of unemployed loggers idly drink beer and pitch stones. The Endangered Species Act, some argue, is impeding American economic growth and prosperity – “trashing the economy”. Indeed, anecdotes abound of butterflies halting shopping mall projects, mooses scuttling highway extensions, and fish blocking resort development.

With the number of listed endangered species presently hovering around 800 and thousands of candidate listings waiting in the wings it is certainly prudent to question whether we can pay the alleged price for protecting endangered plants and animals in the manner presently defined by the Endangered Species Act. And it is in this context that a number of amendments to the Endangered Species Act have been proposed, all aspiring to balance the needs of biodiversity against those of the economy.

In order to assess the potential economic value of these proposed amendments we need to have some sense of the actual economic impact of endangered species listings. To what degree do such listings depress economic growth and development? Those who favor giving economic interests more weight in the endangered species process are convinced that the negative economic effects of endangered species listings are readily observable and substantial. This should be easy to verify, and if true would prove valuable in estimating the economic return from an “economically balanced” Endangered Species Act.

Accordingly, this paper estimates the impact of endangered species listings on state economic development for the period 1975-1990, the entire lifetime of the Endangered Species Act for which complete data are available. The data show that endangered species listings have not depressed state economic development activity as measured by growth in construction employment and gross state product. These findings hold even after taking into account state area, population, population density, size of economy, structure of economy, population growth, and time. In fact a state by state comparative analysis across three consecutive five year periods reveals the converse to be true: higher numbers of listed endangered species are

¹ The author is Professor in Political Science and Director of the Project on Environmental Politics and Policy.

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associated with higher rates of economic growth and corresponding population pressures.

ESTIMATING THE ECONOMIC IMPACT OF ENDANGERED SPECIES LISTINGS AT THE STATE LEVEL

Before launching into any form of statistical estimation it is useful to examine visually the basic trends in the two key variables -- rates of economic development and endangered species "burden"-- to see how they move in time. This study uses two standard indicators of state economic performance that reflect development activity: growth in construction employment and growth in gross state product.² The choice of construction employment is obvious. If the weight of endangered species listings is systematically hindering development activity, for example forcing delays and cancellation of public works projects and spawning permit denials for residential and commercial construction, then construction employment opportunities should be limited if not actually depressed.

Endangered species burden is measured in terms of the number of listings per state -- a relative measure of endangered species burden. In fact the political debate over the Endangered Species Act is itself waged in terms of the number of listings, current and prospective. Opponents worry that the impending avalanche of listings will shut down important segments of the U.S. economy, especially the natural resource sectors. A larger number of individual species listed, they argue, means a larger amount of land likely to be affected. It also implies a larger assortment of restrictions put in place, all else being equal. Therefore, Alabama with 61 listed species in 1990 would in theory labor under more onerous burdens than neighboring Georgia with 31 listed species. And both would be worse off than Louisiana with just 19 listed species.³

If the impact of the Endangered Species Act is really as pervasive and perverting as the anecdotal evidence implies then the overall economic climate in states with high numbers of endangered species listings should suffer in a

² Data were obtained from the U.S. Department of Commerce and Department of Labor.

³ Of course the number of listed species is not a perfect measure. Some listed species range over very small habitats. Habitat for the Tecopa Pupfish was under an acre. Others, such as grizzly bears require hundreds of thousands of acres. Thus, two states with a single listing each may experience very different impacts.

Then too many listed species have overlapping territories. For example, the area designated as habitat for the California Gnatcatcher contains some 37 other endangered species. Thus, it is likely that the cumulative impact of these 38 listings may be substantially less than the sum of their parts. It would be desirable, therefore, to use this alternative measure of species burden. Unfortunately, data are not yet available to allow us to measure endangered species "burden" directly by land restrictions.

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measurable way.⁴ This negative effect should ripple back through state economies and be detectable in changes in the gross state product. For example, traditional assumptions about multiplier effects assert that every timber job lost in Oregon causes three additional jobs in services, retailing, etc. to disappear.

Construction Employment Growth: FIGURE 1 consists of three graphs representing the periods 1975-1980, 1980-1985, and 1985-1990. Forty-eight states, omitting Alaska and Hawaii, are plotted according to (the vertical axis) their average annual growth in construction employment during the five year period and (the horizontal axis) their corresponding number of listed endangered species as of the *beginning* of that period.⁵ In other words, each graph is a snapshot in time comparing the states in terms of the number of listed endangered species and subsequent economic performance for the five year period. The line running through the graph attempts to trace the general trend using simple regression.

None of the patterns in any of the time periods support the assertion that endangered species protection results in measurable reductions in state economic performance. In fact there seems to be a modest *increasing* (positive) trend during the first two periods in construction employment growth as the number of listed species rises, and no trend in the last period. If endangered species listings are "trashing" state economies there is no sign of that impact on construction employment.

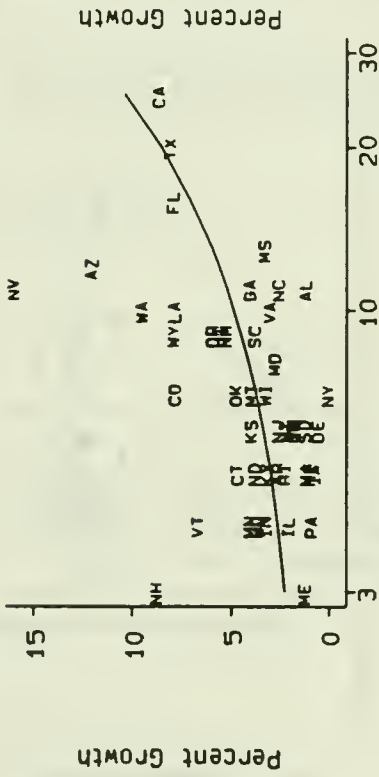
Gross State Product Growth: The next set of graphs arrayed in FIGURE 2 examine the trend for growth in gross state product as a function of endangered species listings. Here again the pattern predicted by critics of the Endangered Species Act fails to appear. There is no trend of declining economic performance as species listings increase. Instead all three periods show a modest increasing rate of gross state product growth associated with increasing numbers of species listings.

⁴ State by state annual data for endangered species listings were obtained from the U.S. Fish & Wildlife Service.

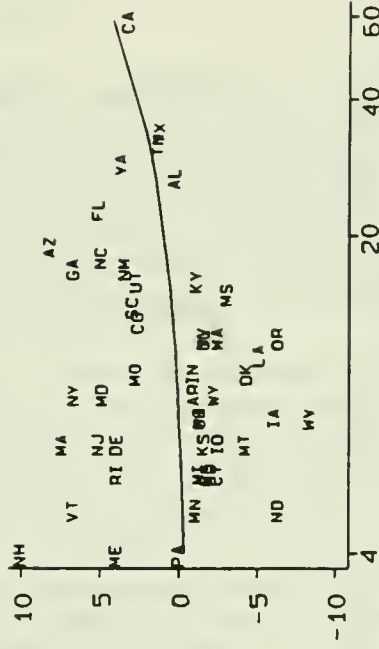
⁵ Both Alaska and Hawaii sit as distant outliers in these graphs - that is, they fall outside the pattern set by the other states. Indeed it is quite common to exclude these states from cross-sectional analyses because of their atypical characteristics. In the context of this study there are strong substantive reasons to explain their "outlier" status. In Alaska's case its extraordinarily low population density, large wilderness areas, and natural resource (oil)economy separate it from the other states. Hawaii's island bio-geography and island economy uniquely distinguish it from the states of the continental U.S..

The statistical analyses for this study were run including and excluding Alaska and Hawaii. There were virtually no substantive differences in the results, albeit for larger standard errors around coefficients and statistics. Thus, only the results excluding these two states are reported.

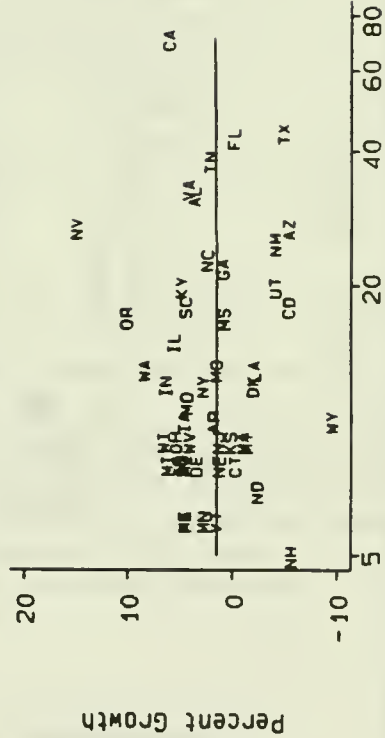
Figure 1: Construction Employment Growth and Species Listings



Number of Listed Species-1975

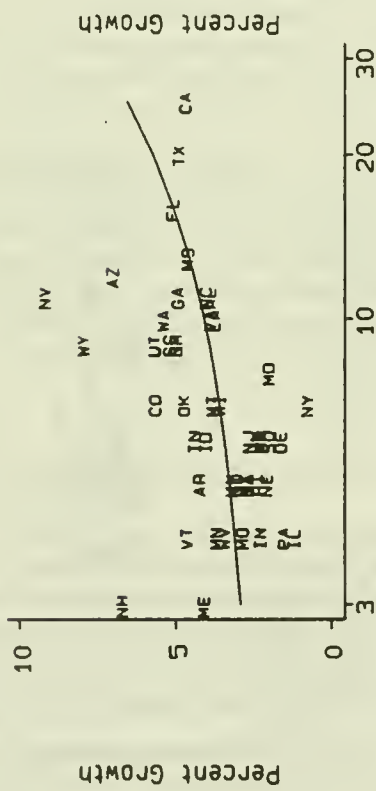


Number of Listed Species-1985

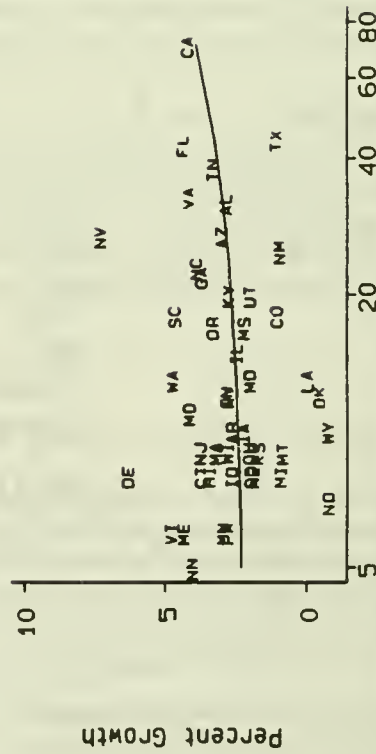


Number of Listed Species-1985

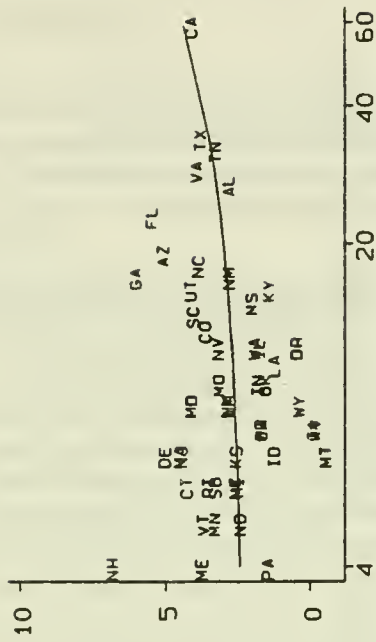
Figure 2: Gross State Product Growth & Species Listing



Number of Listed Species-1975



Number of Listed Species-1985



Number of Listed Species-1985

Simple Bivariate Associations

The patterns in the graphs are indeed suggestive, but do they hold up to more serious scrutiny? Or, is it possible that that *apparent* positive relationship could arise from chance occurrence? Using simple bivariate regressions we can test if the visual impressions from the graphs of a positive association could stand on their own as being statistically significant, or whether they just might be random fluctuations that give the appearance of a systematic relationship.⁶

Beginning with a simple bivariate regression is justified in this case by the fact that those who argue that the Endangered Species Act is trashing the economy are quite vocal in their view that the effects are clear and obvious. Certainly their anecdotes make it seem so. Therefore we should be able to detect the harmful economic effects of endangered species listings without more complex econometric or statistical controls.

Construction Employment Growth: The bivariate regression results for construction employment growth are shown in TABLE 1. What do we find? Look at the row corresponding to the predictor variable: **NUMBER of ENDANGERED SPECIES**. Each column corresponds to a given period and the first

PREDICTOR	PERIOD		
	1975-1980	1980-1985	1985-1990
NUMBER of ENDANGERED SPECIES	0.370*** (3.760)	0.082 (1.325)	0.004 (0.070)
<i>N</i>	48	48	48
<i>R-SQR</i>	0.24	0.04	0.00
<i>Adj. R-SQR</i>	0.22	0.01	0.00

p*<0.05 *p*<0.01 ****p*<0.001

number in the cell is the regression coefficient. It measures the change in construction employment growth as a function of change in the number of listed species. For 1975-1980 it appears that when you compare states each additional listed species is associated with an increase of 0.37% in construction employment growth.

⁶ The regression model used was:

$$\text{Construction Employment Growth}_{(t,t+5)} = \text{constant} + \text{SPECIES}_{(t)}$$

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The number in parentheses directly below the regression coefficient is the t-statistic testing the statistical significance of the regression coefficient. An asterisk (*) indicates that based on the t-statistic there is less than a 5% chance that the coefficient is actually "0" or negative. That is, the coefficient is significant at the 5% level. A double asterisk indicates statistical significance at or below 0.01; a triple asterisk indicates statistical significance at or below 0.001. The choice of a threshold for statistical significance depends on your attitude toward risk. In general, probability values of 0.05 or 0.01 are considered to be appropriate dividing lines., indicating that for the purposes of analysis it is reasonable to assume that a systematic relationship does exist between the variables.

The lower section of the table reports some basic information about the regression. The most important number is the *Adjusted R-SQR*, which measures the relative amount of variation in the economic indicator that is accounted for by endangered species listings. A small adjusted R-SQR – say below 10% – says that the relationship is basically uninteresting because the vast amount of variation in the economic indicator is not explained.

Looking at TABLE 1 we see that the coefficients for all three time periods are positive, but only the 1975-1980 data produce a statistically significant coefficient. The simple regression for 1975-1980 seems to account for about a quarter of the variation in state construction employment growth (Adj. R-SQR). Given the null results for 1980-1985 and 1985-1990 (statistically insignificant coefficients and zero adjusted R-SQR) we can safely conclude that there is no clear or obvious systematic bivariate relationship between endangered species listings and development growth as measured by construction employment growth. This is not what opponents of the Endangered Species Act expect to see.

Gross State Product Growth: TABLE 2 looks at the relationship between endangered species listing and growth in gross state product. Once again the simple bivariate regression coefficients for **NUMBER of ENDANGERED SPECIES** are positive. While the 1975-1980 coefficient is statistically significant the others are not. We might be better off ignoring the positive trends seen in the graphs. Nevertheless these results strongly contradict the argument that endangered species listings impede state economic growth and development.

Confounding Influences

Of course all this begs the question: What happens when you take into account some of the obvious characteristic differences among the states? Perhaps the opponents of endangered species protection are fundamentally correct – endangered species protection does hinder economic growth – but their rhetoric exaggerates the case. Could the effect be more subtle than they believe? Controlling for certain state characteristics, therefore, might reveal the negative economic effects they predict. While a more subtle negative effect

TABLE 2: Regression Analysis of the Impact of Endangered Species Listings on Gross State Product Growth

<i>PREDICTOR</i>	<i>PERIOD</i>		
	<i>1975-1980</i>	<i>1980-1985</i>	<i>1985-1990</i>
NUMBER of ENDANGERED SPECIES	0.17** (3.04)	0.04 (1.55)	0.02 (1.30)
<i>N</i>	48	48	48
<i>R-SQR</i>	0.17	0.05	0.03
<i>Adj. R-SQR</i>	0.15	0.03	0.01

p*<0.05 *p*<0.01 ****p*<0.001

might not be as politically compelling it would still be important for public policy-making.

For example, many western states have fairly large territorial areas, relatively small populations, and have economies that depend to a substantial degree on natural resource industries: forestry, oil and coal extraction, mining, etc. Large area and low population implies fewer occasions where human activities and wildlife activities collide, suggesting lower numbers of species listings. At the same time these states may be more likely to have poorly performing economies because natural resource commodity markets have been skittish for the past two decades. Consequently, an analysis of the relationship between endangered species listings and economic performance that includes these states may be biased if it ignored these confounding correlations.

Likewise we could speculate that states with larger economies might tend to have more listed endangered species because they have larger populations and enjoy more aggressive land development, making encroachments into critical habitats more likely. "Big economy" states may also have stronger economic engines to drive stronger growth. Ignoring state differences in economic size could mask a fundamentally negative relationship between endangered species listings and economic growth. Therefore, we should reanalyze the data using statistical controls to adjust for characteristic differences among the states that are likely to be related to both the relative number of endangered species listings and economic performance.

TABLE 3 presents the results for a multiple regression that examines how growth in construction employment varies with the number of species

TABLE 3: Multiple Regression Analysis of the Impact of Endangered Species Listings on Construction Employment Growth

PREDICTOR	PERIOD		
	1975-1980	1980-1985	1985-1990
NUMBER of ENDANGERED SPECIES	0.407*** (3.718)	0.164* (2.599)	0.019 (0.325)
Land Area	0.315 (0.639)	-0.777 (-1.139)	0.933 (1.222)
Size of Economy	-1.003* (-2.241)	-0.378 (-0.575)	-0.394 (-0.523)
Percent Extractive Industry	0.677 (0.695)	-3.400** (-2.770)	-4.740** (-3.237)
	<i>N</i>	48	48
	<i>R-SQR</i>	0.36	0.33
	<i>Adj. R-SQR</i>	0.30	0.28

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

listings after taking into account some key differences among the states in the form of the nuisance variables: area, economy size (gross state product), and extractive industry dependency (percent of gross state product derived from extractive industries).⁷

Comparing the coefficients and probabilities for **NUMBER OF ENDANGERED SPECIES** between TABLE 1 and TABLE 3 we see that the strength of the positive relationship between construction employment growth and species listings increases after taking the nuisance variables into account. Moreover the 1980-1985 series crosses the 0.05 threshold of statistical significance. Clearly there is something interesting here.

In particular the declining magnitude and statistical significance of the coefficients linking **NUMBER OF ENDANGERED SPECIES** and construction

⁷ Area, gross state product, and percent of industry in extractive industry are used in the estimating equation in log form. Log form is used to remove the confounding effects of non-linear relationships among the variables and heteroscedasticity in the residuals. It also turns out that these are log-normal variables. Population is excluded from the analysis because it is so highly correlated with size of economy (0.985). Economy size is an effective surrogate. Substitution produces the same results. Population density is implicit in the analysis using the log forms of area and population. Percent of urban population was also tried in early analyses but dropped when it failed to show any effect.

employment growth over consecutive periods suggest that the positive association dissipates over time. In contrast the negative relationship between construction employment growth and extractive industry grew stronger over time. This is consistent with the fact that states with large energy producing

TABLE 4: Multiple Regression Analysis of the Impact of Endangered Species Listings on Gross State Product Growth

<i>PREDICTOR</i>	<i>PERIOD</i>		
	<i>1975-1980</i>	<i>1980-1985</i>	<i>1985-1990</i>
NUMBER of ENDANGERED SPECIES	0.21*** (4.05)	0.07** (3.19)	0.07*** (5.05)
Land Area	0.35 (1.51)	-0.32 (-1.30)	-0.27 (-1.49)
Size of Economy	-0.96*** (-4.58)	-0.28 (-1.19)	-0.59** (-3.29)
Percent Extractive Industry	0.19 (0.42)	-1.24** (-2.75)	-2.28*** (-6.56)
	<i>N</i>	48	48
	<i>R-SQR</i>	0.50	0.36
	<i>Adj. R-SQR</i>	0.45	0.30

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

sectors enjoyed good economic times the 1970s as a result of oil price shocks. This produced an expanding construction market (notice the positive, though statistically insignificant coefficient for **PERCENT EXTRACTIVE INDUSTRY**). The economic fortunes of these states changed in the 1980s and that is reflected in the negative coefficients for 1980-1985 and 1985-1990.

Regardless of what one thinks of this persistent counter-intuitive positive to null association between species listings and construction employment growth, state experiences during the period 1975-1990 do not conform to the notion that the Endangered Species Act has hurt economic performance, even after controlling for the nuisance variables.

Gross State Product Growth: TABLE 4 reexamines the relationship between gross state product growth and species listings with controls for state characteristics. Here again the relationship between species listings and gross state product growth is marginally stronger (compare with TABLE 2) -- the coefficients are larger and the associated significance levels get smaller -- when characteristic differences among the states are "controlled."

Indeed, all three time periods now show a statistically significant relationship between species listings and growth in gross state product. As we saw for construction employment, this relationship appears to have been

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strongest during the earlier period. Similarly, the negative relationship between extractive industry dependence and economic performance grows over time.

Anecdotes notwithstanding, the data compel us to reject the argument that higher numbers of endangered species listings are associated with poorer economic performance.

ANALYZING A MORE SUBTLE FORM OF NEGATIVE ECONOMIC IMPACT FROM ENDANGERED SPECIES LISTINGS

Perhaps it is true, as the above results suggest, that states with higher numbers of listed species also tend to have stronger economies. Nevertheless, species listings could still exert a more subtle drag effect – a sort of negative feedback – that gradually and incrementally retards the rate of growth of state economies. You could argue that, regardless of what did happen in the 1970s and 1980s, states with higher numbers of species listings might have *further* economically outpaced the other states had they not had higher species listings.

The effect would be evident by comparing each state's growth rate in a given period against its prior and subsequent economic performance. If larger numbers of species listings decelerate economic growth, then when comparing the periods 1975-1980, 1980-1985, and 1985-1990 states with cumulatively higher numbers of species listings would show a tendency toward slower growth in subsequent periods relative to states with fewer listings.

This hypothesis is tested in TABLE 5 for growth in Gross State Product.⁸ As the first row shows the coefficients are positive, not negative as Endangered Species Act detractors would expect. As states accumulate species listings their economic growth rates do not decelerate; in fact they seem to accelerate. The best predictor of a slowing economy is dependence on extractive industries.

TABLE 6 performs the same analysis for growth in construction employment and produces fundamentally the same results. The accumulation of endangered species listings over time is not associated with decelerating growth rates in construction employment. There is either a slight positive association or no association at all.

The data fail to find any basis for presuming that states that accumulated higher numbers of listed species over time would have enjoyed even stronger growth had the Endangered Species Act not been implemented.

⁸ Defining "Diff" as the difference in economic indicator growth rates between two consecutive five year periods, then the equation is:

$$\text{Diff}_{(p,p-5)} = \text{constant} + \text{Species}_{(p)} + \text{Nuisance Variables}_{(p)} + \text{Error}.$$

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TABLE 5: Multiple Regression Analysis of Impact of Accumulated Endangered Species Listings on Inter-Period Changes in Gross State Product Growth Rates

PREDICTOR	PERIOD	
	1980-1985 vs. 1975-1980	1985-1990 vs. 1980-1985
	TOTAL NUMBER of LISTED SPECIES	4.586** (3.306)
Land Area	-0.455 (-1.176)	0.004 (0.013)
Size of Economy	-0.147 (-0.374)	-0.343 (-1.068)
Percent Extractive Industry	-1.173 (-1.685)	-1.912** (-3.033)
	<i>N</i> 48	48
	<i>R-SQR</i> 0.28	0.24
	<i>Adj. R-SQR</i> 0.22	0.16
* <i>p</i> <0.05 ** <i>p</i> <0.01 *** <i>p</i> <0.001		

TABLE 6: Multiple Regression Analysis of Impact of Accumulated Endangered Species Listings on Inter-Period Changes in Construction Employment Growth Rates

PREDICTOR	PERIOD	
	1980-1985 vs. 1975-1980	1985-1990 vs. 1980-1985
	TOTAL NUMBER of LISTED SPECIES	8.487* (2.640)
Land Area	-1.192 (-1.329)	1.505 (1.474)
Size of Economy	0.051 (0.057)	-0.044 (-0.044)
Percent Extractive Industry	-2.163 (-1.340)	-3.443 (-1.765)
	<i>N</i> 48	48
	<i>R-SQR</i> 0.24	0.09
	<i>Adj. R-SQR</i> 0.17	0.01
* <i>p</i> <0.05 ** <i>p</i> <0.01 *** <i>p</i> <0.001		

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ESTIMATING THE IMPACT OF ECONOMIC GROWTH ON ENDANGERED SPECIES LISTINGS AT THE STATE LEVEL

Of course the above results do not mean that we can stimulate state economic growth by intentionally increasing the number of listed endangered species. Then how can we explain these paradoxical results? *Reverse cause and effect*: strong economic growth is an engine for increases in species listings and subsequent economic growth. Therefore, the data series produce correlations between species listings and subsequent economic growth even though the causal relationship runs the other way.

The appropriate step is to reverse the causal direction in the analysis and reexamine the data predicting endangered species listings based on *prior* economic performance. The analysis here is conceptually straightforward. The pace of economic growth for each state during a given period is measured and then we ask how it is related to the *subsequent* rate of endangered species listings in that state. For instance, did states with higher rates of growth in gross state product between 1975-1980 experience larger increases in endangered species listings in subsequent years?

While this is a simple question conceptually some analytic gymnastics are required to answer it. First, case studies show that pressures on a given species develop slowly and are often unrecognized for a considerable period of time. The development activity that poses a threat to either the creature or its habitat may persist for many years before the threat is recognized. Second, studies of the listings process itself show that there is a substantial delay between the time authorities become aware that an animal or plant may be in danger and its eventual placement on the endangered species list. Indeed, many species in trouble never make it to the list at all. Several dozen have disappeared while in the waiting queue. Thus, we cannot not expect an instantaneous cause and effect.

Moderating that delay, however, are the efforts by U.S. Fish & Wildlife and many national and local environmental organizations supporting enforcement of and compliance with the Endangered Species Act, as well as the activities of local (NIMBY) interests wishing to block specific projects. Whatever the latter's motivation they nonetheless help to identify potential candidates for listing prior to development work. In short, there may be some lag between economic growth (cause) and consequent listing of species (effect) but it should not be extreme.

The multiple regression analysis in TABLE 7 attempts to predict the pace and distribution of new endangered species listings based on economic growth

rates.⁹ It assumes a two-year delay between economic "cause" and species listing "effect". Economic activities between 1980 and 1985 are presumed to affect species listing rates between 1982 to 1987. Other lag values (0 to 5 years) do not substantially alter the results either way. For this analysis both indicators of economic development, the five-year average annual growth in gross state product and the five-year average annual growth in construction employment, appear as independent variables in the model together.

The results in TABLE 7 support our suspicions about the real links between state economic performance and endangered species listings. Gross state product growth is systematically and *positively* associated with subsequent growth in the number of listed species, after controlling for state

TABLE 7: Multiple Regression Analysis of the Impact of Development Pace on Endangered Species Listings

PREDICTOR	PERIOD			
	1975-1980	1980-1985	1985-1990	
Gross State Product Growth	0.21** (3.35)	0.14** (2.83)	0.10** (2.71)	
Construction Employment Growth	-0.03 (-1.15)	-0.01 (-0.30)	-0.004 (-0.386)	
Land Area	-0.12 (-1.84)	0.13* (2.39)	-0.003 (-0.075)	
Size of Economy	0.26*** (4.04)	0.07 (1.46)	0.230*** (5.130)	
Percent Extractive Industry	0.03 (0.26)	0.18 (1.82)	0.172 (1.458)	
	<i>N</i>	48	48	48
	<i>R-SQR</i>	0.37	0.43	0.46
	<i>Adj. R-SQR</i>	0.29	0.37	0.40
* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$				

area, size of economy and extractive industry dependence. In contrast, growth in construction employment does not seem important when the other variables are considered. Its coefficients, while uniformly negative, are for all intents and

⁹ The equation is:

$$\text{New Listings}_{t+2,t+7} = \text{constant} + \text{Gross State Product Growth}_{t,t+5} + \text{Construction Employment Growth}_{t,t+5} + \text{Nuisance Variables} + \text{Error}.$$

The nuisance variables are in log form, as is the dependent variable: new listings. Analysis shows these are all log-normal variables.

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purposes "0", as indicated by their small values and failure to attain statistical significance. While at first glance this result might seem odd, it actually makes good sense. A zero coefficient means that when you hold growth in gross state product constant (as well as the other predictor variables) changes in growth in construction employment do not affect endangered species listings. This is entirely reasonable since growth in construction employment a direct result of an expanding economy. Therefore "controlling" the latter has the effect of controlling the former, and so no independent effect is registered.¹⁰

The table also shows that states with larger economies also tend to have larger numbers of listed species. This may be partially the result of greater economic dynamism: big economies expand more. It may also be related to the fact that big economies have big populations, implying significant population pressures on wildlife habits.

We can carry this exploration one step further if we consider the link between economic performance, development, and population trends. As noted earlier state population was not explicitly used in the analysis because it was effectively captured by several of the other variables.¹¹ But, as shown in TABLE 8 when change in state population (population growth) during periods is added This occurs because of the dynamic interaction among these two variables. People are attracted to states with expanding economies, and an influx of new workers and consumers further stimulates development and economic growth.¹² Therefore when both gross state product growth and population growth are included together in the analysis the former effect is nullified.

The Adjusted R-SQR values shown in TABLE 6 caution that we should not, however, push this argument too far. Only about 40% of the variation in new listings is accounted for the by the two statistically significant predictor variables: population change and size of economy. Thus most of the explanation for differences in species listings among the states continues to elude us. Studies by other researchers point to a host of bureaucratic, organizational, ecological, political, and economic influences that may account for much of the missing variation.¹³

¹⁰ The correlation between gross state product growth and construction employment growth is 0.82, 0.83, and 0.56, respectively for the three periods. The constraining effect on construction employment growth when gross state product growth is held constant is clearly seen in partial regression plots.

¹¹ In fact colinearity was so severe that it prevented model estimation.

¹² The correlation between population growth and growth in gross state product is 0.91, 0.45, and 0.78 for each of the three periods, respectively.

¹³ See, for example: Stephen L. Yaffe (1982) *Prohibitive Policy: Implementing the Federal Endangered Species Act* (Cambridge, MA: MIT Press); Richard J. Tobin (1990) *The Expendable Future: Politics and the Protection of Biological Diversity* (Durham, N.C.: Duke University Press); (continued)

TABLE 8: Multiple Regression Analysis of the Impact of Development Pace on Endangered Species Listings

<i>PREDICTOR</i>	<i>PERIOD</i>		
	<i>1975-1980</i>	<i>1980-1985</i>	<i>1985-1990</i>
Gross State Product Growth	0.054 (0.679)	0.067 (1.247)	0.085 (1.252)
Construction Employment Growth	-0.048 (-1.692)	-0.01 (-0.658)	-0.003 (-0.240)
Land Area	-0.163* (-2.577)	0.070 (1.254)	-0.0.12 (-0.200)
Size of Economy	0.278** (-4.627)	0.089 (1.963)	0.228*** (4.978)
Percent Extractive Industry	-0.017 (-0.143)	0.038 (0.334)	0.170 (1.427)
Change in Population	0.342** (2.936)	0.176* (2.339)	0.018 (0.266)
	<i>N</i>	48	48
	<i>R-SQR</i>	0.48	0.50
	<i>Adj. R-SQR</i>	0.40	0.43
			48
			0.47
			0.39

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

CONCLUDING OBSERVATIONS

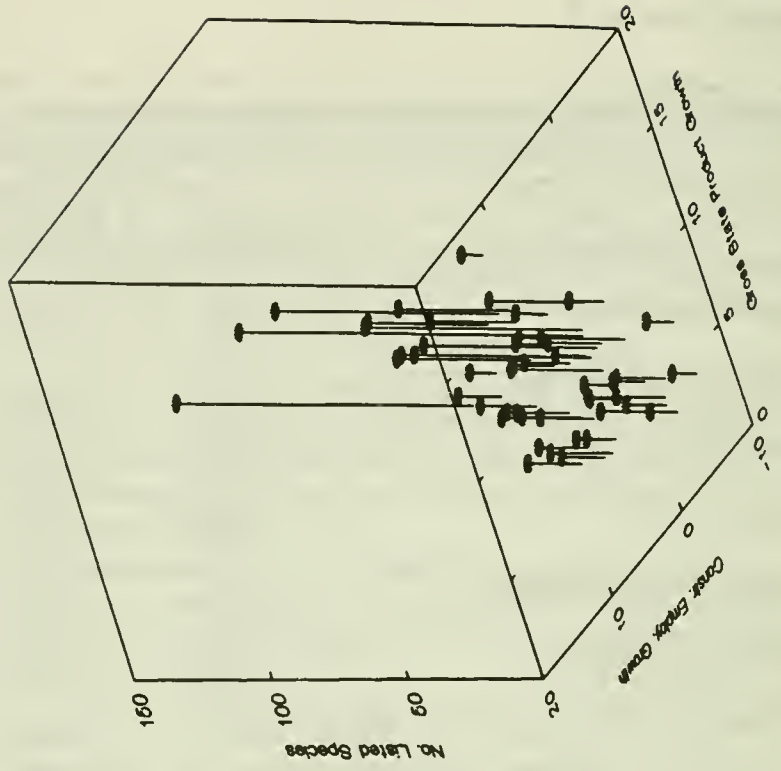
The one and a half decades of state data examined in this paper strongly contradict the assertion that the Endangered Species Act has had harmful effects on state economies. Protections offered to threatened animals and plants do not impose a measurable economic burden on development activity at the state level. In fact the evidence points to the converse. The combination of robust development and population migration accelerates the rate of endangered species listings.

This relationship is clearly seen in FIGURE 3 which places each state in a three dimensional space. The floor of the graph is defined by the two growth indicators: growth in gross state product and construction employment growth over the entire period 1975-1990. The vertical axis corresponds to the total number of listed species in 1992, allowing for lags in the listings process. Each state is represented by a "hat pin" whose vertical height corresponds to total number of listed species. The long upward slope of the hat pins that ascends

and United States General Accounting Office (1993) *Endangered Species: Factors Associated with Delayed Listing Decisions* (GAO/RECD-93-152).

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Figure 3: Species Listings & State Economic Performance 1975-1992



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toward the top rear corner of the graph clearly suggests that endangered species listings are a consequence of strong economic performance over the 15 year period.

We must now return to the source of this inquiry and reconcile these findings with the anecdotes that find their way to the media. How can it be, given the well-publicized horror stories, that the Endangered Species Act does not leave a trace on state economies? The answer is simple: the economic effects of endangered species listings are so highly localized, of such small scale, and short duration that they are do not substantially affect state economic performance in the aggregate. They are lost in the noise of background economic fluctuations. A rare toad may indeed impede construction of an ocean resort or golf course but such events do not ripple back through state economies.

Although detractors of the Endangered Species Act often describe it as blind to the needs of people and the economy, every government and academic examination of the endangered species process has reached the opposite conclusion: political, economic, and social considerations permeate the listings process.¹⁴ In fact, for every tale about a project, business, or property owner allegedly harmed by efforts to protect some plant or animal species there are over one-thousand stories of virtual "non-interference." In reviewing the record of 18,211 endangered species consultations by the Fish and Wildlife Service/National Marine Fisheries covering the period 1987-1991 the General Accounting Office found that only 11% (2050) resulted in the issuance of formal biological opinions.¹⁵ The other 89% were handled informally -- that is to say the projects proceeded on schedule and without interference. Of the 2050 formal opinions issued a mere 181 -- less than 10% -- concluded that the proposed projects were likely to pose a threat to an endangered plant or animal. And most of these 181 projects were completed, albeit with some modification in design and construction. In short, more than 99% of the projects reviewed under the Endangered Species Act eventually proceeded unhindered or with marginal additional time and economic costs. Given the political and economic screening that occurs in listings cases it is not surprising that no measurable negative economic effects are detectable.

It is not my intention to trivialize the economic or social effects at the sub-state level that may result from some individual species listing or habitat designation.¹⁶ Counties, cities, and towns are much more sensitive to single

¹⁴See the previous footnote.

¹⁵ United States General Accounting Office (1992) *Endangered Species Act: Types and Numbers of Implementing Actions* (GAO/RECD-92-131BR).

¹⁶Available case studies also suggest that local communities suffer far greater economic and social harm from over-dependence on extractive industries. The boom to bust story continues to be played out in coal country, hard-rock mining communities, oil towns, and timber
(continued)

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employer or single industry effects. Endangered species critical habitat listings may, under certain conditions, have demonstrable negative economic impacts at the local level. The evidence, however, remains to be collected and analyzed.¹⁷ But even conceding the possibility of systematic local effects, in terms of scale and scope they are a far cry from the national economic crisis that the Endangered Species Act's detractors depict.

Economic assistance, job training grants, and other localized programs can make a difference in such cases at modest cost. The revitalization of county economies in the Pacific Northwest following the listing of the Northern Spotted Owl is one example.¹⁸

Furthermore local economic effects must be considered in context. Hundreds of state and federal policies have far more injurious impacts on local economies than wildlife protection. For example, the recent series of military base closings have had economic effects hundreds of times greater than all the listings during the 20-year life of the Endangered Species Act. Even greater economic and social harm resulted from the ill-conceived deregulation of the savings and loan industry during the 1980s. The number of jobs lost to leveraged buy-outs in the 1980s exceeds by many times the wildest estimates of jobs lost to endangered species; and no social good was accomplished in any of these cases.

The evidence is clear: Based on the actual economic experience under the Endangered Species Act weakening the Act will not spur job creation and economic growth. It will not launch poor rural or western communities on the road to prosperity. It will not save overextended developers from bankruptcy. If "growing the economy" is the top priority of government then we should focus on policy options that can make a difference.

regions. Even the Spotted Owl case reveals that at worst the listing merely brought forward the date of collapse of segments of the Pacific Northwest timber industry. See, for example: William R. Freudenburg (1992) "Addictive Economies: Extractive Industries and Vulnerable Localities in a Changing World Economy," *Rural Sociology*, Vol. 57, No. 3, pp. 305-332.

¹⁷ One such study, by the Texas and Southwestern Cattle Raisers Association, attempted a regional analysis of this sort in which they did find endangered species listings depressed local property values. Unfortunately, several errors in their statistical methodology produced this result. When these errors were corrected the analysis produced the opposite findings: counties with endangered species listings enjoyed higher than average property value growth. See: *Comparison of Fair Market Value of Rural Land and Vacant Lots/Tracts in 33 Central Texas and Hill Country Counties 1989-1993* (October 1994) and the author's review of that report.

¹⁸ See: Jessica Maxwell (1995) "Back to the Woods," *Audubon* Vol. 97, No. 1 (January-February), pp. 88-91; Timothy Egan (1994) "Oregon, Foiling Forecasters, Thrives as IT Protects Owls" *The New York Times* (October 5), p.A1.

Oregon



 DEPARTMENT OF
 FISH AND
 WILDLIFE

Comments On The Endangered Species Act

Before the Senate Committee on
 Environment and Public Works

Presented by
 Rudolph A. Rosen, Ph.D., Director
 Oregon Department of Fish and Wildlife

June 1, 1995

We appreciate the opportunity to appear before you today to discuss changes to the Endangered Species Act (ESA).

There is room for improvement in the ESA, and we hope the Committee will allow us to work constructively together in making improvements.

We suggest that the ESA be amended in a measured way to allow for identification of underlying problems and creation of real solutions. We urge the committee to avoid quick fixes that may do little more than treat symptoms of problems created by the mass of misinformation and hysteria that surrounds endangered species issues in Oregon and throughout the nation. In truth, the act has been successful in helping the recovery of species, as well as halting or slowing the decline of others. In Oregon, species at or near recovery include the bald eagle, peregrine falcon, and Columbia white-tailed deer.

Our proposed revisions to the ESA generally follow the "Essential Elements of Amendments to the Endangered Species Act" developed through the Western Governors' Association. Governor John Kitzhaber was an active participant in the drafting of the Western Governors' proposal.

The document describing the "Essential Elements" is attached and should be referred to for details of implementation of the concepts embodied in our comments. In addition, there are many other points listed in the document that we have not addressed in our comments, but which should be carefully considered as you consider changes to the ESA. Draft proposed bill language that incorporates the "Essential Elements" should be made available soon. We also are aware of proposals by the Clinton Administration to change the act and administration of the act. Many of the recommended changes appear reasonable and should help address some of the problems created by past administration of the act.



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INTRODUCTION

There is so much cooperative work going on in Oregon to aid species. We need to build on such efforts through better cooperation between the state and federal government, as well as through cooperation with local governments, private landowners and citizen organizations.

For example, right here in the Umpqua River Basin there exists a model cooperative restoration program formed in December 1992 by the Douglas County Board of Commissioners. This effort is called the Umpqua basin Fisheries Restoration Initiative and includes representatives from the private and public sectors. The objective here is to restore fish populations and habitat in the 3,000 miles of streams and 3.2 million acres of watershed in the Umpqua River Basin. This includes stream habitat inventory, habitat restoration projects, salmon surveys, research on cutthroat trout, and a volunteer "Fishwatch" to protect fish from poachers in critical holding pools. Annual spending on the initiative has been \$1.2 million in the last two years, plus matching volunteer contributions each year. The total estimated dollar equivalent in expenditures for all work last year was \$3 million. Over 1,000 miles of stream have been worked on in the last three years, with another 500 miles scheduled for work this year.

Legislative changes can facilitate more such constructive activities that help species and avoid listings, especially if the act is amended to take into account cooperative state and local actions. This is a time to enhance cooperation and give credit for protecting species and ecosystems where credit is due. Emphasis must be placed on efforts that improve the overall health of ecosystems, as well as restore and enhance species and their specific habitat.

Extinction and loss of species diversity provide a warning signal to society that we are creating an environment inhospitable to some species of life. Since this is a matter of biology, and because other species are indicators of our collective biological health, this is a signal to humans about the health of the world.

Administration of the ESA as now crafted has created problems, both real and perceived. The ESA also has garnered many advocates who agree it has helped protect species in ways not otherwise available. Creating a pragmatic approach to administering the ESA to preserve the nation's biodiversity of life is critically needed.

ESSENTIAL ELEMENTS FOR AN ENDANGERED SPECIES ACT A NEW APPROACH

What do Oregonians say they want? An Endangered Species Act that protects species, but that also responds to the needs of people.

There is no question that endangered species issues have influenced the perception of private property owners and the public toward government when it comes to regulations that may affect private lands. There also exists massive public support for preventing species extinctions, especially for saving species such as salmon that are so linked to the culture of the Northwest.

Provided the intent of Congress for the Endangered Species Act remains to prevent extinction of species, we believe there are ways to modify the Act that will address the intent of drafters of the bill, regain the public's confidence in government, and protect species in ways that can be administered efficiently by the federal and state governments.

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While the ESA was conceived as a last ditch emergency room response to species extinction, the act is becoming more and more the standard means of managing fish and wildlife. Use of the act preempts state management authority and strips management agencies of the use of standard management planning efforts and other normal mechanisms to manage lands and natural resources, most or all of which already include requirements to address ecosystems, biodiversity and species at risk.

In most cases, listed species are limited in distribution and have specific habitat requirements, such that impacts on economies and land management activities are minimal. However, the minimal impacts on society representative of the majority of listed species are greatly overshadowed by the great impacts resulting (or perceived) from efforts to protect and restore other species such as the spotted owl, marbled murrelet, and chinook, coho, and sockeye salmon. For example, salmon range throughout the Northwest and North Pacific Ocean. Mixing of "listed salmon" with individuals from secure stocks of salmon makes management of salmon fishing a nightmare and protection of the far-ranging salmon affects virtually all land and water resource-based industries in the Northwest as well as all state, federal, tribal, and local governments along the way.

Three Major Goals Are Achievable And Desired:

- 1) Increase The Role Of States,
- 2) Streamline The Act, And
- 3) Increase The Certainty And Incentives For Landowners

1) The Congress Should Clarify, Affirm, And Enhance The State-Federal Partnership In Administering The ESA.

The states possess broad trustee responsibilities for fish and wildlife, including species resident on federal land. The federal government now proceeds under the assumption that the ESA preempts states' authority over species listed. The authority, primacy, and roles and responsibilities of the states must be recognized and affirmed with respect to conservation of species.

States need to be full partners in management of listed species. We suggest a state-federal rulemaking process to set standards and criteria within which the states and federal government will design programs and take action to conserve species and habitat under the ESA. Focus should shift as much as possible toward promoting the sustainability of ecological communities, and focus species-specific efforts on those distinct subspecies, populations or species which are truly isolated and threatened with local or global extinction.

Federal funding should be transferred to the states to support state and local efforts on endangered species. The state of Oregon currently bears a heavy financial burden in meeting requirements, often paperwork or planning oriented, set by the federal government. These requirements must be met simply to allow state agencies to conduct routine fish and wildlife management, and land management activities. This amounts to an unfunded federal mandate that diverts away from primary uses dollars from hunting and fishing licenses, park admission fees, timber sales receipts, and scarce general funds.

In addition to the financial costs, staff time is diverted to completing this federal paperwork and meeting federally-set deadlines. While federal deadlines must be met, the federal government has not been as attentive to state deadlines requiring "endangered species clearances" from the federal government, such as releasing salmon smolts according to preset schedules.

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Federal appropriations should be distributed to those states that assume a share of endangered species responsibility. This should include, reimbursement for costs in administering requirements of the act and in distributing funds to states, and such distribution should not be subject to the sole discretion of federal agencies or an annual "competition" with other agencies for funds. Current appropriations going to federal agencies should be shared with states for administration, management, and research, as well as for creation of Habitat Conservation Plans, conservation agreements, and other activities that can be conducted better at a state and local level than at the federal level.

- 2) **The Congress should ensure that goals of recovery and delisting are quantified and achievable, and the effect of the act is better targeted to the level of need for species protection and to an overall objective of managing ecosystems, not to simply protecting individual species.**

The ESA has created a "crisis" mode of managing species.

The ESA was not intended to be an alternative to traditional wildlife management programs, it was intended to prevent extinction and loss of biodiversity.

Risk levels for species vary, but under the ESA there is little difference in management approach for listed species, regardless of listing status. Crisis management has become the norm, not the exception for species at risk.

Species secure in other countries, but which are rare or undergoing declines in the U.S. may be listed and treated under the same crisis form of management as if the species was about to become extinct. For example, priority has been placed on reestablishing species such as wolves and grizzly bears, which are abundant in Canada, when priority efforts could have been placed on protecting species truly in danger of global extinction or working to avert new listings of species in the U.S. This should not be interpreted to imply a lack of concern over species which are globally secure, but which are locally at risk or locally extinct in the U.S. Work on such species also should be conducted in the U.S., but when financial or other resources are scarce and must be partitioned among competing protection needs, priority should be placed on species or subspecies at true risk of extinction.

The solution includes 1) creating a greater separation in effect of regulatory requirements between "Threatened" and "Endangered" status, and 2) creating a greater separation in effect of regulatory requirements between species for which secure populations exist elsewhere and species for which no secure populations exist elsewhere.

There often are no biological recovery goals for species, making it impossible for the public or state agencies to understand what constitutes successful attainment of protection for a species.

People trying to understand or work with the ESA are often frustrated, because they are unable to learn what constitutes "recovery" of a species. The solution includes requiring biological "recovery" goals immediately upon, or within a set time period after listing, even if these goals must be characterized as preliminary and are adjusted as science improves. Such goals should be set in consideration of the overall health of the habitat, and should include quantifiable and readily measurable parameters such as number of individuals, number of secure populations, number of acres under protection or occupied, and so on.

Emphasis is placed on listing of species, while it seems little or no effort is placed on delisting.

Many people believe that once a species is listed that it never will be removed from the list. Equal emphasis should be placed on delisting and downlisting. A sequential process for downlisting should be established that provides for reducing species protection requirements as a species meets biological milestones on the track to attaining the recovery goal. When recovery goals are reached, the species should be delisted.

Species management under the ESA does not effectively emphasize ecosystem management or account for differences in the certainty of data about how to manage a species.

The ESA should be amended to recognize ecosystem management requirements under existing policies and plans that already require species and land management (long and short range management plans) to contribute to preservation of species and biodiversity. Species management plans approved under the ESA should employ principles of adaptive management, where management of species and habitat is adjusted as better information becomes available, thus providing flexibility to land and species management agencies to use professional judgement and new information in making good faith attempts to improve management. Voluntary cooperative non-regulatory programs should emphasize a more holistic approach to species and land management, as opposed to the single-species approach now stressed by the ESA.

3) Certainty, Incentives, Cooperative Programs, And Assistance Should Be Increased For Private Landowners.

In administering the act, all affected parties need to be included in contributing to the success of recovery planning, habitat conservation planning, and other actions intended to protect and recover species. Where the act may create significant economic or social impacts, those impacts should be evaluated. Where impacts are expected to be great, federal assistance should be made available, especially where there are ways to promote recovery of a species that also would assist in reducing social or economic impacts. Where landowners take action to protect species, such protection efforts should be considered in future government actions.

An "economic and social" evaluation can be incorporated into administration of the ESA to help provide a rational evaluation of the economic and social consequences of species preservation and the costs of regulatory actions to protect the species.

Agency administrators at state and federal levels are running out of funds to address the growing number of listed species. It is perfectly acceptable for the public to question the cost of species protection. This is especially important where costs associated with actually doing something about a species are astronomical, especially where high costs are associated with protecting a species that has secure populations in other states or countries. For example, considerable sums are being spent in the U.S. on the reintroduction of wolves and grizzly bears which are abundant in Canada, reducing funds available for preventing depletion of locally-confined endemic species.

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The logical point at which to incorporate social and economic factors into decision making is after listing, not during the technical evaluation of whether or not a species is "biologically" at risk of extinction. Some form of "Economic and Social Impact Statement" or report is a reasonable addition to the ESA at the point of developing recovery plans, federal agency consultations, Habitat Conservation Plans, management agreements, and so on. Economic realities and considerations about how people will be affected can help decision makers choose between alternatives when decisions are made about what form of action will or will not be taken to protect a species or species habitat, and how to pay for actions selected.

High costs borne by private property owners complying with federal ESA requirements have prompted calls for compensation for so-called "takings" of private property. Worry about more onerous costs have created waves of fear among property owners.

There must be positive incentives and simple voluntary procedures to increase the participation of rural landowners in protecting endangered species. Incentives fall into several categories, such as tax reform, farm programs, regulatory simplicity and certainty, and technical guidance and information. While economic incentives may provide the strongest motivation to protect species or improve habitat, many landowners also react positively to cooperative approaches by agencies and to greater certainty that species protection efforts now will not lead to still more and perhaps more costly efforts in the future

One of the concepts here would be to offer ESA inheritance and income tax breaks for those landowners who make a commitment to conserve an endangered species, make efforts that help avoid a listing, or enhance habitat for native species. Another would be to allow landowners to take voluntary actions on their own that alleviate them from effects of the ESA. Others include empowering communities to set their own agendas for voluntarily protecting species in meeting requirements of the federal ESA, federal cost sharing for specific habitat management actions, incentives under other federal laws such as the Taylor Grazing Act, and mitigation credits, trading or mitigation banking. Also, most people familiar with how the federal ESA has been administered agree more public information and technical help is needed.

* * *

We hope our comments will help, and again we refer you to the attached "Essential Elements of Amendments to the Endangered Species Act" developed through the Western Governors' Association. This attachment adds details and many additional proposals for amending the act. We hope we can work with the committee to achieve reasonable and effective changes in the ESA. Thank you.

April 21, 1995

WESTERN GOVERNORS' ASSOCIATION

**ESSENTIAL ELEMENTS
OF
AMENDMENTS TO THE
ENDANGERED SPECIES ACT**

The Western Governors applaud the goals of the Endangered Species Act (ESA). However the ESA, which was designed as a last ditch effort to protect species from extinction, is being used more frequently for purposes other than protecting species.

The Western Governors believe the ESA should provide for shared authority with the states. The governors have, therefore, developed this comprehensive set of principles to guide lawmakers in making thoughtful and positive changes to the Act. WGA representatives have held discussions with the administration and this document reflects many areas of common ground. The Western Governors also point out that funding for implementation of the Act has been inadequate in light of the broad scope of the Act. If states are to assume a larger role in implementing the Act, funding must match the design of a reauthorized ESA.

Our essential elements for revisions of the Act are based upon the three following goals:

- * Increase the Role of the States
- * Streamline the Act
- * Increase Certainty and Assistance for Landowners and Water Users

I. INCREASE THE ROLE OF THE STATES

The roles, responsibilities and incentives provided to the states and landowners in the protection and recovery of threatened and endangered species must be significantly enhanced. The Act and its implementation must clarify, affirm, and enhance this federal-state partnership.

A. State Role

1. The findings declared by Congress in the Endangered Species Act must recognize and affirm that states possess broad trustee and police powers for fish and wildlife management, including those found on federal lands within their borders. With the exception of marine mammals, states

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retain concurrent jurisdiction even where Congress has previously limited state authority, as in the case of endangered species. The authority, primacy, and role of the states must be recognized and affirmed with respect to the conservation of species.

2. Revisions to the Act are needed to ensure a greater level of active involvement by the states. States with species protection programs approved by the Secretary, should be given the option to assume primacy for implementation of certain aspects of the Act depending upon each state's capability and resources as long as the goals of the Act are being met. If states assume primacy, then they should retain authority over prelisting prevention activities, recovery planning and implementation, including critical habitat designation, and all other aspects associated with land, resource and wildlife protection. If states chose not to exercise primacy, they should still retain a full co-equal partnership role in administering the federal program.¹ States should also be provided the opportunity to accept the primacy role at any time. Federal oversight of those aspects of the Act under state assumption should be in the form of a periodic program audit.

3. Coordination and consultation with affected states must occur prior to rule making to integrate state findings and programs with federal actions to achieve maximum benefits while minimizing impacts. The Act should provide for a cooperative federal-state rule making process to identify standards and criteria within which state programs will be designed to conserve habitat and species under the Act. The states and the Secretary should be directed to jointly develop a model containing the standards and guidelines for subsequent approval of state programs.

4. The States and the Secretary should be given the authority to utilize the resources available under the Act and other programs to promote the sustainability of ecological communities and conservation of endangered or threatened species on a prioritized basis of rarity and threat over the range of the species, as opposed to an equivalent emphasis given to subspecies and distinct

¹ Some governors believe that an option must be provided for states to assume the total responsibility for implementation of the entire Act. They feel that if a state is administering a comprehensive endangered species program pursuant to state statute, and the program meets criteria and standards defined in the Act, then the Secretary of the Interior should be required to defer to the state program including interstate issues to be addressed by compact. Other governors believe that, while an increased state role is essential, there remains an important and appropriate role for federal agencies -- particularly in ensuring standards are being met and in facilitating protection for species that cross state boundaries

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vertebrate populations.² Habitat conservation and management, better integration of natural resources and land management programs across all jurisdictions and preventative/incentives measures designed to preclude the need for the listing of species under the Act should be aggressively pursued.

5. Obstacles to meaningful state participation, such as those created by the Federal Advisory Committee Act, should be eliminated.

6. States should be allowed to assume responsibility for issuing permits under section 10(a)(2)(HCPs) for areas within a state which have adequate comprehensive, habitat-based programs which have been approved by the Secretary.

B. Funding State Assumption of ESA Activities

Federal funding should be provided to support state and local comprehensive, preventive conservation programs to preclude the need to impose the consequences of listing under the Act by addressing the stability of ecological communities before precipitous declines. The entire nation and its future generations benefit from these programs, so they should be financed from an appropriate combination of sources devoted to national interest, including predominantly the federal government.

Many states have already committed significant amounts of funds and will need to commit additional funds in the future for implementation of the Act. However, serious attention must be devoted to identifying funding sources within existing budgetary parameters to facilitate greater state assumption of the Act. The following areas may prove fruitful as potential funding sources/mechanisms, and deserve further investigation.

1. Federal appropriations under the Act (not associated with section 6 of the Act) need to be redistributed to those states which assume a greater role under the Act. States should be reimbursed for their costs in an amount approximating, but not exceeding, the reasonably

² The governors concur that more clarity to the terms "subspecies" and "distinct population segments" in the Act is necessary. As it should, science is continually revisiting the relationship within and between species. Some governors believe that the use of the terms "subspecies" and "distinct population segment" for listing a portion of a species' population has been abused for purposes of halting land and economic activity under the Act and should not be used in listing. Other governors believe that sufficient latitude must remain under the Act to list portions of a population on the merits of each case when they are truly isolated and threatened with local extinction.

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estimated amount the federal agency would have expended. Current appropriations now going to federal agencies should also be made available to those states, which have Secretary approved programs, as block grants, for conservation agreements, listing investigations/reviews, all aspects of recovery planning and implementation, HCP administration, etc.

2. In establishing the Land and Water Conservation Fund (LWCF), Congress dedicated revenues from Outer Continental Shelf oil and gas production as its major source of funds. It reasoned that a portion of the revenues from the development of non-renewable resources should be used to protect other natural resources. In 1977, Congress authorized the LWCF to expend up to \$900 million annually, yet in most years the program receives about \$250 million. While the unobligated balance is used to off-set the federal deficit, \$50 to \$100 million, within the existing LWCF discretionary appropriation, should be earmarked to address one of the most divisive and critical natural resource issues facing the nation. This funding should be made available to the states, as block grants, to facilitate private landowner and water user involvement in conservation agreements and recovery plans. These needed funds could also be used to provide incentives to landowners and water users to enhance habitat conservation, secure easements for essential habitat, etc.

3. Revenues authorized by the Sikes Act and generated from use fees on certain federal public lands may be used to facilitate better integration of land management objectives with ESA objectives through conservation agreements or implementation agreements associated with recovery plans.

II.

STREAMLINING THE ACT

The goal of recovering and delisting the species must receive greater attention in administering the Act. The recovery planning process must be revitalized as the key point where implementation of the Act is centered.

A. Improving Management of the Listing Process

The management of the listing processes is critical to success of the ESA. In order to improve the management of the listing process the following items should be addressed.

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1. Prior to federal agency use of a listing process or the designation of critical habitat, the agency must consider whether the state agencies have developed their own programs for that species which are designed to protect the species, consistent with the Act. In evaluating state programs, the Secretary should provide significant flexibility to the states to develop adequate broader habitat (ecosystem) species protection programs.

2. A more rigorous burden should be placed on petitioners (along the lines of the Secretary's draft guidelines release in December, 1994) to demonstrate that a listing action is warranted and the standard for what constitutes "substantial information" should be tightened. In addition, if information which does not support a listing exists, that information must also be referenced and used in the analysis and proposed rule. An audit of current listings should be completed utilizing the new criteria to ensure previous listing decisions are consistent with the new standards.

3. Upon receipt of a listing petition by the Secretary, a copy must be sent to each affected state. If a state recommends against proposing the species for listing, the Secretary should be required to conduct substantive peer review and rebut a presumption in favor of the state's position in order to propose that species for listing. The standard of review for such a presumption should be preponderance of the evidence. The review should be completed within one year. There should be opportunity for interjection of independent scientific evidence, a record of decision on the information utilized in making the decision, and an opportunity for judicial review of the listing decision by the federal agency.

4. Species listing is to continue to be a scientific based decision and should utilize the new process contained in this document. Improved certainty, however, could be provided to affected parties if biological recovery goals are established at the time of listing when sufficient information is available to do so. The goals, considering the health of the habitat and overall sustainability, would be a number of individuals, number of populations, or acres conserved or occupied that, if met, would constitute sufficient recovery for delisting. It could be refined during recovery planning.

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5. If the Secretary determines a species will become extinct despite the protection afforded by the Act, the consequences of the Act regarding that species may be suspended.³
6. A clear, scientifically defensible regulation defining which acts are prohibited under section 9 and 10 should be published concurrently with the listing rule, when possible.
7. The Secretary should be given explicit authority to concur with approved conservation management agreements entered into by states, federal, tribal and local agencies, and private land owners in order to conserve declining species before the need to list those species. Agreements would address those actions to be taken by the respective parties to eliminate the need to list species by reducing the threats and providing for species recovery. This would include a determination by the Secretary of the adequacy of the program, which would have the force of law. Such agreements would also provide assurances to cooperating landowners that further conservation measures would not be required of the landowners should the species be subsequently listed.
8. Subsequent to a proposal to list or designate critical habitat, the Secretary should have the authority to suspend the consequences of listing or designation of critical habitat under the Act if the Secretary determines that the state(s) had initiated and is making satisfactory progress in implementing measures that are likely to protect or conserve the species. An extension of this suspension should be allowed, if the time for a listing or critical habitat designation decision arises, if the agreement is not in place but the state is demonstrating progress toward such agreement, unless such an extension is likely to jeopardize the species. Any force of law aspects of an agreement or suspension of the effects of the Act implemented due to the existence of an

³ The Western Governors have varying opinions regarding the point in the listing process when the full extent of regulations under the Act would come into effect and have debated the issue extensively.

Some governors believe that the full regulatory protection provided by the Act must remain in effect to ensure that all possible measures are undertaken to prevent the loss of species. They believe that states are or can be adequately informed of the decline of a species, and react accordingly. Because the Act is designed as a last ditch mechanism to reduce the likelihood of species extinction, the Act must cause all protective measures to apply at listing to save species after those earlier conservation efforts have failed.

Other governors believe the Act should be amended so that listing becomes a tool to inform the public about those species perceived to be at risk of extinction from a biological perspective. This would lessen the incentive, perceived or real, to list or fail to list species for reasons other than biology. Thereafter, a partnership of federal and state agencies and other stakeholders would determine the level and type of regulations, incentives or other available protective measures needed to stop the decline of the species. One of the goals of this change would be to enhance the level of accountability vested in elected decision makers

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agreement should be applicable on a state by state basis for those protecting habitats and species.

9. Subsequent to listing, the Secretary should also have this suspension authority subject to the state completing an agreement demonstrating the adequacy of such programs.

B. Improving the Conservation Provisions of the Act

1. The Act should provide greater flexibility to both federal and state agencies to determine when a regulated take of species is appropriate.

2. Section 4(d) should be modified so that the distinctions envisioned by Congress between a threatened and an endangered species are reflected in regulatory practices:

(a) The Secretary should, in conjunction with the state, be given the maximum flexibility to choose from the widest available range of incentives, prohibitions and protection, using administrative process and rule making in consultation with the states, to provide the creative assistance and necessary impetus to prevent a threatened species from becoming endangered;

(b) The regulations required of the Secretary should be "consistent with" the conservation of a threatened species and "necessary and advisable" for the conservation of an endangered species;

(c) The authority of the Secretary to prohibit any act prohibited under section 9(a)(1) or 9(a)(2) for a threatened species should be exercised only if the taking of that threatened species is detrimental to the continued existence of the species;

(d) The "extraordinary case" language of section 3(3) should not be applicable to threatened species and applicable to endangered species only if the Secretary determines that regulated take is detrimental to that species' conservation; and

(e) Language defining conservation under section 3(3) should be modified to provide that a regulated take conservation program authorized by the Secretary is appropriate in promoting the conservation of threatened species, distinct vertebrate populations, and, in some cases, may be appropriate for endangered species.

(f) HCP's should be explicitly available as a reasonable and prudent alternative in consultation under section 7.

C. Section 7 Consultation Process

1. The section 7 process should be streamlined. Full, formal consultation should be limited to high impact plans and projects that may affect the continued existence of the species, while an expedited process should be provided for low impact federal actions. The Secretary should, in conjunction with the states, propose specific streamlining measures within one year of reauthorization of the Act.

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2. In Section 7 consultations, state information and comment should be actively solicited and utilized in the development of the biological opinion and the federal agency management decisions resulting from that opinion. The ability of project applicants and the public to participate in the section 7 consultation process must be affirmed.

3. Projects or certain similar federal actions should be given expedited *proforma* review under Section 7 when they are addressed in an approved recovery plan or HCP and determined to be consistent with or incidental to recovery objectives. This would ensure that where a recovery program is making sufficient progress toward the identified goals that individual projects will be viewed as achieving compliance under Section 7 and are therefore not subject to additional review.

D. Development of Recovery Plans

1. Where the states opt to do so, through a program approved by the Secretary, recovery planning authority should lie with that state. Under those circumstances, the state shall assume the lead in facilitating the involvement of all jurisdictional parties in developing recovery plans. When a species' habitat or range cross state boundaries, the Secretary should act as a facilitator to bring the involved states together to develop the recovery plan. If the Secretary determines that conservation programs across the species range are inconsistent or not complementary, the Secretary may assume recovery authority. This assumption will only occur after notifying the states of such inconsistency and providing the states with adequate time to correct the noted problems.

2. The regulations and standards for recovery plans should require analysis of community and tribal impacts; provide for flexible management when conditions change; establish a definitive time line; and recognize that, upon analysis, some species may not be recoverable because of biological or economic reasons. Where possible, recovery plans should contain a range of options or scenarios with the proviso that all options would achieve recovery objectives for the listed species.

3. The Act should specify that recovery plans have objectives and quantifiable criteria (e.g., size of population, amount of suitable habitat, sufficiency of data, and the like) that, if met, would require the agencies to initiate the delisting process within 120 days. The development of the criteria should consider the overall health of the habitat, impacts on species diversity, and other relevant ecological factors to ensure sustainability of the entire community. Recovery plan objectives should include early attention for species having the best likelihood of biological recovery in a timely manner, species that have a potentially large economic impact, species that are close to extinction, and species that serve a critical ecological function. The goal should be to develop the draft recovery plan within one year after a species has been listed.

4. The Secretary should have the discretion to preclude the designation of critical habitat if the Secretary determines it is either undeterminable or it is not necessary for the protection of the

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listed species. If it is to be designated, then the Act should provide for the designation of critical habitat during development of recovery plans and provide incentives for such designation for clusters or related groups of species.

5. The recovery planning process under the ESA should require all appropriate state and federal agencies to develop one or more specific agreements to implement a recovery plan. Upon approval of an implementation agreement by each of the appropriate state and federal agencies, the agreement should be legally binding and incorporated into the recovery plan. An incentive should be created for federal agencies to approve implementation agreements by providing an easier, quicker section 7 process. Such implementation agreements should--

- expedite and provide assurances concerning the outcome of interagency consultations under section 7 and habitat conservation planning under section 10 of the ESA;
- ensure that actions taken pursuant to the agreement meet or exceed the requirements of the ESA; and
- should require that each appropriate agency that signs an agreement comply with its terms.

6. Recovery plans developed by the states utilizing the processes outlined in this paper and providing for public review and comment, should be construed as having satisfied the NEPA requirements for implementing actions.

7. There should be a mandatory status review of recovery programs at least every three years. If intermediate reviews reveal that the recovery plan criteria need revision, then the Secretary or states should revise the plan. If the recovery criteria have not been met, then the recovery team shall specify what has been and has not been accomplished under the recovery plan and indicate what else needs to be done.

8. State recovery planning and HCP's, exercised in conformance with the standards and guidelines developed coincidentally with listing, must be considered by all federal agencies taking any action subject to Section 7 consultation. To the maximum extent practicable, federal agencies must have the responsibility of coordinating their management programs to cooperate with and ensure implementation of state programs for recovery of species.

9. To the maximum extent feasible, priority shall be given to the utilization of existing public lands for the conservation of species, insofar as conservation measures are compatible with the primary public purposes of such lands

E. Delisting of Species

1. Due to the inherent pressures on the Secretary to emphasize listing and recovery actions, the Congress should express its intent that down and delisting is considered of equal importance and

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resources be allocated accordingly. There should be rapid down or delisting of species or populations within a state or an ecosystem when the criteria have been met that are presented in a recovery plan or conservation agreement or have been established otherwise by the Secretary in conjunction with the affected state. Down and delisting actions should not be subject to the current process required for listing, delisting and changes in status of a species.

2. Delisting or down listing of a recovered populations should be encouraged if a listed distinct vertebrate population has reached recovery plan goals but another distinct vertebrate population has not.

III. INCREASE CERTAINTY AND ASSISTANCE FOR LANDOWNERS AND WATER USERS

The policy in the Act concerning private and other non federal landowners (owners of real property) should be as follows: The Secretary will thoroughly assess the economic consequences of each implementation step of the Act -- recovery plans, federal agency consultations, HCP's/Conservation Management Agreements (CMA's), etc. The benefits of the ESA are national in scope and the Secretary will explore ways in which those costs will be borne by the society as a whole and not solely by the individual landowner, non federal landowners and federal land users. Incentives and regulatory certainty should be provided to landowners who implement habitat or species conservation efforts.

A. Policy Issues⁴

1. All affected jurisdictional agencies and parties, including non federal landowners, should be given an opportunity through the recovery planning, HCP and critical habitat designation processes to have their concerns, interests and ability to contribute to the success of these processes considered and given close attention in the final plan.
2. Implementation of the Act, in some cases, has created significant economic impacts. Federal assistance should be used to mitigate these economic impacts whenever possible. Priority should be given to those means of promoting the recovery of species that also would assist in reducing social or economic impacts.

⁴ The protection of water in the west is an enormous issue for all the governors. Many governors believe that state water law and interstate compacts must be respected while designing recovery goals and actions. Other governors disagree. They recognize that state water laws may not adequately have considered endangered species and see the need for an overriding level of protection of the public's fish and wildlife resources

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B. Landowner Assistance

1. Financial and technical assistance should be provided to states, counties, tribes and municipalities to foster development of flexible conservation plans that allow for reasonable development and use of private property (including water rights). Development and use should be consistent with the conservation plan and should not significantly impact listed species.
2. Incentives should be provided to non-federal landowners to assist in the recovery of listed species and the conservation of candidate species as well as technical and financial support for such activities. Linkage to the conservation provisions of other Acts, such as Conservation Reserve Program (CRP) and Wetlands Reserve Program (WRP) sections of the farm bill, should be enhanced.
3. The Secretary and appropriate state agencies should be specifically authorized to enter into voluntary prelisting agreements and expedited HCP's with cooperating landowners and water users to provide assurances that further conservation measures would not be required of the landowners should a species subsequently be listed. Landowners and water users who have satisfactorily demonstrated that they will protect candidate species or the significant habitat types within the area covered by a prelisting agreement or HCP should be assured that they will not be subjected to additional obligations to protect species if the candidate species or additional specific species not covered by the agreement but dependent upon the same protected habitat type are subsequently listed under the ESA.
4. The federal agencies should develop and employ an inexpensive, expedited HCP process. This expedited HCP process should include a simplified NEPA review process.

C. Relief for Landowners and Water Users

1. The responsible state and federal agencies should be authorized to initiate procedures in the recovery planning process whereby landowners and water users whose impacts on a species are insignificant should receive for categorical protection from Section 9's taking provisions and section 7 jeopardy opinions. Those landowners and water users who do not receive categorical exclusion but have demonstrated adequate protection measures to maintain or preserve species or habitat should be eligible for programs developed by the Secretary for incentives to encourage those efforts, including regulatory relief and certainty (through expedited HCP's, etc.) and other means by which the land and water uses proposed by that landowner are allowed to proceed. Should the landowner or water user significantly alter land or water use practices then the relief or exemption can be reconsidered.
2. Regulatory incentives should be provided to landowners who voluntarily agree to manage or enhance habitat for species on their lands by excluding them from restrictions if they later need to bring their land back to its previous condition.

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D. Non Federal Landowner and Water User Incentives

Incentive programs for land and habitat stewardship already exist at many jurisdictional levels (federal, state, local). Resource managers need, however, to more effectively match landowners who willingly enhance the habitat for listed species with workable financial incentives programs. Existing programs include but are certainly not limited to:

- ◆ conservation/soil and water quality provisions of the federal Farm Bill (CRP, WRP, Forest Stewardship Incentives Program, etc.),
- ◆ state and local land preservation programs, including associated tax relief;
- ◆ environmental easements administered by government, private or quasi public land trusts; and
- ◆ existing tax credits/incentives such as Minnesota's wetland and prairie tax credit.

Cooperation with non-federal land owners and water users is essential to the success of the Act, therefore, early involvement of and regulatory certainty for landowners and water users must be a policy of the Act. The identification of the full range of incentives programs that might be available to assist landowners and water users in good habitat stewardship should be developed. The stewardship incentives found in other federal programs like the Conservation Reserve Program, in laws governing inheritance taxes and in non-government programs should be catalogued, enhanced and coordinated. Additional areas that deserve further investigation include:

1. Inheritance laws -- A revision of the existing laws to discourage the practice of dividing up large ranches/farms to avoid inheritance taxes and thereby fragmenting the habitat.
2. Mitigation credits, trading/mitigation banking -- This idea must be debated more thoroughly to ensure appropriate use and application but it could have limited application in conserving ESA habitats.
3. Federal cost sharing for specific habitat management, restoration and protection, and species recovery work -- This would have to be authorized under a program similar to the forest stewardship.
4. Incentives under other federal laws -- Incentives to public land ranchers under the Taylor Grazing Act might include: reduced grazing fees for conservation of a species habitat, priority for range improvement funds to improve a species habitat, extended permit tenure, etc.

1995 JUN 12 AM 11:08

FROM: MICHAEL J BARTZ

3616 CARNES RD

ROSEBURG OR 97474

TO: SENATOR DIKE KEMPTHORNE

SENATE DRINKING WATER, FISHERIES AND WILDLIFE SUBCOMMITTEE

US SENATE

WASHINGTON DC 20510

SUBJ: RSA

DEAR SEN. KEMPTHORNE

THIS LETTER IS A FOLLOWUP TO THE ORAL TESTIMONY I RECENTLY GAVE AT THE ESA HEARING IN ROSEBURG. I BELIEVE THE ACT AS IT IS KNOWN TODAY IS BEING USED IN AN INSANE WAY TO FURTHER THEIR CAUSE TO DEFILE SOCIETY,

SINCE I WORK IN THE TIMBER INDUSTRY AND HAVE BEEN INVOLVED IN THE GRASS ROOTS MOVEMENT FOLLOWING THE OWL AND OTHER ISSUES, I WILL DIRECT MY COMMENTS TOWARDS THOSE ISSUES AND FLAWS IN THEIR CASE.

THE ENVIRONMENTAL GROUPS USE SO CALLED SCIENTISTS TO PROVE THEIR FACTS WHEN THE CONTRARY IS HAPPENING. TO WIT: THE SPOTTED OWLS POPULATION IS CONTINUING TO DECLINE AT 7%. IN THE EARLY 70'S THERE WAS 200+ KNOWN PAIRS OF OWLS. IN 1990 THERE WERE 2100 KNOWN PAIRS AND LATEST COUNT WERE 3500 PAIRS AND 2000 SINGLES. IF POPULATION WAS DECLINING THEY WOULD BE GONE TODAY. EVEN IF FROM 1990 THE POPULATION DECLINED 7% THERE WOULD BE 1572 PAIRS OF OWLS TODAY.

WITH NO 2. IT IS SAID THROWS NEEDS OLD GROWTH AND WILDERNESS TO SURVIVE. FROM MY SOURCES AND LITERATURE THAT I HAVE READ, WILDERNESS HAS NEVER BEEN SURVEYED FOR OWLS. THE NUMBER OF ACRES SET ASIDE FOR OWLS DOES NOT INCLUDE WILDERNESS. WHEN CONSIDERING HABITAT FOR A SPECIES SHOULDN'T ALL FEDERAL LAND BE CONSIDERED WHETHER IT IS LOCKED UP OR NOT? THE MORE LAND SET ASIDE IN WILDERNESS MEANS THAT MORE MULTIPLE USE LAND WILL BE SET ASIDE FOR SPECIES. THAT IS WHAT THE NUMBERS ARE SAYING.

REHABILITATION OF DAMAGED FORESTS ~~ARE~~ ^{IS} BEING STUDIED BY THE RSA. THE WARNER CREEK BURN IS ONE PRIME EXAMPLE OF THIS. 10,000 ACRES OF BURNED TIMBER IS OFF LIMITS DUE TO THE FACT IT IS SPOTTED OWL HABITAT. WHY NOT COMPROMISE AND SHARE THIS AREA. THIS AREA COULD BE A STUDY AREA USING VARIOUS LOGGING TECHNIQUES, RETENTION LEVELS AND VARIOUS REGENERATION METHODS. A LONG TERM STUDY COULD SCIENTIFICALLY PROVE WHICH METHODS WORK, BUT THE ENVIRONMENTAL GROUPS WANT NOTHING TO DO WITH A COMMON SENSE SOLUTION. I WOULD LIKE TO POINT OUT THAT THE TILLAMOOK BURN OF 1940'S IS A GOOD EXAMPLE OF REHABILITATION. SOME AREAS LOGGED AT THAT TIME IS PRODUCING MARKETABLE TIMBER WHILE OTHER AREAS THAT WAS ALLOWED TO REGENERATE NATURALLY IS 20 YEARS BEHIND.

IT IS ALSO WRONG TO PLACE THE TOTAL BLAME ON CERTAIN INDUSTRIES. THE FISHING INDUSTRY BLAMES LOGGING FOR THEIR DEMISE. WHAT IMPACT DOES PREDATORS PLAY? WHAT ABOUT ILLEGAL FISHING OR THE FOREIGN FISHING FLEET PLAY? HOW MUCH OVER FISHING HAS BEEN GOING ON. I DO NOT THINK THAT ANY PROFESSIONAL SCIENTISTS CAN ANSWER ANY OF THESE ISSUES. YET THEY STATE THAT LOGGING IS THE CAUSE OF THEIR WOES.

THE BADA'S IS ANOTHER REASON FOR THE DECLINING POPULATION OF ANONYMOUS

FISH OR SO THEY SAY. IN DOUGLAS COUNTY, WE HAVE GALESVILLE DAM ON CON CREEK THAT FEEDS THE SOUTH UMPQUA RIVER. THIS DAM WAS NOT WANTED BY THE ENVIRONMENTAL COMMUNITY AND THEY STILL OPPOSE IT TODAY. YOU MAY WONDER WHY I MENTION THIS DAM. SINCE IT WAS PUT IN THE FISH RUNS ARE UP. I HAVE TALKED TO VARIOUS MEMBERS OF UFA A GROUP THAT TRAPS SALMON, TRANSPORTS THEM TO THE HATCHERY AND ENHANCES THE POPULATION. THEY USED TO SPEND A MONTH TO CAPTURE 100 SALMON AND NOW THEY GET THEIR QUOTA OF 450 IN ONE DAY AND THAT IS ONLY A SMALL SAMPLING OF THE RUN.

THERE ARE ALSO MOVES TO LIMIT IRRIGATION FOR CROPS. THIS SAME DAM PROVIDES IRRIGATION AS WELL FLOOD CONTROL. WHEN I WAS A KID GROWING UP ON THE AREA WE WERE ALWAYS HAVING FLOODS IN THE WINTER AND THE RIVER WOULD VIRTUALLY DRY UP. THIS DAM IS BENEFITTING FAMILIES, FISH AND THE AGRICULTURE COMMUNITY DESPITE WHAT THE ENVIRONMENTAL EXPERTS SAY.

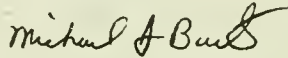
I WILL SAY THAT SOME PAST PRACTICES HAS BEEN DETRIMENTAL TO THE ENVIRONMENT AS WE SEE TODAY. DAMAGE TO STREAMS DUE TO LACK OF DEBRIS IN SUCH IS THE DIRECT RESULT OF ENVIRONMENTALIST AND BIOLOGISTS ACTIONS AND PHILOSOPHIES OF THE TIME. THERE WAS A TIME DEBRIS WAS LEFT AND THE ABOVE PEOPLE SAID DAMAGE WAS OUTRAGEOUS AND SUCH STREAMS NEEDED CLEANED UP. TIMES CHANGE IT APPEARS BECAUSE THEY DO A COMPLETE TURN AROUND AND ACCUSE TIMBER OPERATORS OF GROSS NEGLIGENCE.

OUR LOGGING PRACTICES HAS CHANGED OVER THE YEARS AND WILL CHANGE IN THE FUTURE. SOME PAST PRACTICES WERE EXCEPTABLE AT THAT TIME BUT LOOKING BACK MAY HAVE BEEN POOR PRACTICE BY TODAY'S STANDARDS. I CONSIDER THAT PART OF A EVOLUTIONARY PROCESS, WE WILL CONTINUE TO CHANGE IN THE FUTURE MAKING USE OF LESS SUPPLY BUT WE NEED SOMETHING TO WORK WITH.

TO SUM UP MY THOUGHTS AND IDEAS, A REVISED ESA SHOULD INCLUDE
THE FOLLOWING

1. IT SHOULD BE BALANCED FOR ALL CONCERNED
 2. THE ACT SHOULD BE SCIENTIFICALLY SOUND. FACTS SHOULD BE PROVEN.
- WE ARE ALL PART OF A INFRASTRUCTURE WHICH WE ALL PLAY A ROLE BY
MAINTAINING IT, PROTECT FROM FIRE AND SUPPRESS WHEN WE HAVE TO
TO SAVE FROM HARM. I ALSO BELIEVE MAN CAN SURVIVE ALONG WITH PLANTS AND
ANIMALS IF PEOPLE ARE COVERED IN THE ENVIRONMENTAL EQUATION.

SINCERELY



MICHAEL J BARTZ

WRITTEN STATEMENT FOR THE RECORD

OF

FRANK M. GLADICS
INDEPENDENT FOREST PRODUCTS ASSOCIATION

BEFORE THE

UNITED STATES SENATE

THE DRINKING WATER, FISHERIES AND WILDLIFE SUBCOMMITTEE
OF THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

FIELD HEARING ON THE RE-AUTHORIZATION OF THE
ENDANGERED SPECIES ACT

JUNE 1, 1995
ROSEBURG, OREGON

Independent Forest Products Association appreciates the opportunity to submit our comments for the record on this very important hearing. While we would have liked to have spoken at the actual hearing, we trust you will incorporate our ideas in your efforts to re-authorize the Endangered Species Act.

Independent Forest Products Association represents approximately 100 independently owned small forest products companies in 14 states. Our members are located in rural communities from Alaska's southeastern archipelago, to the northern shores of Lake Superior's Minnesota shoreline, to the high elevation forests of eastern Arizona. Most of our members have been heavily dependent on federal forests for their timber supply and all have suffered devastating supply short falls in the last five years. Many of our members in Oregon, Washington, California, Arizona and New Mexico can point directly to our federal land managers' application of the Endangered Species Act as the reason that their federal timber supplies have disappeared.

In other parts of the country, federal timber supplies have dried up because federal land managers are modifying policy before species are even listed. Thus, ESA and its implementation cast aN onerous pall across most of the rural communities in America. All of our members are suffering needless reductions in federal timber supply as a result of the Endangered Species Act.

Our members understand that many of their challenges, related to access to federal timber supply, stem from other laws and regulations. However, many have focused their frustration on the Endangered Species Act because it is the most onerous law they have to deal with. Additionally, most federal land managers have needlessly modified timber management practices in the vain hope of avoiding the listing of a species on their forest. What federal land managers fail to understand is that the application of the Endangered Species Act has been perverted by the eco-syndicate.

In our estimation, the U.S. Fish & Wildlife Service (USF&WS), the National Marine Fisheries Service (NMFS), some in the Bureau of Land Management (BLM), as well as the U.S. Forest Service (USFS), are knowingly using the act to control land management decisions. This Act has shifted authority for land management decisions from agencies like the U.S. Forest Service and Bureau of Land Management to agencies like the USF&WS and NMFS. It disregards the laws which define agency goals and objectives and affords opportunity to non-land managing agencies, like NMFS, to drive land management decisions which they otherwise would have no authority to take part in.

In this testimony we will discuss: (1) why Congress must take a new approach to preserving some endangered species, (2) our thoughts on some of the testimony we heard at the hearing; and (3) specific suggestions for changes to the Endangered Species Act.

I. Past Strategies for Recovery of Fish & Game Species Must be Followed

The companies who belong to our association have always understood the need to conserve our natural resources. Our members depend on a healthy forest environment for their economic survival. We have always understood the need to undertake conservation efforts to ensure certain species are not driven to the edge of extinction, and we have always looked for ways to cooperate with others to ensure this occurred. During the 1950's, 1960's, and 1970's we worked with federal land managers to develop balanced forest plans which met the needs of the public. We cooperated with the U.S. Forest Service to set-aside wilderness, to designate national recreation areas, as well as wild and scenic river corridors. We cooperated with the land management agencies and fish and game management agencies to address their concerns for wildlife and fisheries resources. This was done in a cooperative non-regulatory spirit, based on incentives.

One only has to look at the major fish and game successes of the last 80 years to understand how powerful these cooperative efforts were. In 1930, there were less than 2 million white tail deer in the United States. Today there are in excess of 15 million. In 1930, there were less than 100,000 wild turkey; today there are nearly 4 million. Today we have over 500,000 elk. In 1930, there were less than 50,000. Similar success stories have been repeated for many, many species, from ducks and game birds to many species of fish. All these magnificent success stories were achieved in the absence of the 1973 Endangered Species Act. All were achieved through incentive and cooperation.

The application of the 1973 Endangered Species Act offers a striking comparison. Federal managers' application of this law has led to economic devastation for some communities, to polarization of many communities and regions, and to very little progress in the protection of the very species it strives to protect.

As representatives of all Americans, we believe you should look to past efforts to find acceptable strategies for saving imperiled species. There is something to be learned by our past efforts to save deer, elk, ducks, and game fish. That model should serve as a template which this country can use to save other species. We do not need the regulatory club of ESA wielded by over-zealous federal regulators to gain success. We need calm, cooperative, reasoned discussion between land managers, fish and game managers, and the public, which are incentive based to heal the pain, frustration, and discord brought about by the 1973 Endangered Species Act.

II. The Economic Suffering and Social Dislocation Wrought By ESA Must Be Avoided

Mis-application of the Endangered Species Act has led to needless economic and social suffering. In the case of the Northern Spotted Owl, even those who petitioned for the listing and fought so hard to shut-down harvesting on federal forests, now admit the owl was a surrogate for a broad political objective. Recent data shows Northern Spotted Owl populations to be nearly three times the number said by the Committee of Scientists to be

needed to ensure healthy populations. Yet, there seems to be no way to delist the species now that we know so many exist.

Congress, the Administration, and the courts cannot allow people with a broad political agenda to use ESA to gain their political goals. Such actions weaken the government's integrity and the public's support for the act. If Congress feels the American public desires a new management scheme for federal lands, other than the traditional multiple-use management model, then it should debate the issue openly. We should not allow groups, or the Administration, to impose a new management strategy through administrative or legal fiat. Laws to change federal land management strategy and goals should be debated openly. The eco-syndicate, and their accomplices in Congress and the Administration are using the ESA to accomplish what they have been unable to successfully push through Congress.

One only has to look at many rural Pacific Northwest communities to understand why people are so disgusted with the law. Rural communities have been devastated both economically and socially. The social fabric of many communities is being torn to shreds as a result of overzealous application of the Endangered Species Act. Your hearing in Roseburg indicates your understanding for the economic and social challenges caused by the overzealous application of ESA. But, you should look to even smaller and the more rural federal dependent communities if you really want to understand the impacts of the Endangered Species Act. Examine towns like Forks, Washington and Happy Camp, California, or Mill City, Oregon. Study the social challenges these communities face in terms of alcoholism and child abuse. Study how devastated the timber and wood workers are when they are told their traditional profession is politically incorrect in a country where every person demands three cubic meters of solid wood products a year. Three cubic meters, when the average per capita world demand for wood products is less than one cubic meter per person.

Yes, technology and shifting demands have resulted in the collapse of some trades over the passage of time. But never in the history of man, have a group of workers whose product is: (1) in record demand; (2) the most environmentally sound product available; and (3) one of the basic building blocks of our entire civilization, been treated so shabbily.

On a weight/volume basis, we use more wood than all other wood substitutes combined. On a daily basis, the average world citizen uses 1,800 milliliters of wood per day. In comparison, that same person uses only 1,019 grams of cement, steel, plastic, and aluminum combined. One can better understand the implication of these numbers when you consider the overall energy cost of producing wood substitutes. It takes nine times as much energy to produce a ton of steel, 21 times as much energy to produce a ton of concrete, and 30 times as much energy to produce a ton of brick veneer.¹

¹. The World's Need for Wood, Dr. Wink Sutton Canadian Forest Service, 1994.

It is no wonder timber and wood workers are devastated when the Administration tells them the government is setting aside 80 to 85% of the federal forests in Oregon, Washington and northern California because of the Northern Spotted Owl. The Endangered Species Act has devastated their lives, their communities, and their trust in government.

III. Federal Land Managers Are Applying the Act In the Absence of Listings

When I was younger, my mother used to say she only had to mention a cold and we kids would sneeze. Today, on many forests in the federal system, one only has to mention a challenged species and the federal land managers shut the forest down. This phenomenon is pervasive. Some regions and forests are shutting down programs to protect species which they think may be sensitive. Thus, an act designed to address only the most threatened species is now applied to some of the most prolific and common species known to inhabit our forests. One only has to examine the current listings to be convinced that land managers and biologists have lost the ability to differentiate between endangered, threatened, sensitive, and thriving species. If Congress expects to save species, it must reign in the over-zealous application of the act.

IV. Comments on Testimony At the Roseburg Hearing

Having been involved in this debate at the Washington D.C. level for a number of years, as well as having sat through three other endangered species hearings over the last four months, much of what you heard in Roseburg is what I call typical ESA rhetoric. Some witnesses were disingenuous, and some witnesses made statements which the facts do not support, but all in all, you heard a good cross section of how people feel and saw how frustrated segments of the population are with the current law. Several points were made which must be corrected, several should at least be questioned, and several should be highlighted.

A. The Solution to Salmon Rests With All Resource Users

In my mind, the single most important concept which you heard at the hearing was that you must look to all habitats to address the problems of salmon. If a species spends 75 percent of its life cycle in the open ocean, scientists should understand what goes on out there before imposing draconian solutions on the land based resource users. No single habitat component should be expected to bear the brunt of conservation and rehabilitation plans.

In the case of the salmon, numerous studies list ocean conditions, dams, estuary habitat, fishing (commercial and recreational), and marine mammals as being the chief causes for declines in salmon stocks. Yet NMFS continues to focus its efforts on shutting down logging as the best method to save the salmon. Congress cannot allow the federal bureaucrats to apply the Endangered Species Act in this manner. If a species is challenged, then we should address all areas of habitat. We should spread responsibility for conservation of threatened and endangered species to all users of the habitat we share with the species. As you heard one gentleman explain, on some forests in eastern Oregon, the federal land managers are

protecting habitat at a tremendous social and economic cost, which the salmon have not recently used, and are unlikely to use, until populations are greatly expanded.

A conservation strategy which is designed around terrestrial habitat protection, when the cause of population declines are aquatic based, is akin to building a four star hotel with no means of access. If the salmon can't get passed the ocean fisheries, the recreational fisheries, the marine mammals, the dams, and irrigation projects, it is highly unlikely protecting stream side habitat is going to increase salmon populations.

Congress must rewrite the Endangered Species Act in a manner which will force government bureaucrats to find solutions to all major challenges to a species, rather than attempting to find a silver bullet solution which impacts one small group. Our members understand the need to modify activities to help save salmon, but we would like others to be forced to modify how they do business in proportion to their impact on the salmon.

B. The Existence of the High Tech and Forest Products Industries in Oregon Do Not Have to be Mutually Exclusive

You heard some people testify that Oregon was better off because the listing of the Spotted Owl is forcing our state to diversify. Some testified their county is better off because of this diversification. Time after time, people testified in a manner which would make one conclude that the high-tech industry and the forest products industry cannot co-exist in Oregon. That mentality is driven not by economics, but by a political agenda to shut down logging in Oregon. Both industries can thrive in this state. Economists who strive to play one against the other are overtly damaging the economic potential of Oregon. Rather than comparing what our economy was like when timber was dominant, economists should report on how many jobs could be generated if we had maintained the forest products industry, while at the same time developing the high-tech industry in Oregon. We have the potential to have a world class economy, which would be the envy of every other state in the union. If you don't believe this, take a look at employment figures for the states of Michigan, Wisconsin, and Minnesota. On a fraction of the timber harvested in Oregon, these states have nearly as many jobs in the forest products industry. At the same time, other sectors of their economy, which are in no way connected with forest products, thrive.

C. The President's Forest Plan (Option Nine) is Not Working

When the Clinton plan was introduced, it promised 2 billion board feet of timber would be sold the first year; and then over the next six years, the BLM and Forest Service would ramp up to 1.2 billion board feet per year. That has not occurred. In comparison to 1990 when 4.529 billion board feet was sold, the Forest Service and BLM only sold 277 million board feet in 1993 and only 171 million board feet in 1994. If the Administration were being graded on a normal curve, they would have scored 13.85%. In 1994 their grade improved to 14.25%. No one, not even the strongest supporter of outcome based education could view the Administration's performance as a success.

Of the 72 counties in Washington, Oregon and northern California affected by Option Nine, thirty are reliant on the wood products industry. Half of those are dependant on federal timber for their economic survival. Between 1988 and 1992, half of those 30 counties lost 2 or more percent of their employment base.

A big part of the Administration's plan to revitalize the economy of the Pacific Northwest hinges on their belief that tourism and secondary forest products manufacturing will be established. A soon to be released study by Dr. Bob Lee, scheduled to be published by the University of Washington's Institute for Resources in Society, questions the Administration's strategy. That study indicates 40 of the 72 affected counties sustained a 10% or greater loss in employment in the hotel/motel business. At the same time, only 5 counties saw an increase of more than 10% employment in the hotel/motel sector. This data would indicate tourism has not yet filled the gap created by declining timber supplies.

The other leg of the Administration's plan for economic re-vitalization rests on secondary forest products manufacturing facilities. Aside from the obvious point that secondary manufacturing facilities rely on primary manufacturing facilities for their raw material, the Lee study points out that 61% of the established secondary manufacturing facilities in the region are located in counties with a population density higher than 100 persons per square mile. Thus, 61% of the secondary wood products capacity is located in 11 urban counties centered around Seattle, WA; Portland, and Eugene, OR; and San Francisco and Oakland, CA. Left out of this strategy to revitalize the Pacific Northwest are the rural towns and counties which depend on federal timber for their survival.

Thus, we are seeing forest products company after forest products company go out of business. Over 275 companies or mill sites have shut their doors over the last four years and 66% of those have been small family-owned operations.

V. Changes Which Must be Incorporated in the Re-authorized Endangered Species Act

A. **The Law Should be Based on Incentives Rather Than Penalties**

As written, the Endangered Species Act attempts to force compliance through penalties. As a result, it is polarizing our nation. Those in the rural communities and western states are experiencing harsh regulatory prescriptions which discourage innovative solutions. One only has to look back to the great game management successes of the last 80 years to understand cooperation between private individuals and government pays greater dividends. Look at the miraculous recovery of white tail deer, wild turkey, elk, antelope, ducks and other game animals. We didn't have an Endangered Species Act; and some of these animals are now so numerous, some states would like an open season.

Compare those success stories to current debate on the Endangered Species Act. Not one of the species under that act has been fully recovered. Many listings have divided communities, families, and one could suggest, our country.

Whatever is done to modify the act, please find incentive based solutions. Ones which will encourage cooperation and compliance. Our nation has enough other issues to fight over, we don't need to be fighting over how best to save threatened and endangered species.

B. If Implementation of a Conservation Plan Negatively Impacts a Private Property Owner's Ability to Manage His or Her Land, They Should be Compensated

The way we view it, if the government inhibits the ability of a property owner to fully utilize their private property, they should compensate for that taking. The current proposed 4(d) rule, developed as a result of the listing of the Northern Spotted Owl, will greatly impact small land owners. If the American public feels it needs private lands to protect the owl, the people in New Jersey, New York, and Massachusetts should help shoulder the true cost. Private land owners shouldn't be asked to forego harvest on 40% of their land without compensation.

C. Congress Must Examine More Than Just the Endangered Species Act

It would be wrong tell you that everything on federal lands would be better if you would only fix the Endangered Species Act; it will not! Congress must examine a number of conflicting and intertwined laws and regulations. The National Forest Management Act's viability regulations must be rewritten to conform with the re-authorized Endangered Species Act. The conflicts between the National Marine Mammals Act and the Endangered Species Act must be reconciled. Congress should develop a matrix to examine how each environmental law interacts with all other acts. In some instances, you are going to have to decide which is more important.

Is it more important to save Sea Lions and Seals, or is it more important to save Salmon and Steelhead. That is the choice now faced by some federal managers.

If the National Forest Management Act tells the manager to conserve diversity across the broad range of a species' natural habitat, how does that square with Department of Interior decisions to capture all living members of a species to begin captive breeding programs, such as was the case with the Condor or the Black Footed Ferret.

We understand your committee is not charged with providing oversight on all these laws, but Congress is; and you shouldn't authorize these laws in a wily-nily fashion. A careful integrated approach to environmental laws is badly needed.

D. A Balance Between the Needs of the Species and the Impact on Mankind Must Be Struck

The re-authorization effort must incorporate some economic, sociological, and political balance. It is wrong for a small cartel of biological scientists to dictate the future of a community without also weighing the economic and sociologic impacts of a listing.

If the American public makes a decision to set-aside 80 to 85 percent of the federal lands in the Pacific Northwest to save the Spotted Owl, then they ought to also address how best to maintain the rural communities and families which relied on those lands for their economic survival.

The market dislocations and economic suffering wrought by the Endangered Species Act must be balanced. In the end, man is the only species with the capability of saving other species. If man disappeared from the face of the earth today, no other species would develop conservation strategies to save the endangered species. Rather, those species would disappear. If we are to save threatened and endangered species, then we must find ways to incorporate the needs of man, and not just the needs of those people who live in urban and suburban America.

E. Biologists Should Make Decisions Related to the Status of a Species - The Secretary of Interior Should Make Decisions Related to Conservation Objectives

The current act places far too much responsibility on a small cartel of biological scientists who do not have the expertise, political understanding, or ability to make the complicated political decisions our nation faces in relation to the conservation of native wildlife and plants.

It is our hope Congress will recognize this and relieve the biologists of this overwhelming responsibility. Nothing has done more damage to the profession of biology. If Congress does not rethink the implementation strategy, biologists will be scorned by the American public in a manner far worse than even lawyers suffer.

F. The Endangered Species Act Must Deal With Species and Sub-Species in a Fair Manner

The act must clarify whether species or sub-species will be protected. If a species is truly endangered, then it should be protected; however, a genetic standard must be developed. It makes no sense to list a sub-species, or sub-population, when a genetically identical population thrives in the next drainage or state. The current taxonomic practices encourages biologists to split species in order to have their name associated with a species. Under current practice, the Endangered Species Act then treats species, sub-species, and sometime sub-populations in the same manner. Such listings diminish our ability to focus on those species which are in real need of assistance.

Look at the Northern Spotted Owl, the California Spotted Owl, and the Mexican Spotted Owl. All are identical in the eyes of most geneticists. Both the Mexican Spotted Owl and the California Spotted Owl are thriving. In fact, population data would indicate Northern Spotted Owls found in Northern California are thriving. We should be concentrating on those species which are under serious stress, not a species which thrives in 60 percent of its natural range.

This phenomenon becomes clear or when you examine salmon and trout. For years our U.S. Fish & Wildlife Service, along with many State Fish and Game Departments, worked tirelessly to eradicate some species of fish, such as Bull Trout, Suckers, Squaw Fish and others. Across these species' range, we have rivers, lakes, and streams with thriving populations. Yet the current ESA bill encourages people to petition to have sub-species or sub-populations listed as endangered or threatened.

Rather than designing recovery plans that facilitate the re-stocking of these sub-species, the current law forced untold economic hardship and social dislocation of rural communities, while biologists work to enlarge the diminished population in a "natural" way. We shouldn't do that. If we have areas where a sub-species or population thrives, we should use that population to help re-populate habitat where the U.S. Fish & Wildlife Service extirpated the local population. Many of these species are no more endangered than man, they simply need to be transported to the stream or lake so they have enough numbers to thrive.

G. The Scientific Assumptions Used to Base Listings Must Continually Be Independently Tested

Many people who attempted to provide information or data which ran counter to the biological cartel's expressed goal for the Northern Spotted Owl or Marbled Murrelet are very frustrated that the process does not allow for double blind peer review. It is wrong to base listing decisions on the preliminary work of a master student. In the case of the Marbled Murrelet, decisions of momentous implications were based on information collected by one graduate student, before the data was even published in a thesis. That is wrong.

We believe any data utilized to base a listing should be held up to the spotlight of scientific scrutiny. When new or better information becomes available, the Department of Interior should utilize that information. This did not happen in the case of the Marbled Murrelet, or in the case of the Spotted Owl.

H. Congress Must Appropriate Funds for Conservation Plan Implementation Prior to Implementation of Those Plans

Before the Secretary implements a conservation plan for a listed species, Congress should consider that plan in relation to all the other priorities facing this country. Quite frankly, we do not believe there are enough funds to save every endangered species. Under the current law, biologists impose plans which entail significant investment of public and private capital without regard for other deserving projects. That is wrong and must stop. There must be some political screen which these decisions pass through before they are imposed by the biologists on the unsuspecting rural communities of America. For better or worse, we believe that should occur in the Interior Appropriations process.

I. Listing Decisions Should Consider Populations In Other Countries

In the case of the Marbled Murrelet, the Department of Interior ignored population information from Canada, as well as from Alaska. That is wrongheaded and the Fish and Wildlife Service ignored the main body of the population. If a species is thriving across most of its range, whether that range be in the United States or some other country, then the Endangered Species Act ought to take those populations into account.

J. All Current Listings Should be Reviewed by an Independent Scientific Panel; Those Listings Lacking a Sound Scientific Basis Should be De-Listed

After Congress has re-written the Endangered Species Act, all current listings should be reviewed under the new law. Those species which fail to meet the new criteria should be de-listed. Likewise, those which are currently not listed, which meet the new criteria, should be listed.

Conclusion

We appreciate the opportunity to submit testimony to the Committee and trust Congress will modify the Endangered Species Act to balance the needs of our members' employees, their families, and their communities with those of truly endangered species.

Endangered Species Act Reauthorization
Testimony of Geoffrey B. Hickcox
(In response to ESA hearings of Thursday, June 1, 1995
in Roseburg, Oregon)

My name is Geoffrey B. Hickcox and I offer the following testimony concerning the reauthorization of the Endangered Species Act:

The Endangered Species Act serves to protect us all. Not only do the "listed" flora and fauna whose numbers have declined to mere fragile reflections of their once plentiful populations benefit from the Act, but so too do we human beings. Nonetheless, many of the countless assaults directed at the ESA, the nation's most powerful and important environmental statute, from both property owners and industry, refuse to look beyond the immediate short-term economic effects of the Act's implementation to recognize the importance the Act may play in our own economic and biological survival. Both property owners and industry, as well as environmentalists have directed criticism at the ESA as it is currently worded and implemented. Most of these critiques have a foundation in valid arguments, but many also fail to recognize the need to strengthen rather than weaken the Act. Below are a number of the common complaints from both sides of the debate and recommended solutions to resolve the two sides' differences and, most importantly, accomplish the goals of the Act - the protection and preservation of all species.

Delay in the Listing Process

The prolonged delay in getting a species listed is an especially relevant criticism from the environmental camp given the backlog of thousands of species designated as "candidates" for listing as either endangered or threatened. All too often, when a species is proposed for listing, the Fish and Wildlife Service (FWS) opts for the unwritten alternative of studying the species to death. Unable to address the needs of those species already listed, the agency is reluctant to list newly proposed species, which

are accumulating at a rate faster than the agency can meet the needs of those already under its supervision. The easy alternative has simply been to require more studies and more determinative evidence that the proposed species is in fact in danger. Numerous species have slipped into extinction before making it off of this waiting list.

Taking a more preventative approach to the listing process would eliminate much of this senseless loss. If action is taken immediately to protect and preserve a proposed species and its habitat once a minimum threshold of evidence is established, then at the very least, the species will receive a degree of protection during the time it takes to complete the necessary studies. Preventative measures, as in the narrower scope of health care, are often less costly than treating an illness once contracted or repairing an eco-system already damaged.

Loopholes in the Designation of "Critical Habitat"

No species, listed under the ESA or not, can continue to exist if the habitat on which it depends is destroyed. Similar to the situation faced by the thousands of "candidate" species, is that of many listed species. While listed species are protected from direct harm in the form of hunting and other activities which threaten to individually harm a member of the protected species, the habitat in which the species lives may still be in great danger. Currently, § 4 of the ESA requires the FWS to designate critical habitat at the time of listing to the extent prudent and determinable. This standard creates a sizable loophole often resorted to by the agency to delay designating the necessary land as critical habitat.

Besides declaring the designation of critical habitat "imprudent" or "indeterminable", the agency may also avoid this essential step by implying that it is not necessary due to already existing protection of the same land under another statute such as the National

Forest Management Act. The fact that a particular tract of land may be protected under a separate statute for a separate and distinct purpose should have no bearing on the designation of critical habitat under the ESA. The needs for the prior protection may change in the future, leaving the species once indirectly protected by the eliminated status of its habitat, vulnerable once again. Where these protective orders overlap there may be redundant restrictions in place, but the benefits of having specific guidelines in place for the species whose habitat is being protected would outweigh any confusion created by the overlay.

The agency has further discretion in that it may rely on economic or non-biological factors in reaching its determination. With this discretion the agency can exclude essential areas from designated critical habitat if the economic benefits of excluding it outweigh the biological benefits of including it. Balancing these distinct factors to reach a determination aimed at ensuring the survival and protection of a species opens the door for inappropriate consideration of economic concerns which have nothing to do with the species' survival. While this balancing act is not supposed to tilt so far in favor of economic concerns that it would drive the species into extinction, it often results in the protection of only a minimum viable population of a species teetering on the brink of extinction. This is neither biologically nor economically sound. For obvious reasons, biological factors should be the paramount, if not the only, consideration when determining what the habitat necessary for a particular species' survival is. Economically, it may be less expensive to protect a species when it is plentiful and thus prevent its decline to near extinction, than it is to maintain or bring back a nearly extinct species. As more and more species are neglected and allowed to approach as close to the edge of survival as possible in order to accommodate economic concerns, it is inevitable that many will slip over the edge and out of sight.

A final loophole in the requirement that the agency designate and protect critical habitat is in the implementation stage. It is there that the agency is supposed to prevent "adverse modification" of critical habitat. As the FWS and the courts have interpreted this language, however, the prohibition on adverse modification of habitat no longer stands on its own. Rather, adverse modification of critical habitat is allowed as long as it does not "jeopardize" a threatened or endangered species. This opens the door to increased activity in areas designated as critical habitat as long as the species which rely on that habitat are not directly jeopardized. The standard by which adverse modification of critical habitat is measured must be returned to its status as a wholly independent indicator.

There is no justification for the broad level of agency discretion illustrated by these arguments. The ESA was intended to protect threatened or endangered species regardless of the cost or impact on economic concerns. This standard should apply throughout the processes involved in implementing the Act including the listing process and the designation of critical habitat. Eliminating the delay in listing candidate species, and addressing the backlog of the same and of listed species who have yet to receive critical habitat designations will avoid the senseless loss of those species to short-term economic benefits.

Continuing on the current path of accomodating short-term economic interests will not only jeopardize the species the ESA was intended to protect, but will ultimately result in long-term economic upheaval. How much longer can we continue to extract our natural resources at the present rate, let alone the increased rate proposed by many? I submit that we can no longer successfully continue this extraction **and** offer protection to the many species of plants and animals that support the ecosystems on which even we human beings depend for our survival. Eliminating or modifying the ESA so as to

accommodate the short-term economic interests of natural resources industries and the communities they support will prove to be a dead-end road. By the time industry representatives admit, (I believe they already know), that our natural resources will not last forever as they contend, where will we be? Relatively few corporate entities will have milked the profits from the extraction industry to its full potential and will walk away very wealthy, at least for the present generation. For the communities which are dependant on those industries the inevitable will merely be delayed, as timber and mining companies pack up their profits and payrolls and move on to retirement leaving thousands of displaced workers with little or no alternatives for an income. Finally the species and ecosystems compromised to pad the profits of those relatively few beneficiaries will literally be beyond repair in many situations, (Extinction Is Forever), and economically beyond retrieval in many others.

Diversifying the economies of resource extraction dependant communities and retraining the displaced workers will never be an easy task, but it will surely be more affordable and less destructive to our environment if done sooner rather than later. At the rate our government subsidizes these destructive extractive industries, whether it be for timber roads, grazing on public lands, or mining subsidies, there is a substantial amount of money that could be re-channeled to retrain and employ displaced workers to rebuild and remedy the destruction which has accompanied the exploitation of our natural resources. These are people who have made their livelihoods in the forests and on the plains. Their familiarity with those areas provides them with a valuable headstart in learning how to recover and protect ecosystems and wildlife habitat. Our tax dollars would be much better spent in this fashion than for subsidizing the continued destruction of our environment and the inevitably more expensive and more difficult clean-up that will require.

V Amendment Regulatory Takings

Perhaps the most high profile of all industry and private land owner complaints about the ESA, the claim that regulations which restrict uses of land that would harm a threatened or endangered species amount to a fifth amendment taking deserving of compensation, is counter-intuitive. Such an argument presupposes that the land owner has an inherent right to conduct the activity which would drive the threatened or endangered species into extinction. This is not one of the sticks in a property owners bundle of rights. Compensating a land owner for the inability to use his or her land in a way detrimental to a threatened or endangered species, either directly or indirectly through destruction of the species' habitat, would be to compensate for the taking of a right that the land owner never possessed. Such a scheme would constitute a windfall to the landowner. Until the land owner has vested rights in investment backed expectations concerning the proposed activity or use, any government regulation restricting such activity or use for the purpose of protecting a threatened or endangered species is not a Fifth Amendment "taking" requiring just compensation. The land owner, having had no right to initiate the proposed activity or use to begin with, cannot be compensated for having to forego that non-existent right.

The government's duty to promulgate regulations in order to protect the nation's wildlife has a long history. The duty arises from the government's obligations as trustee for the public, under which it must protect the public interest in the conservation and preservation of our environment. This argument was eloquently made in the *amici curiae* brief of Patrick Parenteau in the case of Babbitt v. Sweet Home, currently being decided by the U.S. Supreme Court. While landowner concerns must be weighed into the decision making process, the overriding responsibility of the government is to the public and that responsibility requires first and foremost, the conservation of our natural environment.

Species by Species Approach to Protecting Wildlife Ineffective

It should be clear to all who have had the opportunity to survey the history of the ESA that the current approach of listing wildlife as threatened or endangered one at a time, species by species, is not achieving the desired result of wildlife conservation. Except for the relatively few success stories like that of the bald eagle, the overall advancements are small and the movement is losing momentum fast as the number of species demanding protection increases dramatically. Once again, the solution lies in a broad preventative approach to conservation. Recognizing that the single most important factor leading to the decline of wildlife is habitat destruction, the one most vital thing that can be done is to alter the focus of the ESA from the protection of individual species to a broader protection of entire eco-systems.

The species by species approach has resulted in a bureaucratic maze of regulations ultimately allowing the forest to fall while protecting a few struggling trees. This approach has also had the undesirable effect of placing the great majority of the costs and burden of conservation on the last resource user whose development or, proposed activity would be the final affront to the imperiled species. Such a narrow application of the costs to so few people is disliked by parties on both sides of the debate. Land owners see it as unfair, while environmentalists recognize that such a system makes the battle to protect species much more difficult.

The solution to both the concerns of the land owners and the environmentalists is to redirect the focus of the ESA from a species by species effort to protect our nation's wildlife, to a much broader eco-system approach. By protecting endangered or threatened eco-systems in their entirety the individual species who are encompassed in this larger protected area will be safe from further human caused decline in population.

This protection would extend to all species, whether they are presently threatened or not, thus preventing the extinction of those already listed, and ensuring that other species, presently strong in numbers, do not land on the threatened and endangered lists of the ESA. Early efforts to prevent the decline of species through the designation of protected eco-systems will also spread the costs of conservation more evenly among many resource users, as opposed to placing the entire burden on the last user.

This eco-system approach to conservation is one of the basic tenants of conservation biology, a philosophy that recognizes that all species, plants, animals and humans, are simply parts of a much larger whole. This theory emphasizes the importance of viewing all species as essential to the integrity of the whole. Failure to recognize this interconnectedness will result in an accelerated decline of the larger eco-systems due to a loss of important individual components. The current trend which oversees the extinction of species which are wait listed to receive protection and many others which are destroyed before even making it onto the wait list, is contributing to this imminent collapse. A change in the focus of the ESA to protect entire eco-systems will help alleviate this pressure by setting aside essential habitat before it is discovered that there is not enough left to go around.

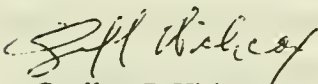
An important part of this proposal is to emphasize the need for a pure scientific approach focusing on biodiversity, rather than on economic factors. The injection of economics into these essentially biological determinations has repeatedly politicized the decision making process. Such politicization threatens gridlock since the political compromises made typically lean toward social and economic desires rather than realistic biological needs.

Broad Interpretation of "Harm"

Finally, the ESA should be amended to clearly state that the "take" provision under § 9 includes any "harm" to the protected species, whether direct or indirect. The argument currently being reviewed in the Sweet Home case that "harm" to a species includes only conduct which involves direct harmful contact with a member of the species, and not indirect harm to that same species through the destruction of the animal's habitat, is ludicrous. There is no sense in enacting detailed and costly legislation designed to protect and conserve particular species of wildlife through the prevention of direct harm to that species, which at the same time allows the species to be wiped out indirectly by uses of land or other activity which destroys the species habitat and only means of survival. The only justifiable interpretation of the term "harm" as it used in the ESA must include the destruction of a species' habitat upon which the species' survival depends, as well as direct destruction of the species itself.

Having never been employed with the deliberate speed and detached biological focus that were intended to accompany the provisions of the ESA, there is no justification in calling for the Act's repeal. If any changes are to be made to the ESA they should strengthen the Act by addressing the failure to achieve the ultimate goal of preserving all species and their habitat.

I respectfully submit the foregoing testimony for your consideration. I look forward to your response.



Geoffrey B. Hickcox
2996 Harris St.
Eugene, Oregon 97405

June 2, 1995
Date

May 31, 1995

Senate ESA Task Force
Hearing of June 1, 1995
Roseburg, OR

Dear Senators:

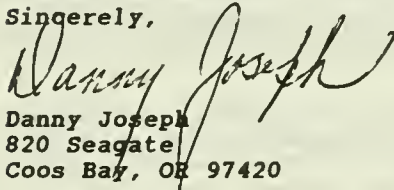
I am sending my written testimony which I hope you will consider as you deliberate how best to amend the Endangered Species Act, since oral testimony is limited at this hearing.

The ESA needs to be amended to insure that we don't go so far overboard in "protecting" or "providing habitat" for one species that we endanger another. The over-population of sea lions threatens the salmon runs. Re-introducing wolves in "politically correct" places threatens both livestock and wildlife that will serve as prey. Over-protecting spotted owls means that we don't log as much, and so our deer and elk are predicted now to decline by 30-40% if we have even one bad winter.

I do not believe the original intent of the ESA was that we would create a "stasis" of all species that exists at this moment in time, but rather allow a means of preventing man from deliberately wiping out a species from the face of the earth in our rush to develop.

It is time that we return to that original intent, and let wildlife and land managers get back to doing their jobs.

Sincerely,



Danny Joseph
820 Seagate
Coos Bay, OR 97420

June 1, 1995

TO: Senate ESA Subcommittee
Roseburg, Oregon

FROM: Mrs. Mary Griffin
855 Overland Rd.
Coos Bay, OR 97420

I am the editor of T.R.E.E.S. TALK, a newsletter put out by the Coastal Chapter of T.R.E.E.S. Our small group of about 600 members works to support wise use management of our public lands and our natural resources.

I have to read through a massive amount of information each week in this role, and have come across an interesting statistic that I wanted to share with you as you consider amendments to the Endangered Species Act.

Out of all of the thousands of species which are currently on or have been on the T&E list, only about five have been singled out as "success" stories. Of those five, two are questionable. The bald eagle was starting to recover even before the ESA went into effect, through heightened awareness of its danger and the elimination of DDT.

The Eastern peregrine Falcon was largely recovered because of the private efforts of Tom Cade and the organization he created, The Peregrin Fund (which later developed into the World Center for Birds of Prey.) This was a private individual and private organization...not a government activity.

Tom used falconer techniques to breed peregrines in captivity, raising them and later turning them loose when they had been adapted back to the wild. If this technique worked to recover a species from the brink of extinction, why is raising animals in captivity being spurned by scientists for other species? "It's not NATURAL!" they claim, as if it's NATURAL for one species to care whether another species goes extinct or not!

Billions of dollars are being wasted on a program which is 99.99% a failure! Yet everyone seems to think that if we only make MORE regulations and spend MORE money in the same manner, we can save the world! You know, and I know, that it just won't work! If we truly believe that it's in our national interests to save species from going extinct, then we have to do triage!

You are all very aware of the public dissatisfaction with Congressional habits of spending tax money without regard to results. This "bad habit" has resulted in our current national deficit crisis. We have limited resources and limited patience! Let's start considering whether a species is REALLY in danger of being wiped off the face of the earth and whether it stands a chance of recovery before we commit our resources to its "recovery."

We can't save every species, much as we would like to. But we can change the ESA to make sure that we put our limited resources to good use by helping those who stand the best chance of making it if we give them a hand for a few years.

Mary Griffin



P.O. Box 1026

ROSEBURG AREA
**Chamber Of
Commerce**

Roseburg, OR 97470

June 7, 1995

The Honorable Dirk Kempthorne, Chairman
Senate Environment Subcommittee on Clean Water,
Fisheries & Wildlife
Room 456, Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Kempthorne:

My name is Tom Nelson. I am president of the Roseburg Area Chamber of Commerce, an association representing more than 700 businesses in southwestern Oregon.

On behalf of the Chamber, I am submitting the attached statement for your review and consideration as part of the official record of the June 1 Roseburg hearing on the Endangered Species Act.

We are deeply grateful that you and Senator Chafee took time out of your busy Congressional schedules to hold the hearing in our community.

Sincerely,

Thomas L. Nelson
President

cc Senator Bob Packwood

**Written Statement of the Roseburg Area Chamber of Commerce
Thomas L. Nelson, President**

**Senate Environment Subcommittee
on Drinking Water, Fisheries and Wildlife**

**Endangered Species Act Hearing
Roseburg, Oregon
June 1, 1995**

Southwestern Oregon Overview

As you know, President Clinton is moving ahead to implement his management plan for federal forests in Oregon and the Pacific Northwest. One of the key components of the President's plan was driven by the Endangered Species Act and its focus on fish and wildlife protection.

However well intentioned, the President's forest plan offers little hope of ending the forest management crisis in our region. The cumulative effects of the President's forest plan and the Endangered Species Act have raised serious concerns in our community about the future economic well-being of our businesses and wood products industry.

Douglas County is the heart of Oregon's timber country, and has been labeled "ground zero" because of impacts resulting from the Endangered Species Act and other land management laws and regulations.

The majority of forested and commercial timber lands in our area are managed by the Forest Service and Bureau of Land Management. Under the President's forest plan, most of the federal timberland is withdrawn from timber harvest.

According to a recent report by Dr. John Beuter, the wood products industry accounts for at least one-third of Oregon's economic base. In the Douglas County area, the wood products industry provides a major portion of local employment. A copy of the Beuter report is enclosed, and I ask that it be made part of the hearing record.

Improving the Endangered Species Act

After more than 20 years of experience with the Endangered Species Act, it is time for Congress to examine the current law, see what we have learned, and consider how it might be improved.

It is time to provide workable procedures and positive incentives in the Endangered Species Act

which will promote protection of our fish and wildlife in a way that considers economic factors and respects the rights of private property owners.

While we recognize our national commitment to protect endangered and threatened species from extinction, the current law does not work. It fails to strike a balance between the needs of people and animals. It has wreaked havoc on timber dependent communities and local economies throughout our state and local area.

Experience and common sense have taught us what some of the major problems are with the current law. We have identified a number of critical areas which Congress should address to fix the Endangered Species Act.

- ▶ **Insist on sound, verifiable science**

Establish scientific standards more strict than "best available data" for the listing of plants and animals. The law should ensure that the best science is used. Data collection must be accurate with proven findings. All studies should be reviewed by independent, outside experts.

- ▶ **Balance needs**

Management and regulatory efforts on behalf of a species should be adopted only after thorough consideration of social and economic impacts, relative risks, costs and alternative strategies. An entire region's economy should not be shut down to save a species which some evidence suggests is neither threatened nor endangered.

- ▶ **Protect private landowners**

Private landowners must be given reasonable compliance and relief procedures that do not unfairly burden them with the costs of protecting a public resource, and they should be compensated when they are deprived of economically viable use of their property.

- ▶ **Reward good land stewardship**

The law currently disadvantages people with listed species on their lands by restricting the land's use. Private landowners should be offered positive incentives to work cooperatively with the government to help protect listed species. For example, the proposed 4(d) rule created a real disincentive for landowners to create owl habitat and forced many to harvest immature, young stands.

- ▶ **Involve local citizens**

State and local officials should have major consideration in the process from the beginning of a listing until all recovery plans are in place. The listing process should include hearings accessible to locally affected people.

- ▶ **Use common sense**

Establish a biological assessment of species and consider the significance of the species, the cost and practicality of recovery. Don't protect one species at the expense of another. Establish

attainable recovery goals in the law and in recovery plans. It is critical to recognize that some species deserve more protection than others.

► **Define the rules**

The taking of a species should be defined literally and only when it jeopardizes the existence of a species; the current inclusion of habitat modification is not proven to do so. Federal agencies have done a poor job of defining habitat and landowners have only a vague idea of whether they are in compliance with the law. Enforcement is now based on speculation, rather than fact.

Conclusion

On behalf of all Roseburg Area Chamber of Commerce member firms and their employees, I thank you for your consideration of the material included in this testimony.



Klamath Basin Water Users Protective Association

409 Pine Street Klamath Falls, OR 97601 (503) 883-6100 FAX (503)883-8893

1995 JUN 12 AM 11: 51

**TESTIMONY DELIVERED TO:
THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE,
SUBCOMMITTEE ON DRINKING WATER, FISHERIES, AND WILDLIFE**

CHAIRMAN: THE HONORABLE DIRK KEMPTHORNE

TESTIMONY DELIVERED BY:

**THE KLAMATH WATER USERS ASSOCIATION
JOHN CRAWFORD, PRESIDENT**

REGARDING: ENDANGERED SPECIES REAUTHORIZATION

**JUNE 1, 1995
ROSEBURG, OREGON**

Promoting Wise Management of Ecosystem Resources



Klamath Water Users Association

Testimony on the Endangered Species Act

The Klamath Water Users Association appreciates the opportunity to present testimony to the Senate Committee on Environment & Public Works' Subcommittee on Drinking Water, Fisheries, & Wildlife.

The Klamath Water Users Association represents more than 12,000 water users in the Upper Klamath Basin of south central Oregon and northeastern California. We have been directly affected by the E.S.A. and feel that a change is necessary to make this well-meaning Act workable.

In 1988 the United States Fish and Wildlife Service listed the shortnose sucker and Lost River sucker as "endangered" under the Endangered Species Act. With the listing, the flexibility of resource managers in the Klamath Basin was shattered and polarization of interests ensued. Extreme environmentalists pursued legal recourse and sued the Bureau of Reclamation, under the ESA, to stop deliveries of water to the vast majority of irrigators in the federal Klamath Project. The Water Users were forced to intervene in this action - - at a tremendous cost. The legal complaint has been amended no less than four times, and subsequently rejected in federal court, on all assertions.

The Klamath Project was authorized in 1902 by an act of Congress, more than eighty years ago and at least seventy years prior the enactment of the Endangered Species Act. Nevertheless, federal agencies have interpreted the regulations and conditions under the much younger ESA as superior to the rights and tenets of the decades old Klamath Project. The ESA's conditions for "reasonable and prudent alternatives" has so dramatically altered the irrigators and Bureau of Reclamation's ability to effectively run the irrigation system as to render it inefficient.

Under the requirements of the ESA, consultation must take place between the various

government entities and a biological opinion must accompany any major federal action by agencies. The operation of the Klamath Project was inextricably intertwined with numerous biological and interim biological opinions forcing the operation of the billion+ dollar Project to be operated for the needs of the suckers, not for maximum efficiency of water delivery and agricultural production. Landowners potentially effected by the decisions made in formal consultations should have the right to participate individually or collectively as an applicants in the process.

Since July 22, 1992, the Klamath Project has operated under a long-term biological opinion which specifies minimum lake surface elevations. Recently, the Klamath Tribe insisted, under the threat of litigation, that the Bureau of Reclamation reinstate consultation for a new biological opinion on the operation of the Klamath Project. The Tribe's proposed August lake elevation for the endangered suckers would not meet adequate Project water needs 55% of the time.

In two drought years, 1992 and 1994, the Bureau of Reclamation managed the project primarily for fisheries needs. Thousands of acres of agricultural land went without a full delivery of water. Some farmers were cut off prior to deliveries, while others nearly finished the season only to have water stopped just before completion of an agreed upon water season. The impact to the region was reduced cuttings of hay, less row crop production, reduction and removal of livestock from the Project, uncertainty over future water deliveries, concern by the banking community regarding the repayment of operating loan, diminished water deliveries to the Tule Lake and Lower Klamath Refuges. People and the ecosystem suffered for the benefit of the suckers.

The Klamath Water Users Association, in January 1993, published the *Initial Ecosystem Restoration Plan*. This document, the first recovery plan for the species, concentrated on scientific parameters and, importantly, prescriptive, on-the-ground, solutions to the sucker recovery. This project alone cost the Water Users in excess of \$150,000; a tax which would prove minimal as ESA mandates progressed. Over the past four years, Klamath area farmers have spent more than \$2 million on science, legal defense and administrative activities.

The ESA gives extremist a means to promote their cause no matter how unreasonable. In

the Klamath Basin a single group is responsible for the curtailment of many private land restoration projects. The environmental organization insisted that the Service follow the law and determine critical habitat for the suckers. In the Klamath Basin, this action has hurt the species rather than conserved it. The ESA provides no protection for the private participants using federal funds in restoration projects from subsequent legal assaults under the Act. Restoration participation should not be discouraged. At this point, many projects have been halted and recovery efforts for the species on private lands have suffered.

It is far too easy for extremists to bring action and receive compensation and, the accompanying notoriety, under the ESA. The ESA should be modified to allow prevailing defendants to collect from plaintiffs. Further, the fear of legal action by agencies has resulted in "settlements" outside of the court by those with little, if anything, to lose; with compensation and publicity to gain. The resulting system forces resource agencies to kowtow to extremists. To allow the threat of litigation to drive the ESA process, including recovery activities, makes for short-term and, potentially, catastrophic natural resource decisions.

The requirement of making policy on the "best available commercial and scientific data" is a major flaw in the ESA. Quite literally, there were no sucker "experts" a decade ago. Therefore, science for the listing decision was not rigorously challenged. "Sub-species," population censuses, even critical habitat for the two suckers are not well understood. And, the single entity with the most scientific data on the suckers, the Klamath Tribe, will not release their basic data or the methods of collecting and analyzing the data to the public or, as far as we know, federal agencies.

Recent surveys have found many millions of young suckers in the Klamath Basin, unsurveyed prior to the sucker listing decision. One can only wonder if the species would have been listed as endangered if this information were known then rather than now.

Further, nine square meters of spawning habitat for a so-called "sub-population" of suckers in the 370 million square meter Upper Klamath Lake has been used to determine lake levels in the Klamath Project operations biological opinion. It is unreasonable to hold at bay 40% of the basin's

economic base due to a few square meters of readily available habitat, to protect a purported sub-population of sucker. The ESA must be amended to better define and deal more fairly with "sub-populations."

The Act should not use the "best available commercial and scientific data" but should establish reasonable scientific standards including open disclosure of data and methods, and peer review, well before any decisions under the ESA, including listing, are made. Furthermore, federal, state and local laws and rights existing prior to the ESA and socio-economic information should be weighed in the decision process. It is inappropriate and immoral simply to "err on the side of the species." Human life and ecosystem health are in the balance.

The ESA also has been used in the Klamath region to override the authority of state water law. The Bureau of Reclamation has held endangered species water needs above those of state water right holders. The ESA should respect state water right authority and it should be held less authoritative than existing laws.

The communities most directly effected by the listing should have the opportunity to forestall the listing. Many public employees and private citizens in the Klamath Basin are working to conserve the Klamath Bull Trout. The listing of the Bull Trout would only hamper restoration progress by replacing our cooperative work with a legally driven mandate. Our community and any community potentially effected by a listing, should have the opportunity to correct the situation prior to being forced into action.

Once a species is listed, the ESA provides little or no incentive for the agencies to delist a species. In most cases, the listing personnel are dependent upon the continued "endangered" status of the species for their employment and funding priorities. Therefore, specific and realistic recovery targets, with dates and financial parameters (such as cost/benefit), should be included in the ESA.

In the Klamath Basin, we have seen property values drop and parcels of land have been deemed "unsalable" due to the uncertainty over water supply. We have seen increased difficulty in

receiving operating loans due to the competition for water between endangered species, tribal trust, wildlife refuges and irrigators. The Klamath County Realtors Association estimates that the determination of the proposed critical habitat for the suckers, if made final, would result in \$188 million loss in property values. In our desert climate, agricultural land cannot generate ranching or farming profits without water. The ESA must more fairly balance the economic impacts for all determinations and decisions, and fairly compensate landowners and businesses affected by the decisions.

In 1905 and through both World War I and World War II, veterans and immigrants were *encouraged* to settle the West. Many families have generations of roots in the Klamath basin after receiving parcels of land from our government to homestead the basin. The ESA should not take away these American rights.

The recovery of endangered species is a national priority, which should provide the funding for species recovery. The Klamath Project, Water Users and private organizations in the basin contribute way more than their fair share toward restoration activity. Not only have we funded research and planning, we have been forced to concede profits and have had our equity in our farms and ranches taken ostensibly for the conservation of the species. It is time for those inflicting the pain on the rural West, to provide significant financial support for their concept of ecosystem health.

We must protect the heart of America by providing balance in the Endangered Species Act. Without balance, the Klamath Basin will suffer, the ecosystem will suffer, and the nation will lose a vital resource.

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PacifiCorp Testimony
Endangered Species Act Reauthorization

June 1, 1995

Pacific Power is an electric utility that provides electricity to much of Douglas County. We also generate electricity at our North Umpqua Hydro projects, which are currently in the relicensing process, 80 miles east of Roseburg. Under the name PacifiCorp, Pacific Power and Utah Power serve 1.3 million customers in seven western states.

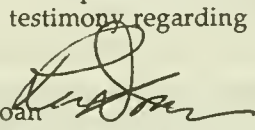
The Endangered Species Act has affected PacifiCorp in several ways: through increased power costs and revenue losses and through impacts on our customers and the local communities we serve. We believe the ESA can be improved to better protect species, take into account economic impacts, and ensure greater public participation throughout the process. The following key reforms would help achieve this end:

- *Require independent, scientific peer review of agency listing decisions to ensure that such decisions are based on the best scientific information available and to enhance the credibility of the listing process.*
- *Species listings decisions should continue to be based solely on biological, scientific factors. However, economic impacts should also be considered during development of recovery plans for listed species.*
- *The Act should encourage the development and implementation of long-term, comprehensive recovery plans. A comprehensive recovery plan will take into account all factors contributing to a species' decline, helping ensure recovery.*
- *A multi-agency, multi-species ecosystem approach should be required, particularly in situations where actions taken to protect one species could adversely affect another species. For example, in the Klamath Basin, actions designed to protect endangered sucker fish in lakes could affect salmon species downstream.*

PacifiCorp Testimony -- page 2
Endangered Species Act Reauthorization

- *The Act should allow for private interests to consult with federal agencies about actions or activities they may take that might affect listed species so they can determine whether they will be in compliance with the law.*
- *The Act should allow all affected interests to participate in the legal process and provide legal "standing," not just those viewed as having a conservation or environmental perspective.*

As a representative of PacifiCorp, I appreciate this opportunity to speak and submit testimony regarding reauthorization of the federal Endangered Species Act.


Ron Doan
General Business Manager
Pacific Power

W Pat or Judy
ORTMAN

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& ANGUS
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June 1, 1995

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CONTRACT
SALVAGE
LOGGING

Environment and Public Works Committee
Senator John Chafee, Chairman
Att. Steve Shimberg
505 Dirksen Office Bldg.
Washington, DC 20510

RESOURCE
MANAGEMENT
CONSULTING

Please enter my testimony into the official record for the Committee on Environment and Public Works and the Subcommittee on Drinking Water, Fisheries and Wildlife.

It is hard to know where to begin the process of helping your committees understand the devastation that the Endangered Species Act (ESA) has had on our families, communities, and industries in the West and for that matter, across the nation.

I work with grass roots organizations at home, Wallowa County, Oregon, and serve as an officer for our state grass roots organization, Oregon Lands Coalition. The Coalition is a communication network uniting 69 natural resource groups and 108,000 families committed to empowering ordinary citizens in the quest for sensible environmental decisions. The Endangered Species Act is the tool that many in Congress and the environmental industry have used to bring whole communities and industries to their knees in the Pacific Northwest.

The rural families, communities, and counties that produce the natural resources for this nation and much of the world are the most affected by the ESA. With the shut down of the timber industry, ranching, mining, and agriculture, we wonder where common sense and reality have gone. We only ask that people and economics are considered.

Human Equation

Enclosed is a map showing mill closures over a 5 state area.(attachment #1) Keep in mind each of these primary industry jobs support 2 or more service jobs, these jobs also support 5-7 indirect jobs.

Closer to home, in Wallowa County, the economic structure is primarily timber, ranching, and agriculture with some arts and tourism.

Today Wallowa County has 15.9% unemployment, the highest in the state. We have no saw mills running at this time. The Boise Cascade mill was closed and dismantled a year ago, Rogge Mill is down and not expected to re-open, and the RY facility closed in October 1994 and is expected to re-open with approximately half the employee base. Our county lost 15% of its highest paying jobs in a matter of months. The primary reason is the listing of the Snake River Salmon and litigation from the environmental industry to further halt activity on the national forest.

Ranching is also an intrgal part of this county and most of the permittees on Forest Service land have lived in fear for their livelihoods for nearly 2 years. True to form, the

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environmentalists have lawsuits filed on 8 forests in Oregon and Idaho to stop grazing with no thought to the investment and commitment the ranchers have had to the land for generations. Again, the ESA is used as the weapon to halt ranching, logging, and mining.

My husband serves as a commissioner on the Wallowa County Court. The federal forest receipts have dwindled to almost nothing and our county is facing cutbacks and layoffs. . This county of 7,000 has never had large industry or any other way to create revenue other than from timber, agriculture, and other small business. Our largest taxpayers are landholders. Again, timber and agriculture. We have heard the tourism pitch many times and yet in Wallowa County, the art industry which is primarily bronze casting facilities and tourism are struggling with layoffs and reduced visitors to the area. Many of the tourists in an area such as ours are blue collar people and they too are without jobs or job security.

The *absolute crime* in assessing the situation in Wallowa County is that we are sitting in the middle of millions of acres of dead and dying forest that needs proper management and rehabilitation. There is no reason our mills should be closed, our ranchers threatened, or that our county is in trouble economically.

Wallowa County is not waiting for some huge bureaucratic effort to manage the land. We have crafted the Wallowa County/Nez Perce Salmon Habitat Recovery Plan (attachment #2) to address management needs of our county. This effort was built by local citizens, county government, the Nez Perce Tribe, and local, state, and federal agencies. No big stick of government that takes away rights and opportunities, but a plan that protects habitat, species, *people and economics*. Even though the Salmon Plan is highly regarded as a viable, workable solution, do we have it formally recognized as the way we should be doing business on the land....no. Why....because it brings the decision making capacity back to the people who have to live with the results and limits government intervention.

It is apparent that the federal government is a dismal failure when it comes to land management compared to private ownership. It is amazing that Congress and the environmental industry have allowed the lock up of federal land and condone the extraction of resources from countries that have few environmental regulations. What is wrong with a nation that thinks it is inappropriate to harvest forests, graze livestock or mine essential minerals? Please help me understand how it makes sense that we destroy the communities and rural economies of those that produce raw materials that become food, clothing, and shelter for people. Help me understand how there can be so little regard for a whole culture of Americans that are the backbone of this country.. Why are we destroying our resources including endangered species, year after year with catastrophic forest fires and importing beef and lumber from other countries? The ESA must be amended to stop this insanity.

Cost to nation

Enclosed is testimony from Paul Ehinger and Associates, Eugene, Oregon regarding costs associated with the Spotted Owl/Clinton Forest Plan.(Attachment #3) The Spotted Owl/Clinton Plan is now costing this nation *8 billion dollars per year*, in higher consumer cost for wood products. This is one species! What happens to the Pacific Northwest when the Salmon listing is finished?

I am also entering into testimony some of the absurdities of the ESA.(attachment #4) We believe the public would be outraged if they knew the ESA is used in this manner. It also

needs to be noted that no species recovery can actually be attributed to measures taken by the ESA. The public needs to know this.

At the local level, the economic stability is so threatened and reduced that it is affecting the high level of community support that the county has always enjoyed. Our people are generous and always willing to help. The ranchers, farmers, loggers and main street business' are no longer able to give the charitable organizations, community projects, and schools the funding they have always depended on.(attachment #5)

Amending the Endangered Species Act

The following points would be the minimum changes required to make the Endangered Species Act a successful tool.

- Species listing decisions should be based ONLY on verifiable science.
- A thorough analysis to determine the economic impact on each local area must be conducted prior to listing a species.
- Protect private property by incorporating appropriate legislation into the act.
- Rewrite Section 7 so that “take”, including “harm”, or “alteration of habitat”, etc, must be verifiable scientifically and that the burden of proof is on the appropriate agency. Incorporate language that allows legitimate ongoing activities to continue until “harm” can be verified.
- List only true biological species. Delete “sub-species and distinct populations” from the language and delist those so classified that have been already listed. Allow for the option to NOT list a species based on the determination that the species is irretrievable lost.
- Insure that legitimate ongoing activities continue until the listing is completed including the delineation of critical habitat and the recovery plan.
- Include the public in plan preparation and provide that the agencies may not place more stringent conditions on landowners that they do on themselves.
- Delineate ALL CRITICAL habitat when listing species. (In the salmon listing the ocean was omitted even though it is the predominant part of their critical habitat and a prevailing reason for the decline.)
- Eliminate the provisions allowing citizen lawsuits against private landowners.
- Empower local elected officials and local citizens to protect endangered species and their habitat through incentives.
- Eliminate the provisions for “emergency” listings by the Federal Agency Heads. Only in cases where an activity can be reasonable established as an imminent threat to the existence of a species can an emergency be requested and if that species is adequately protected elsewhere, no emergency will be granted. Such cases will be dealt with

locally, will be incentive based rather than punitive.

- Require law enforcement actions to come from the local jurisdictions.

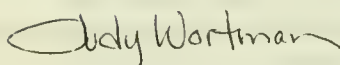
Summary

The ESA has proven to be unrealistic and unworkable. It has proven to be a cruel weapon used by environmentalists with no regard for the adverse impacts to individuals and whole communities or even to the species they purport to protect. It has become a vehicle for attack on private property rights. The ESA ignores the critical need to manage our natural resources and address problems in a reasonable and systematic way. The ESA has ultimately failed in its objective because of its focus on single species, as opposed to dealing with more comprehensive concerns of habitat health for a multitude of species, including humans.

Intelligent management of soil, water and timber is the very best way to conserve resources and ensure best habitat. Just as important, intelligent management will provide products for this nation, jobs and stability for rural America, and a healthier economy. In closing, a quote from Evergreen Magazine.

"We are the richest nation on Earth, and in ever increasing numbers, we have absolutely no idea where our wealth comes from. Worse yet, we do not know the people who bring us these riches in such abundance.

If more of us knew more of them, we would probably view logging, farming, and mining in more favorable lights. There would still be concern for the environment, but it would be tempered by the reality that even the essentials of life come at a price."



Judy Wortman

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

SATURDAY, JUNE 3, 1995

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON DRINKING WATER, FISHERIES
AND WILDLIFE,
Ramada Inn, Lewiston, ID.

The subcommittee met, pursuant to notice, at 2 p.m. at the Ramada Inn, 621 21st Street, Lewiston, ID, Hon. Dirk Kempthorne (chairman of the subcommittee) presiding.

Present: Senators Kempthorne, Thomas, and Chafee [ex officio].
Also present: Senators Gorton and Craig.

OPENING STATEMENT OF HON. DIRK KEMPTHORNE, U.S. SENATOR FROM THE STATE OF IDAHO

Senator KEMPTHORNE. Ladies and gentlemen, being the hour of 2 o'clock, I now convene this Senate hearing on the Endangered Species Act here in Lewiston, ID. And on behalf of all of you that are from neighboring States, let me give all of you a warm Idaho welcome, those of you in the audience, those of you that are sharing this platform with me this afternoon.

Of course, I've been with many of you in different forms, but by way of self introduction, I'm Dirk Kempthorne. I'm the chairman of the subcommittee that has jurisdiction over the Endangered Species Act. Once the subcommittee has accomplished its work with the Endangered Species Act, it is then sent to the full Environment and Public Works Committee. That chairman is John Chafee, seated to my left. We are very fortunate to have Chairman Chafee with us here today. Next to Senator Chafee is one of our neighbors from Washington, Senator Slade Gorton. And, Slade, we're delighted that you are here with us as well. Next to me is the—a friend from Wyoming, Senator Craig Thomas, who is also a member of the subcommittee that will be working on this issue. And then, of course, next to Craig is a friend of all of ours, my partner in the U.S. Senate, Senior Senator Larry Craig.

To begin this hearing I felt it would be helpful if each member of this committee perhaps gave just a few opening comments so that you would have an idea as to where, individually, we may be coming from as we deal with this very important issue.

The fact that hundreds of you are here makes it very clear that the Endangered Species Act has significant impact for you. And, as I'm sure we'll hear today, that impact may be positive and it may be negative. But every one of you here feels strongly or you

wouldn't be here to advocate either its continuation unchanged, its modification, or its outright elimination.

I'm prepared to work together in a bipartisan effort on this issue. I do not approach this issue as a neutral observer. The Endangered Species Act needs change. My view is that too often the interpretation and the implementation of the Endangered Species Act has gone far beyond its original intent. The ESA should not be a tool that places entire communities at risk by threatening their economic survival. At the same time, we cannot turn our backs on the effort to save endangered species. That would be suicidal.

Now why would I say that? Some 120 plants have given us pharmaceuticals that have not only enhanced human life, but in some cases have saved it. I could not have told that by looking at a Pacific yew tree, for example, that it would provide the drug that may cure ovarian cancer.

But I ask myself, what role does the ESA play in the preservation of the yew. The Pacific yew has never been listed under the ESA; and if it had been, would we have found its life-saving components?

Science needs to assume its proper place in this debate by providing scientific information and options for policymakers. Until we use science to allow us to make the best public policy decisions, and until we take it into the political arena and discuss the competing interests of health care, welfare, and education along with the environment, we'll never know where to place our priorities as a society in the big picture.

That's where Congress has abdicated its responsibility. Congress tells Federal agencies to go out and to make the Endangered Species Act work, but often the only tools that those agencies have are the blunt instrument of regulation. I think we need to provide incentives instead.

Now this issue has become so polarized that many politicians would just as soon not deal with this issue. If you suggest changing the ESA you are quickly tagged as anti-environmentalist. Although, to me, that logic escapes me because who could possibly be against their only life-support system? Advocate that ESA must not be tampered with and you're tagged with being blind to how the Act was destroying jobs and communities and families. Step into this debate and you'll be damaged politically by someone.

Well, so what's new? That's just one of the hazards of this particular job. The fact is we're spending millions of dollars now and putting jobs at risk on endangered species with no clear-cut policy, priorities, game plan, or ability to measure results. So let's get real and let's get practical.

Should we make concerted efforts to save species? Absolutely. Can we bring every species to full recovery? Absolutely not. Can we prioritize which species we should make greater efforts toward? We must. Can we do this without undermining private property rights and putting whole communities at risk? We'd better, or the outcry against the Act will kill it.

So what's at stake? Our environment, and I do mean "our" and I do mean "environment." I envision an endangered species law that encourages all of us to willingly participate. A law that provides incentives in decisions to conserve rare and unique species.

And one possible incentive would be adjusting the estate tax when there's a conservation easement to benefit an endangered species. That's an incentive to participate in endangered species management and keep property in the hands of the family that manages it.

I envision an Endangered Species Act that treats property owners fairly and with consideration and that recognizes private property rights and minimizes the social and economic impacts of this law on the lives of its citizens. As Forest Service Chief Jack Thomas said at a—Jack Ward Thomas said at a recent hearing, “Eco,” E-C-O, is the root word in economics, in ecology, ecosystem. It comes from the Greek word “oikos,” which means home. And the idea behind it is that it is an inclusive way to view an entire system; the people, the economics, the flow of energy, the flow of money and how we deal with all of these aspects.

This Act in its present course of heavy regulations and putting people and their communities at risk will not work. To single out individual communities to carry the brunt of recovery when the entire national community is the beneficiary is wrong. But to also say that extinction of a species is no big deal and just the luck of the draw for that particular species, and that we won't lift a human finger to help is equally wrong. And the proponents of each of those two extremes probably deserve each other on some remote island where the only way they can survive is to help one another.

So what's right? To reform the Endangered Species Act and to use good science that makes good public policy decisions with innovation and incentives and, where necessary, public financial resources to do what we as a human race, the stewards of this environment, can to benefit not only other species, but ourselves as well. I try to refrain from calling one group environmentalists, because we'd all better be environmentalists because this is all we have.

Is the term “probusiness environmentalist” an oxymoron? Well, it better not be, because without a healthy economy you won't have the resources you need to conserve the rare species among us. As Charles Mann and Mark Plummer said in their book, *Noah's Choice*, and I quote, “If we want truly to improve the lot of endangered species we should stop shooting for the stars, because the arrows will fall back to our feet. By aiming a little closer we might shoot farther in the desired direction.” And I will add, and hit the target more often.

So this hearing is to seek from you your attitude about the current Endangered Species Act. What do you want? What don't you want? What should be changed? And how, specifically, that should be done. And based upon our collective input, we'll go write a bill, and the key will be balance.

With that, I want to recognize for his comments Senator John Chafee. Senator Chafee, again, was very gracious to come out here. Yesterday we spent 14 hours from 7:30 a.m. until 9:30 p.m. seeing as much of Idaho as possible; the forest, the rivers, going around and just literally kicking the tires. For those of you who don't know John Chafee, you'll be interested to know that John Chafee left college to enlist in Marine Corps to fight during World War II. He served with honor in the original invasion of Guadalcanal. When

called again in 1951 he commanded the rifle company in Korea. In 1962 he was elected Governor of Rhode Island by 398 votes. And then won his two subsequent re-elections by a landslide margin. In 1969 President Nixon chose John Chafee to be the Secretary of the Navy.

Mr. Chairman, I welcome you to Idaho and thank you for being here for this hearing.

**OPENING STATEMENT OF HON. JOHN H. CHAFEE,
U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. Well, thank you very much, Mr. Chairman. And first I want to congratulate you, Dirk Kempthorne, with the skill and vigor with which you have moved ahead with these hearings on the Endangered Species Act. And I also want to extend my thanks to everybody gathered here today for taking the trouble to come and testify for those who are going to be witnesses. We have some 23 witnesses and for those who just are going to listen and have taken the trouble to be present.

This is my first trip to this part of Idaho. Yesterday, as you mentioned, we saw some extremely beautiful areas and enjoyed visiting with many Idahoans. I'm delighted to be in such a lovely section of our Nation. I want to take a moment to express to everyone here my respect and to tell about the friendship that I have for both of your Senators.

The Senator Larry Craig is a dedicated and intelligent leader. Through his position on the Senate Energy and Natural Resources Committee, he's worked effectively to improve management of our Nation's Federal lands. Over the past 3 years I've come to know Dirk Kempthorne through our service together on the Environment and Public Works Committee and I greatly admire his skill and his integrity. The country is certainly fortunate to have such an intelligent, fair person at the helm of the subcommittee of the Environment and Public Works Committee as we tackle this very complex issue of the endangered species conservation.

It's very thoughtful of Senators Gorton and Thomas to attend this hearing. Both of them are knowledgeable and influential on these issues. Senator Gorton, through his duties on the Appropriations Committee, and Senator Thomas as a member of the subcommittee—of this subcommittee and of the Environment and Public Works Committee.

Now Senator Kempthorne chose to kick off the Endangered Species Act reauthorization process by holding these field hearings in the West. These are the first hearings. We held one in Roseburg, OR, on Thursday, and this is the second one here in this section of the Nation.

We must pay a special consideration to the impact of the environmental Endangered Species Act on communities—and that's what Senator Kempthorne was talking about—where communities where the economy depends to a considerable extent on the natural resource base. With a listing of several runs of the Snake River salmon, for example, this area certainly feels the effect of the ESA.

Yesterday representatives of Potlatch and Konkoville Lumber Companies, business people here in Lewiston and up in Orofino, and others along my tour expressed their serious concerns about

the actual and potential impact of the listing of the salmon and the other species under the ESA. The burden of the ESA, as Senator Kempthorne rightfully said, does fall disproportionately on specific communities and on certain individuals. As a matter of fairness that's of grave concern to me.

I'm conscious of the difficulties that have been caused by this Act. The recovery of the Snake River salmon, for example, appears to be one of the most complicated and far-reaching of all the conflicts under the ESA. And that's why we on this committee need to hear from you and learn from you; that's why we've come here. You're right on the scene. We want to hear how the Act affects you and how it may be improved. While the ESA may be amended, I think it's safe to say that it will not be repealed or substantially gutted.

Most Americans, including many with whom I spoke yesterday, support conservation of fish and wildlife and maintenance of a healthy environment. However, they want our environmental laws to be less burdensome and more effective.

What do we hope to accomplish in these hearings? I think we all would agree we should maintain the underlying and still sound goals of the 1973 Act, that is the ESA. That's when it was enacted by a vote of 92 to 0 in the Senate.

Now what are the goals of the Act? There are two. First, to provide a means to conserve endangered and threatened species in their ecosystems; and second, to fulfill our obligations under treaties and international conservation agreements.

Moreover, this fundamental policy set forth by the Congressmen and the ESA that, "All Federal departments shall seek to preserve endangered species," still seems to me to make sense and shouldn't be watered down nor made discretionary.

The question is, then, how do we reach our goals? I want to explore ways to meet the above goals in a less contentious air and manner than currently exists. I support many of the suggestions that were made to this subcommittee during our hearing 2 days ago in Roseburg, and I suspect we'll get those views echoed here today.

What are they? Well, Senator Kempthorne touched on some of them. Developing incentives to promote habitat conservation on private land; providing greater certainty and flexibility to property owners; providing a larger role for local governments and for State governments; eliminating disincentives and burdensome requirements that lead property owners to destroy potential habitat because they don't want to get involved with this Act. And we want to encourage up-front planning and multispecies conservation.

I hope that during today's hearings we'll be presented with constructive solutions to the problems that exist under the current goal. The question that I challenge all our panelists to address is the following: How can we work together to resolve conflicts that have arisen under the ESA while at the same time maintaining a commitment to conserving America's rich and diverse heritage of fish, wildlife, and plants?

Conservation of a species not a frivolous effort. Conservation is worthy and indeed critical. It is not worthy only when the species in question provides an immediate human benefit. Should we not

also save those things that perhaps do not have an immediate benefit to us such as the grizzlies or California great whales or our national symbol, the American eagle? I think we would all agree that our society would suffer from the loss of these creatures.

As stewards of the earth, I believe it's our responsibility to maintain a world rich in biodiversity. Do we care what kind of a world we leave to our children? If the answer is yes, then we need strong laws to force ourselves to take the long-term view necessary for species conservation. Eighty-five years ago one of my heroes, Theodore Roosevelt, said the following: Of all of the questions which can come before this Nation, short of the actual preservation of its existence in a grave war, there's none which compares in importance with the central task of leaving this land even a better land for our descendants than it was for us. So let's try and we'll all carefully pay attention to this testimony today. I am looking forward to it; I think it can be very helpful to us as we try to reach a solution to these difficulties that we now face under the Act. Thank you very much.

Senator KEMPTHORNE. Senator Chafee, thank you very much.

Washington's Senior Senator, Slade Gorton, understands the need for protecting what's best about the Pacific Northwest. He has a long history of successes ensuring that tomorrow's generations will be able to enjoy our natural treasures. He serves on the Appropriations Committee where he's chairman of the Interior subcommittee, as well as serving on the Agriculture and Energy and Water subcommittees. Senator Gorton also is a member of the Senate Commerce, Science and Transportation Committee and the Budget Committee. Senator Gorton and I work together on a number of issues and I am very pleased to welcome to Idaho my friend from Washington, Slade Gorton.

**OPENING STATEMENT OF HON. SLADE GORTON,
U.S. SENATOR FROM THE STATE OF WASHINGTON**

Senator GORTON. Dirk, thank you very much both for myself and, I'm sure, for everyone in this room for giving them the opportunity to see one of their Senate committees in action, you know, at home, and giving them an opportunity to make their views known on vital issue of public policy.

In my view, the defect or the shortcoming of the present Endangered Species Act lies not in its goal of conserving endangered species. That is now, as it has been since the Act was first debated, a worthy and important goal of public policy. And few, if any Members of Congress in either house or either party are indifferent to it.

No, Mr. Chairman, the fact is in the Act at the present time, is that the consequences of a determination that a particular species or subspecies or run of salmon is threatened or endangered takes place without regard to the human consequences of those actions. It takes place without regard to what it does to people with respect to their jobs, their lifestyles, their communities, or the economy of not only the communities but the Nation in which they live. And as a consequence, as I went to work to propose amendments to the Endangered Species Act, it was my view that we should, if anything, strengthen the scientific input into the determination of

whether or not a species is, in fact, endangered. That is a pure question of fact which should be decided by the best science we can find.

However, once a species has been determined to be endangered, the question of what we do about it is not a pure question of science by any stretch of the imagination; it is a question of public policy. And in making public policy, the people who are to be affected by that public policy ought to have a voice in what it is to be. And that is the heart of the change that I believe needs to be made with respect to the Endangered Species Act itself. People, and especially the people whose lives and communities are going to be affected by any plan for the conservation of the species, should have a significant voice in determining what that plan is to be.

There is a great value to saving the particular species, to recovering the particular species, but it literally is not the only value. And I hope that we will end up with an Endangered Species Act which considers human beings, their families, their communities, their jobs and their careers as an integral and important and respected part of the environment.

And so it has been my goal, whether we're dealing with the spotted owl or with a particular run of salmon or with the beetle, to have the decision respecting what is to be done about that species made by a politically responsible person—in this case, the Secretary of the Interior or the Secretary of Commerce—someone responsible to an elected President of the United States who can be praised or criticized for the decision that that individual makes by either side in the debates over a particular species in an effective fashion. And we cannot simply hide behind the law and say, well, I would like to have helped you out, but unfortunately my hands are tied. I simply couldn't do it. Public policy decisions should be made in the arena of the political process in a free society such as our own. And you and I and all of us should have the right to make a contribution to that determination.

Let me take a particular example now that relates not to the 6-year long struggle over the spotted owl in the forest, but the endangered runs of salmon here on the Snake River. Every member of this panel just a little bit more than a week ago voted for a budget for the United States of America which would bring our budget into balance by the year 2002 and would keep the promises and the commitments we made in our campaigns last year and the previous years.

In order to do that we must make a number of value judgments. We must recognize for the government, as we do in our families, that our resources are limited and that we must set priorities as to what we wish to do and what we wish to accomplish. And if that isn't important for our society as a whole, and certainly it is, it's important in connection with the way in which we deal with endangered species.

Right now we are under a set of orders, a biological opinion, and a graph recovery plan by the National Marine Fisheries Service, which will impose charges of roughly \$600 million a year on those people whose electricity comes through Bonneville Power Administration for the recovery of three runs of salmon on the upper Snake

River. The goal—the stated goal of this recovery plan is that sometime between 10 years and 50 years from now three runs, in which there are about 2,500 fish today, will increase to about 30,000 fish. Now, if you divide the figure 30,000 into the figure \$600 million, you come out to a figure of \$20,000 per fish after paying the \$600 million a year for 10, 20, 30, or 40 years in a row.

Now I ask you, using that amount of money, using half that amount of money, could we not cause the recovery of the overall salmon resource of the Pacific Northwest a hundred or a thousand times greater if we were permitted here in the Pacific Northwest, in the Columbia and Snake River Valleys, through our own processes first to determine how important this resource was to us, how much money we were willing to pay for it, and then to determine what actions would get us the maximum gain in the salmon resource itself? That kind of flexibility, that kind of decisionmaking centered in the people who have to pay the bill and who gain the rewards from paying that bill seem to me, Mr. Chairman, to be the direction in which we ought to go.

The waters of the Columbia and Snake River system, of course, untraditionally, 100 years ago, 200 years ago, were essentially used for fish purposes and to a certain degree for transportation. If you have—OK. You put the first one up to the size you can get it. It's upside down, isn't it? No.

That photograph is Grant County, WA, in the mid-1930's when the Columbia River ran free. The human environment of Grant County was that hostile desert atmosphere supporting a handful of people in poverty or near poverty. Today, with the dams on the Columbia River—this is a photograph of the same area in Grant County, WA. The county in which 20 times as many people live with a much higher standard of living producing food and fiber for the people not just of their own county but of the State, of the United States, and of the world. Now that is a real value of an alternate use of the waters of that river.

We must recognize the fact that everything comes at a price. And a return to a state of nature, with a return to the first—or second photograph. But by the same token, by the same token, we've got to recognize the fact that the salmon resource, too, is valuable; valuable not just in a dollar sense, but in a social and cultural sense as well.

But we must have a series of statutes under which we can make public policy decisions like this by giving an appropriate degree of weight to all of these considerations: to the fish, to the agriculture, to the power, to the recreation, to the transportation, and above all to the people of this region. That's the goal of my crusade with respect to changing the Endangered Species Act, and I know it is the goal of the committee as well.

Senator KEMPTHORNE. Senator Gorton, thank you very much for your comments.

Senator Craig Thomas has a strong commitment to multiple use of public lands. Senator Thomas was raised on a ranch near Cody, WY; has a degree in agriculture from the University of Wyoming. He served the people of Wyoming as a member of the House of Representatives for nearly 6 years before being elected to the Senate. Senator Thomas is a member of this subcommittee and I'm

proud to work alongside of this man. He's also a member of the Energy and Natural Resource Committee where he serves as the chairman of the Oversight and Investigation Subcommittee.

Senator Thomas, welcome to Idaho.

**OPENING STATEMENT OF HON. CRAIG THOMAS,
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator THOMAS. Thank you. It's great to be here. I appreciate it. Your State is green like ours; in fact, I don't remember seeing it ever greener. When it rained 40 days and 40 nights before, we got $\frac{6}{10}$ of an inch.

At any rate, thank you very much for having this hearing. I will file a statement and will be very brief. We have much in common, of course, when we talk about things like this. When we talk about multiple use, when we talk about the fact that the Federal Government owns nearly half of the State and managing. So, we have many things in common in our State. I've been home for a week, as these gentlemen have in their home States, and we've talked about this.

Let me tell you that the biggest and most common reaction we get when we talk about Endangered Species Act is "let's apply some common sense." Now, I suppose everyone can interpret that a bit differently, but there is a message there. We do need to apply some common sense. Few ask that we do away with the protection, nobody wants to do that; but we want to do it in a way that also considers jobs and property rights and the future economics for our State. We need to talk about the process for listening. I think that needs to be reviewed. I think the question that Slade Gorton asks is, do all critters have the same sort of impact on our realist process?

I took that out of a Salt Lake paper on the way over this morning. They're talking about buffalo coming out of Yellowstone Park, which is a little different, but the guy who's looking at it is a biologist and he says, this issue is entering the political arena. We're sort of deviating from the biology. Well, of course we are. There are other factors. Once the science is there, there are other factors.

So, one of the other problems we have is the delisting. Most every scientist around Wyoming and Yellowstone would agree that we've reached the goal that we've ascribed for grizzly bears, but we can't get them off the list.

So, I'm interested to hear your opinions of where you are, and maybe more importantly, maybe your suggestions as to where we go. Thank you.

Senator KEMPTHORNE. Thank you, Senator.

And now, again, my partner in the Senate, Senator Larry Craig who in the Energy Committee serves as the chairman of the Forestry and Public Land Subcommittee and the Agriculture Committee; also is a chairman of the Forestry Subcommittee; and is someone who has demonstrated time and again his leadership on the natural resource issues.

So with that, my friend, Larry Craig.

**OPENING STATEMENT OF HON. LARRY CRAIG,
U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAIG. Chairman Dirk, thank you very much and a very sincere thank you for bringing the subcommittee to Idaho and to Lewiston, because Lewiston, ID, is a community that is facing a variety of alternative provisions for managing the fish that swim up and down the rivers that confluence here, and some of the potential outcomes of that decision, they look at being very devastating to Lewiston and the community they now know. So it's important that you have those hearings here.

I am extremely pleased that Senator Chafee would come and be with us here in Idaho and see Idaho through a variety of eyes and broaden his understanding of the concern that is expressed by so many over this issue and its application. I know John Chafee, ladies and gentlemen, very well. He is a sincere and dedicated person. And while we do disagree on issues from time to time, we have a very close working relationship as most Senators do because we recognize that the outcome of our disagreement sometimes can result in very destructive policy.

Let me also thank Slade Gorton for being here. You've just heard from Slade and you know how thoughtful he is and the approaches that he takes on behalf of his State and the Nation. The thoughtfulness of his Endangered Species Act's amendments were strong enough for me to become a cosponsor on.

And let me tell you why I became that and why I think that it serves as one of the foundations for analyzing the problems we face with this particular law. We all agree, and I think unanimously on this platform, that the intent of the Endangered Species Act is something we want to adhere to. What we are frustrated by is its application. And the reason we are frustrated by that, and I think what's embodied in the Gorton proposal that I support, is a recognition that the fundamental operations of this Act are flawed, that they cannot function in the context of providing a result that is nonconfrontational and nondestructive to our joint interests. I'm not so sure that they can even register great successes in saving species of plants or animals. I think history will prove that that's one of the—another very important reason for changing this Act.

And here's the reason, Mr. Chairman, why. I do not believe that you can create conservation that is rooted in both punishment, fines, and negative thoughts about why you are caused to do something. Conservation and its concept must be rooted in positive actions. It must be rooted in being satisfied that you have accomplished something that's good for you. You, personally, you bet, and your family, and your economic wellbeing, and then, for the rest of all the right reasons.

And when that test fails, the law that drives that or the motive that drives it fails, and in this Act, that is what has failed. It has pitted the human species against other species and that's why we're here today; if that were not the result, we would not be here. And that, in my opinion, is why the law as it is currently drafted and enforced has failed.

So, Mr. Chairman, what I have struggled with and what I think most of us have is, do we throw it out and try to rewrite an entirely new law under the new framework? Or can we adjust the current

laws to change the incentive in the direction? I expect that's what we'll struggle with over the course of the next several months in attempting to accomplish that.

Was it the intent of the Endangered Species Act to take the management of the forests away from the U.S. Forest Service? No, but it did. Was it intended to take the management of the BLM land away from the BLM? No, but it has. Was it intended to take States whose entire economies and population wellbeing oftentimes are based on the resources of public lands—to take those incentives away from them? No, but it has.

And those are the negatives that have resulted from this Act that's brought us here today and ultimately will force change.

Mr. Chairman, I would like to ask unanimous consent that the bulk of my comments be put on the record for the sake of time. But let me suggest that some of the things that Senator Kempthorne and I have already done in behalf of Idaho and resource issues that are embodied in the Gorton Act and must be embodied, in my opinion, in any reform of the Endangered Species Act would be the language that Dirk and I put in S. 455. Now, if you will remember, that was language that would have—it was introduced to prevent a repeat of the Pacific Rivers Council lawsuit.

In other words, it dealt with consultation and how you deal with consultation. And so that Idaho or any other State not be put through that kind of phenomenally emotional and life-threatening threat—human life threat that somehow a Federal judge somewhere in the continental United States can shut an entire economy of a State down and throw thousands of people out of work. And yet that's where we were but a few short months ago in our State.

So those are the kinds of things that we're going to be looking at today as we deal with these issues. And we hope that as a result of that—we hope that as a result of our efforts, we'll be able to produce a law that does a lot of things differently than what it's currently doing, but it's premise would be the same.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Craig follows:]

STATEMENT OF LARRY E. CRAIG, U.S. SENATOR FROM THE STATE OF IDAHO

Mr. Chairman, thank you for holding this hearing today and offering me the opportunity to testify about needed changes in the Endangered Species Act.

It is very appropriate to hold this hearing in Lewiston. More than most, the citizens of the Clearwater valley have felt the burdens of the Endangered Species Act.

None of us wants to relinquish our fish and wildlife heritage, and that is not what I believe will happen when we reauthorize the Act. But we've got to put some sense in it. We must prevent the courts from overreaching in their interpretation of the law. And the ESA must be balanced with the other needs we have as a society: reliable hydropower, a steady supply of wood products from our forests, and economical river transportation for agricultural products.

Reform of the Endangered Species Act is way overdue, and I am very pleased that the Congress is finally confronting this issue in a substantive way. This is only one of the hearings Senator Kempthorne will hold to address all aspects of the ESA over the coming months. I offer him my full support to get this job of reauthorization done.

I want to be counted as one who recognizes the value of our fish and wildlife. I've repeatedly said that I cannot support outright repeal of the Endangered Species Act, although I have been urged by some to do so. However, the Act needs substantial revision if it is to be brought back in balance with the economic well-being of this country and with the needs of its citizens. Far beyond its original intent, the Act has been made a bludgeon to suppress legitimate use of public lands and to threaten

private landowners and communities. In Idaho, we witnessed that scenario most vividly early this year when we barely avoided a shutdown of all mining, logging, and grazing on six national forests.

As Chair of the two subcommittees in the Senate with jurisdiction over forest policy, I have embarked on a series of hearings to understand and correct the myriad of conflicting laws and regulations which have strangled the practice of good forestry in this country. The practice of forestry is at a standstill on our western public lands, and the primary culprit is the Endangered Species Act. The Endangered Species Act rules the forests, and that is a reality which must be changed.

I am pleased to be a cosponsor of S. 768, "The Endangered Species Act Reform Amendments of 1995", a bill which was introduced by Senator Gorton on May 9. Senator Gorton's legislation provides many of the needed changes. As you know, Mr. Chairman, it includes language from S. 455, which you and I introduced earlier this year to prevent a repeat of the court opinion from the Pacific Rivers Council lawsuit which I've already mentioned. It would streamline the Section 7 Consultation process, which has proven to be unworkable in our experience with endangered salmon. It would bring cost-consciousness into the equation by requiring cost-benefit analyses and risk assessments. It would provide the States a much larger role throughout, and would guarantee State sovereignty over water. Private landowners would be far better protected in a number of ways: incentives and partnerships would be offered private owners to protect listed species rather than threat of Federal enforcement, the definition of "takings" would be scaled back, and suits against private citizens would be eliminated.

S. 768 contained a provision worthy of special notice. It would require that all pre-existing recovery plans and pre-existing biological opinions be brought into compliance with the new law. I can only envision a very positive effect for the State of Idaho resulting from those revisions.

I have told Senator Gorton that I will assist him in any way possible to accomplish a balanced reform of the ESA. Also, I may have amendments to S. 768 as we go along. For instance, I might suggest elimination of the consultation process entirely because the Federal land managing agencies have the capability to do it themselves.

Regardless, ESA reform must be accomplished this year—we have waited too long already.

Senator Kempthorne, thank you again for the opportunity to present my thoughts on Endangered Species Act reauthorization.

Senator KEMPTHORNE. Larry, thank you. Congressman Helen Chenoweth was here yesterday and her schedule did not allow her to be here.

Ladies and gentlemen, I'm going to now announce what the ground rules are going to be as we continue this hearing. This is a hearing. And so I'm going to ask that you refrain from any sign of approval or disapproval as we go through this and as we listen to a variety of witnesses that make their comments known to us.

You will hear people say things that you totally agree with and you will hear people say things that you totally disagree with, but we're going to have an atmosphere of respect here. And so I'm asking that there be no showing of approval or disapproval through applause or cheering or what have you as we go through this hearing.

We have got 20 witnesses that are going to be speaking and so we want to be able to allow all of them their opportunities to do so.

Another thing that I would mention is that while you have these five senators that are seated here, Senator Harry Reid, who is the ranking democrat on the subcommittee, also intended to be here. Unfortunately at the last minute his schedule did not allow it, but his staff is here; as is the staff of Senator Max Baucus from Montana who's the ranking member of the full committee.

With that, we'll now turn to our first panel; all four Idahoans that you know quite well. They will be introduced; they will be

given 5 minutes to make their comments; then we will have a round of questions that would be directed to any member of that panel, again it would be with the 5-minute rule. We have a light here that will allow us to stay on schedule. And for those that do not get to speak today, let me tell you that the record is being kept open so that any written comments that you may wish to add can either be left with us today or 1 week from today—postmarked 1 week from today will still be accepted and made part of this record.

With that, let me now turn to Idaho State Senator Laird Noh, who is the chairman of the Resources and Environment Committee of the Idaho Legislature.

Laird Noh.

STATEMENT OF LAIRD NOH, CHAIRMAN, RESOURCES AND ENVIRONMENT COMMITTEE, IDAHO STATE SENATE

Senator NOH. Thank you Mr. Chairman and members of the U.S. Senate. Welcome from the Idaho State Senate. I do chair the Resource and Environment Committee of the Idaho State Senate. Of course, Idaho is one of the number of States that have been almost totally immersed in a variety of species listings and consultations in the last few years and the Idaho Legislature and the Resources Committee in particular have attempted to be a heavy-duty participant in that.

So what I want to do today is to try to share with you and I have some 12 fairly specific points listed in the written testimony, at least, what we think we have learned in that regard. First, however, it seems important to me to compliment you, Mr. Chairman, on the tone which you set for this hearing. And perhaps speak to the constituencies which you will have and others will have, some of whom are in this room today.

I certainly believe that some fundamental changes in the Endangered Species Act are absolutely essential and they must come fairly soon. Because not to act fairly soon places many of these key decisions affecting the lives of certain species, but also of our communities in the hand of Federal judges. And that doesn't always turn out well and so time is of the essence.

And yet while it is—these are very emotional issues, they have an enormous impact on citizens. There is indeed broad public support for protection of endangered species in reasonable ways. And if we, who are your constituents put you in a position where we ask you to do too much in the way of change, I think that the political cards are such that we could end up with no change through the process of a veto or other actions. And so, it is indeed time for thoughtful compromise.

I might touch on a couple of the—of the key points of the written testimony. One is, I think, the consultation process as Senator Craig and others have mentioned has become literally a disaster to natural resource management. Particularly as more species are listed and as species begin to overlap species as the planning processes of public land management begin to overlap one another, it can become a totally unworkable, untenable situation, particularly when these processes must work under the threat of action and injunctions by judges through an overlapping series of ongoing lawsuits.

And it is true, I think, that in the West on the public lands, the responsible day-to-day important decisionmaking and natural resource protection and management have been ground in many cases almost to a halt as a result of the problems with the Endangered Species Act. That does decimate the intent.

And, of course, the other major area which I am sure many will focus on is the importance of developing systems in the Act which encourage rather than discourage public community and citizen participation from the beginning to the end. We've had a very difficult time with that in Idaho. One of the impediments has been the Federal Advisory Committee Act—and we may want to discuss it some more. But we are told that that is a real problem which gets in the way of Federal agencies and decisionmakers sitting down with groups of citizens appointed by Governors or legislators or others to try to work out these particular problems in a cooperative manner. Certainly we need as much as we can to include that local and citizen participation.

One section of the Act which I believe we have found quite constructive in that regard, at least as it relates to the rest of the Act, is the Section 10(j) referred to as the experimental nonessential portions of the Endangered Species Act. That's an area which I personally believe can work quite well in terms of encouraging cooperative decisionmaking and the flexibility which is required. But much of the rest of the Act does not, in fact, provide for that opportunity.

I guess the other point I would make which I know you're already conscious of is that there is a lot of talk about the concerns about private property rights and private lands and incentives, but in the West in many of the States we don't have much of that. We've got public lands and those public lands have to serve as the basis for sustaining the economy of our communities and others.

So don't cut the decisions that affect the people who use and must utilize in a responsible way the public lands too much loose. Those public lands are very important to us out here. Thank you.

Senator KEMPTHORNE. Larry, thank you very much.

Our next speaker is Idaho State Representative Chuck Cuddy, who is from Orofino. He is a member of the Resources and Conservation Committee.

STATEMENT OF CHUCK CUDDY, RESOURCES AND CONSERVATION COMMITTEE, IDAHO HOUSE OF REPRESENTATIVES

Mr. CUDDY. Mr. Chairman, Senators of the committee, I want you all to know, how appreciative we are to be here before you today and for me to represent my district before you. And being an Idaho democrat, you have to know I have a certain affinity for the Endangered Species Act.

Senator CHAFEE. I wonder if you could pull the mike a little bit closer.

Mr. CUDDY. Certainly.

Senator KEMPTHORNE. And say that last statement again.

Mr. CUDDY. The economy of my legislative district is primarily wood products and agriculture; recreation also contributes nicely to that economy. But without question the Endangered Species Act is the one that probably has more adverse effect on our economy in-

cluding recreation than any other one thing that transpires in this central Idaho area.

Implementation of PAC fish was probably the most disconcerting thing that came our way in quite sometime. By Forest Service statistics on the Clearwater and Nez Perce Forests, which you heard yesterday are two of the most productive inland forests in the United States, reduction of 20 percent is expected in timber harvest just by the implementation of PAC fish.

The thing that has went unanswered, Mr. Chairman and members of the committee, is we're not sure if that applies to the diminished harvest that we see now from these two forests of approximately 50,000,000 board feet or if it applies to the over 200,000,000 board feet that land is capable of producing on a sustained basis. When you anticipate there are about nine jobs for a mile of board feet, you're talking about a lot of jobs in this district and a detriment to our economy.

You have to remember that out of that comes—25 percent of every one of those sales goes to education and to transportation through the counties and local highway districts. When you take that much money away from a district that is 70 percent public owned to start with, that has a diminished tax base, it is a definite difficulty for our economy to survive.

Local impacts on agriculture and land use through wetlands withdrawals and various other withdrawals for the Endangered Species Act and the Clean Water Act will further diminish our ad valorem tax base under the current laws that exist today.

To sustain our inland resource economy Idaho must continue to provide competitive transportation systems both over land and water. The topography that you people have seen in the last few days indicates how difficult it is to do that. As, for instance, the road between here and the town I live in 40 miles up the Clearwater could probably not be reconstructed today under the current Endangered Species and Clean Water Act. In fact, there have been jobs turned down—construction jobs—pardon me, turned down simply because rip-rap was to be placed above the ordinary high water mark but not above flood stage and the environmental and fisheries people rejected the project. Consequently the State of Idaho is in the process of redesign at a more expensive redesign.

No one in Idaho, I don't believe, wants to see the Endangered Species Act done away with, although I think they believe that it has to be reasonably interpreted and reasonably implemented so that compatibility with the human population is possible. I believe that there are some differences of opinion as to what is compatible and as to what is possible, but this is one thing we do have to take into serious consideration, that the population is here and if you look at the evolution of biology, you will notice that there is always a predominant species. Normally this predominant species prevails, and in most cases you'll see where some have failed because of this. I think maybe this has something to do with what we see today.

One of the things that I think need to be corrected and it's also a protection to endangered species is the attitude of forest fire prevention. If you don't prevent forest fire, you have a situation where stream depredation is created that is oftentimes worse than viola-

tion of logging practices. And I think we need to take a hard look at that.

Mr. Chairman, I'm running out of time and I would like to say a lot more, but I think the one thing that we have to do is get the Administration, the operation, and the implementation of the Endangered Species Act back to the governments that are closest to the people where they have courts and have elections within where these people have standing.

Senator KEMPTHORNE. Chuck, thank you very much.

And now representative of Idaho Representatives is Lenore Barrett, who is from Challis, ID, and is serving on the local government committee.

Lenore, welcome.

STATEMENT OF LENORE BARRETT, LOCAL GOVERNMENT COMMITTEE, IDAHO HOUSE OF REPRESENTATIVES

Ms. BARRETT. Thank you, Senator, and greetings to Chairman Kempthorne and Senator Chafee and distinguished senators. I represent District 26: Custer, Lemhi, Clark and Jefferson Counties.

To familiarize you with District 26, I quote from Randy Stapilus' Political Almanac. "There is no bigger legislative district in Idaho than District 26. This is an area lashing together an economy out of string and baling wire. Many people do not have just one job; they'll do several jobs to make a living wage. This is a very independent country, where people live in small clusters and are deeply distrustful of large ones—and of government. When people think about what they want from government, they want to be left alone."

On Saturday, January 14, 1995, after the State legislature had convened, I read in The Boise Statesman of a ruling by Judge Ezra that, to protect salmon resource activity in central Idaho would cease.

I immediately recalled over 20 years of proliferating environmental legislation with injuries and usurpations continuing unabated, "all having in direct object the establishment of an absolute tyranny over these States." Now this has happened in the sovereign State of Idaho.

Subsequent to the threatened closure, the Idaho legislature accomplished three important goals. We adopted a resolution to convene The Conference of the States with the purpose of restoring balance in the Federal system; we adopted a Tenth Amendment Resolution reaffirming State Sovereignty; we created and funded a Constitutional Defense Fund to protect Idaho Sovereignty.

The Endangered Species Act references "cooperation" with States to the maximum extent practicable. Additionally, the Act allows agreement with any State for the administration and management of any area established for the conservation and the secretary is authorized to enter into a cooperative agreement with any State which establishes and maintains an adequate and active program for the conservation of endangered species. The Act also addresses conflict between State and Federal law, with the State being placed in supercedural position.

So, why isn't this cooperation happening? Consider just a few of many incidents that have occurred over the past 2 years.

In 1993, I became aware that it had been more than 1 year since application was submitted to the Army Corps of Engineers for the provision of a bridge to the Cutler property across Meadow Creek in Stanley, ID.

The original and preferred site carried a construction—original preferred plan carried a construction cost estimated at between \$14,000 and \$15,000 dollars. National Marine Fisheries was considering a second design. Cost of construction? \$65,000.

The Idaho Fish and Game, Idaho Department of Water Resources and the Idaho Department of Environmental Quality had already agreed to issuing a permit based on the first, more cost effective design. In the meantime, the Cutlers were landlocked. The cause of delay and exorbitant cost was the result of a tiered bureaucracy turf battle between the Corps and National Marine Fisheries.

Recently, the Custer County Commissioners learned that National Marine Fisheries were proposing to kill kokanee in Redfish Lake. No one in Custer County thought killing kokanee would do anything more than kill kokanee. Idaho Fish and Game commented that State fisheries science did not agree with NMFS fishery science in this matter. Which science will prevail? Even if it's wrong? NMFS.

My favorite example of so-called cooperation between State and Federal interests is the ignominious Idaho Wolf Plan. No plan in this case was better than a poor plan. The only plan U.S. Fish and Wildlife would accept was the one they authored. Intimidation by U.S. Fish and Wildlife to adopt their plan was vigorously applied and just as vigorously rejected.

So, you see, gentlemen, for the Federals, cooperation is a game of "Simon Sez"—and they're Simon. Idaho is relegated to an administrative unit.

In conclusion, the Act, in my opinion, should be repealed. Absent repeal, it should be rewritten from top to bottom. Absent rewrite, it should be at a minimum reauthored to include peer-reviewed scientific data, equal consideration to potential human suffering caused by restriction or elimination of basic human needs such as jobs, energy, and overall quality of life. It should also include Federal and State measures to re-establish the primacy of State government for implementation of all environmental policy.

Further, the Act should recognize Idaho's right to appropriate and manage water within its own borders without interference or usurpation by the Federal Government. Idaho's water including draw downs should not be the solution for restoring listed species. Plans in progress to control Idaho water should be immediately discarded by the Federal Government. The Federal Government has been trying to micromanage State governments for decades and it is time to change direction. The Endangered Species Act is a good place to start.

Thank you, gentlemen.

Senator KEMPTHORNE. Lenore, thank you very much.

I've been informed that in the back perhaps you're having difficulty hearing some of the speaker so I would just ask that as you speak you'd pull the microphone a little closer to you.

Now we have Darrell Kerby. He is the President of the Bonners Ferry City Council and a life-long resident of Bonners Ferry. Darrell.

**STATEMENT OF DARRELL KERBY, CITY COUNCIL PRESIDENT,
BONNERS FERRY, ID**

Mr. KERBY. Can I congratulate you and the Senators for Senate Bill No. 1 before I start?

Senator KEMPTHORNE. Thank you.

Mr. KERBY. I live approximately 30 miles from Canada, 30 miles from Washington and 30 miles from Montana. Let me explain my community's experience with the Endangered Species Act.

Several years ago, a gentlemen by the name of Jasper Carlton of Snail River fame moved into my community, and through petitioning the U.S. Fish and Wildlife convinced the powers that be that the caribou deserved to be listed as threatened endangered and that they were in such dire condition that they should be listed under the emergency procedures which bypasses the public process.

Now as I stated in my written submission, the caribou that frequent my community are primarily Canadian caribou. They are very nomadic in nature, and in the past regularly came across the border into the Selkirk Mountain Range. But in the last 25 years, a couple of major events happened—acted to change that frequency by which these Canadian caribou crossed the border in my town.

The first was the Trapper Peak and Sundance fire that occurred in the late 1960's in the Selkirks, a fire of such devastating proportions that the National Geographic magazine did a feature story on it in which they used terms of atomic proportions to describe energy which was being released, terms like megatons of TNT and analogies to bombs dropped on Hiroshima and Nagasaki—in other words, total devastation.

Next event was the Canadians built the super-highway up and over the Selkirks just north of the border, and cars began running into and even killing caribou as they attempt to cross the highway.

So at the time of the listing there were no caribou in the United States of America, no caribou sightings except for an old bull that occasionally came across the border a mile or two on the Washington side of the Selkirks. Well, now that they were listed and there were none in the United States, they set aside some 300,000 acres of habitat and decided to go up to Revelstoke and Williams Lake area of British Columbia and capture 60-plus caribou and bring them down to Boundary County.

Well, in doing so, so many died while being captured, so many died while being transported, some of them died by stress once they were placed in the ground. In fact by December 1993 37 were dead, many made a B-line for Canada, one was sighted on the local golf course.

But perhaps the most interesting was the sub-species of caribou that was listed as threatened and endangered was different than the caribou that were transported to the area. The resulting offspring, therefore, hybrids, and the original species listed is ceasing to exist.

The real tragedy is that the caribou were not then and are not now threatened with extinction. There are thousands upon thou-

sands of caribou just north of me. And when the forest eventually recovers from the fire, they'll probably wander back. In the meantime, due to the ESA, hundreds of thousands of acres were placed under restricted use and millions of taxpayer dollars have been wasted.

The same thing can be said of the grizzly bear. While hundreds of thousands of acres are restricted for grizzly bear use just over the border in Montana, they have legal hunting limits for the bear; and the bear are plentiful in Canada and Alaska and is neither threatened with extinction—or threatened with extinction.

Now come the sturgeon. Well, we thought we had learned our lesson with the caribou and grizzly bear. So we thought if we could get together with the different agencies and come up with a plan, a conservation plan, we could avoid another listing.

So the city of Bonners Ferry and the county of Boundary, the Kootenai Tribe of Idaho, all joined together, we hired a biologist and we began to work with the different agencies to preclude a listing. The Federal Government funded a sturgeon hatchery for the Kootenai Tribe of Idaho and the meetings began. The bottom line was the sturgeon was listed.

The hatchery was a success; however, but because it wasn't natural, it is an unacceptable solution. And even though it was OK to transplant animals for caribou, the U.S. Fish and Wildlife said no way for sturgeon. So we are using millions and millions of dollars worth of the hydropower which will raise the river in an attempt to do things naturally, which just this week has caused one of our city streets to cave into the river. My solutions are outlined in written submission which also includes a statement from Boundary County Commissioners, superintendents, a couple of resource managers, and a local owner.

I can't speak strongly enough in support of Senator Gorton's bill S. 768, but I would add the following. I would prohibit the listing of subspecies; I would clarify the use of sensitive species or candidate listing; I would establish a conservation need not be by natural means; allow the use of technology, captive breeding, et cetera; extend judicial standing to economic interests; make State and local government not just advisory, but an equal partner in the process; set actual criteria for delisting; and finally allow some species to become extinct if the social and economic costs of the recovery become too high.

My American community as well as thousands of others like mine are being devastated by the Act not only economically, but the social fabric that holds our Nation together is beginning to break. Let's take a giant step toward restoring society's faith that government can effectively serve the people. Thank you.

Senator KEMPTHORNE. Thank you very much. Let me begin now just a round of questions. All of you being State or local officials, I am one who does not believe that all wisdom flows from Washington, DC, and therefore, let me ask each of you the same question. And we'll just give a 1-minute response from each of you.

But, one of the key proponents I want to put into reform deals with granting greater authority to the States and local governments. What elements should we be sure to include, or what should we be thinking about as we tackle this?

Laird.

Senator NOH. Well, since I brought up the FACA Act, maybe I better focus on that. I have got a number of other ideas as well that I'll be glad to share with you later.

My understanding is that it is impossible under the FACA Act for the Federal agencies to sit down on a regular basis with regular broad-base citizens' committees, for example, without going through the process of listing the meetings in the Federal Register, putting out public notices in the Federal Register of the time and place of those meetings and all those sorts of things. We ran into a real problem with that when State and Federal agencies signed property agreements to try to put together conservation plans to head off the listing of a variety of candidate species. And the solicitors in the Justice Department said, well you can't have those kinds of meetings unless the State agency becomes the lead agency and sets the agenda and calls the meetings and develops all of these things as the lead agency. They can be approved then by the Idaho Fish and Game Commission, and they can then—the State Fish and Game Commission can then invite the Federal agencies to implement these plans. But it couldn't work the other way around.

Now I understand that you wise men included some changes to that law in the Senate Bill No. 1 which was referred to earlier which makes some steps in alleviating that problem, but it just seems to me this is perhaps a small area but a fairly big impediment to cooperative decisionmaking.

Senator KEMPTHORNE. All right. Laird, thank you very much.

Chuck.

Mr. CUDDY. Mr. Chairman, having been the author of the Grizzly Bear Oversight Committee Act in Idaho and getting some individuals from Idaho involved in Central Idaho grizzly bear reinstatement or reintroduction, I believe there's a message there; and it has worked to some degree and gotten some input from the local people.

But the point I'd really like to emphasize is we have some natural science at the University of Idaho, at Boise State, at Eastern Idaho, at Idaho State and various other colleges. We have an excellent State land department that does a quality job as far as forest practices; in fact, they have been, their Forest Practices Act recently inspected by DEQ was shown to be 99 percent effective. And when it wasn't effective it was only because it had not been implemented properly.

I think there are a number of quality science people available within the State that could contribute very much, and I think the State courts could also contribute very much to a more level adjudication of what transpires. I believe the science and the ability is at home to assist very well.

Senator KEMPTHORNE. Thank you very much.

Lenore.

Ms. BARRETT. Thank you, Senator. Well, I guess I'll go back to my theme that the Federal Government has and still continues to treat the States as subordinate units of government. I know we're hearing lead agency and cooperation and so forth and so on, but usually what happens, as I think I indicated in my testimony, or

at least there will be some of this in your attachments, the State simply becomes the guy that gets a pat on the back and usually we'll do it because there's Federal money as enticement.

I do not see anything to date that gives States the primacy that they need to make the kinds of decisions that they need to make. I think that if there's an Endangered Species Act, it should have been—it needs to be Idaho inspired. And I go back to the old school, "Idaho born, Idaho bred, and when it dies it can be Idaho dead."

Senator KEMPTHORNE. OK. Darrell, in 60 seconds.

Mr. KERBY. Sixty seconds.

Senator KEMPTHORNE. Sixty seconds.

Mr. KERBY. I suspect that one of the most effective methods might be to once they—the habitat area has been decided for a particular recovery, that those local government entities that are involved in that area be part of a joint group or committee or study group to come up with recovery decisions. And that the members of those groups, therefore, be—having the same status as each of the other ones in the coming up a conclusion for conservation efforts.

And in that method the local knowledge, historical custom and culture can more easily be brought into place as those conservation plans are brought up and finalized.

Senator KEMPTHORNE. Thank you very much.

Senator Chafee, your questions.

Senator CHAFEE. Thank you, Mr. Chairman. I'd like to say to Senator Noh that I thought the point you may made was a very good one where you said that there's always—we better compromise and get something constructive done here that considers not only views to Democrats because it's getting now in the Senate anyway, that you've got to have 60 votes to get anything passed because of the filibuster and so forth. But you also mentioned the Presidential veto and I think we have to bear those thoughts in mind as we try and put together this—these revisions to the Endangered Species Act.

I'd like to ask you a little bit about one of the points you made about looking for—you were referring to Section 10(j) of the Act. And you said in your written testimony, this is basically what you said in your given testimony, to look for guidance at the experimental nonessential sections of the ESA. I take it there you were referring to the fact that currently when an animal species is listed as endangered or threatened, it's really the same as endangered. And perhaps there should be a greater difference there.

In other words, now all of the restrictions that come up when the species is declared endangered exist when it's threatened; and thus, it seems to me it limits—and maybe this is the point you're making—it limits the flexibility of trying to solve the problem. Is that the point you're making?

Senator NOH. That is correct, Senator.

Senator CHAFEE. Could you expand a bit on that, please?

Senator NOH. Well, our primary experience with this comes out of two—the recovery reintroduction plans for two different species of grizzly bear and wolf. The grizzly bear was not handled and it may be handled too, not that it wasn't in the Yellowstone area,

under the experimental new rule and then the wolf is caught where he was. The—my understanding of the experimental nonessential allows for the publishing of an experimental rule which can have all kinds of things in there which can be done. I don't know how they got around the FACA Act, maybe they just ignored it.

For instance, there was direct negotiation between a broad-based Idaho citizens' committee and the individual responsible for putting together the environmentalist impact statement and those responsible for developing experimental rules. And in the experimental rules and the Federal registry, you could get down to such details, for instance, as to whether or not you could protect stock dogs from being attacked by wolves; whether you could treat private land—treat State lands if as if it were private land under the Act and under the rule and all sorts of fairly localized specific elements which provided the flexibility which was needed and which would also withstand the legal onslaughts that you would expect down the road. Much greater flexibility than you could get if you couldn't operate under that experimental rule.

And, of course, the law says that only under certain prescribed circumstances can you use the experimental rule, so I would think that if we broadened the opportunity to use that approach it would help everyone.

Senator CHAFEE. Well, I think that is a constructive thought and I was glad to hear you mention it. You're the first one that has noted that point. In other words, that wasn't raised in Roseburg last Thursday.

I see my time's up. Thank you.

Senator KEMPTHORNE. Senator Gorton.

Senator GORTON. Mr. Chairman, just a couple of observations. The first is that as we listen to this panel, we are listening to people who know much more about the impact of the Endangered Species Act in their lives and the lives of their constituents than we do because they must live with these consequences literally every single day, which leads me to the view which they have all shared that they and the kind of people like them in other States in the country ought to have a much more significant voice than the way in which these decisions are made. I was impressed by Mr. Kerby's use of the caribou where the dynamics of the caribou were created first by a natural disaster and second by human intervention in a different jurisdiction and in a different country, and yet the impacts of the Endangered Species Act are just for the artificial boundary of the United States were very significant—overwhelmingly significant—for him and the people whom he represents.

And I think the second observation that I have, and I would be happy to have any of the members of this panel comment on, is that people like these three State representatives and this mayor—the mayor actually lives in a county that has a great deal of sensitivity toward that natural environment and, I believe, care very deeply about its preservation under reasonable circumstances and about rules in which human beings who are their constituents can live in harmony with that nature. The consequence: I think we ought to listen to what they say.

Senator KEMPTHORNE. Thank you very much.

Senator Thomas.

Senator THOMAS. Thank you. Let's see. I think, Senator Noh, you mentioned public participation. Would you—I don't understand why there's a shortage of public participation. Isn't there a series of hearings? Isn't there a system for people and all that sort of things?

Senator NOH. I may be speaking, Senator, more from the standpoint of less of the formal normal public participation processes. For example, in the listing process, we properly, I suspect, under the Act rely very heavily on science. Traditionally, however, those scientists have operated totally behind closed doors. They have not held public hearings in most cases; they have not invited in non-government scientists. And, for instance, in the deliberations over the bull trout, we in Idaho read in an account in the Spokane newspaper a quote from a BLM biologist that said, we bull trout biologists have set down at a series of professional and trade meetings and—I believe at the University of Idaho at the time—and have talked this all over; we've reached our conclusions and in a few days they will become the law of the land. First anyone knew about it. So, you know, science doesn't have to operate behind closed doors and sometimes scientists can learn something from lay people if they listen as well; although, granted, you have to rely upon the scientists.

Senator THOMAS. So the scientific aspect of it?

Senator NOH. That's just one example, and then I think there are others. Very often the emphasis of the Act is upon Federal decision-making. The Federal decisionmakers have the authority to make the decisions and only through the environmental impact came the process, and maybe some discretionary public hearings which may be perfunctory do you get the input. The focus isn't on spending a lot of time with local people working out solutions before the decisions are made.

Senator THOMAS. What—some of the legislation such as the BLM Organic Act and others do have provisions where the State is—and local governments are specifically allowed to participate. Does your State have an agency and an assignment to participate prior to the submitting the statement stage?

Senator NOH. Under the Endangered Species Act?

Senator THOMAS. Under any Act. Any type of Act. We're talking generally, here, now about the State's—

Senator NOH. Yes, I think Idaho is well prepared. I think another example which causes real problems and has under the salmon situation is where you have multiple States involved. And it would seem to me to make sense that somewhere in that there ought to be some priority given to Governors of the States that are directly affected to sit down and put together their own plan with their own State experts and their State processes and bring that to the table and that ought to have at least as much standing or at least be given as much consideration under the law and in court as the decision which is made by the National Marine Fisheries. At least you ought to have the chance to do that before the final decisions are made.

Senator THOMAS. I agree. And that doesn't happen now.

Mayor Kerby, you really have caribou?

Mr. KERBY. Come on up.

Senator THOMAS. North slope caribou?

Mr. KERBY. We have caribou that have been brought down from Canada walking around now in our county.

Senator THOMAS. I see. Are they endangered then? Listed?

Mr. KERBY. Yes.

Senator THOMAS. And you have—do you—well, I guess what I want to really ask you is what's your opinion of the delisting process? Have you had any experience with that? Does that, in fact, work?

Mr. KERBY. The goals that the biologists have established for recovery of the species seem to never reach culmination so that it's—there's—the process is evidently so undefined, and that—the methodology in arriving to delist that, to my knowledge, there—it doesn't look on the near horizon. However, I was informed by the Boise director of U.S. Fish and Wildlife Service that there is a staff person currently writing that treatise within the agency for the potential for delisting the caribou that they may now have found didn't meet the criteria to begin with, but after, you know, millions of dollars have been spent.

Senator THOMAS. Some of it observed, I think, probably that those teams usually are not excited about unhitching themselves from the chosen Act.

Thank you very much.

Senator KEMPTHORNE. Senator Craig? Senator Craig.

Senator CRAIG. Mr. Chairman, thank you very much. To all of you, thank you for your—I thought—very insightful testimony.

In trying to make a new Endangered Species Act, we're really going to need to use you as a backdrop, especially where it comes to where the Federal Government and its agencies interface with the State and local governmental units. Because I think that that has been one of the great errors in this legislation which is resulting in the kind of confrontation and economic dislocation that we've seen in our effort to save certain species of plants or animals.

To the committee, when you listen to Darrell Kerby, you're listening to a fellow that represents an area that's so overlaid with Endangered Species Act, I think Senator Kempthorne used an overlay of Boundary County that so narrowed the ability for any human activity on its public land base that it has made that county almost a static noneconomic unit. Tremendously frustrating today with three species I believe overlaying the area. And it leads to the kind of confrontational or frustrating approach that Senator Noh had mentioned with the multiples of management, one upon another that don't seem to work collectively together in a positive sense.

And certainly, we are—Lenore Barrett represents an area where I think you are at least at 80 percent or 85 percent Federal ownership.

Ms. BARRETT. That's 95 percent in Custer, and 95, give or take an acre or two, in Lemhi. Those statistics are long-term.

Senator CRAIG. So, to the committee it's important to understand that only 5 percent of the land base that she represents which is probably about the size of Rhode Island and Kentucky and Delaware put together is—only 5 percent is where people can exist. And

the rest is all public lands that are directly affected by the variation we're talking about.

Thank you all very much for your testimony. It's tremendously insightful.

Senator KEMPTHORNE. I want to thank very much the panel of State and local officials. I appreciate it, your testimony.

With that would you please call forward the next panel that will help us with a discussion of Idaho's economy.

Our first speaker will be Ron Gillett from Stanley, ID, who is an outfitter and a motel owner.

STATEMENT OF RON GILLETT, OUTFITTER AND MOTEL OWNER, STANLEY, ID

Mr. GILLETT. Mr. Chairman and Senators, I want to thank you for this opportunity to speak today. I want to give you just a very brief background of my problem. I'm going to get right into that very quickly, a very quick solution by quick solution, one that I have condensed down over weeks and months since last summer, and I have got to do that in 5 minutes. My name is Ron Gillett. I am in an outfitter, I am representing the outfitters and guides of Idaho today and also tourism and recreation. I live in Stanley, ID, in the Sawtooth Mountains. And if you've ever seen the Sawtooth Mountains, you know they'll take your breath right away from you. And I hope Senator Chafee maybe got to see them.

The problem: Last August at the peak of our summer season, all the floatboating on Upper Main Salmon was in limbo of being shut down by the Endangered Species Act. The outfitters 2 years previously had asked to meet with the Forest Service to outline steps that could be taken on the return of the late summer-run Chinook.

In 1992 the Chinook salmon on the Upper Main Salmon were listed as threatened under the Endangered Species Act, and in 1994 they were listed as endangered.

The reason for this listing is that these fish are on the verge of extinction on the Upper Main Salmon. There were only a total of three to five redds in the stretch of river that we float, which is about 10 miles long. The main reason for this catastrophic decline in the number of summer Chinook returning to spawn is there are eight—eight major hydroelectric power dams on the lower Snake and Columbia Rivers which impose at least a 95 percent mortality rate on the young migrating salmon. In fact, at least 80 percent may be killed in the first dam on their way to the Pacific Ocean.

Now the National Marine Fisheries, or NMFS, because of the threatened or endangered status of the ocean-going fish, became the managing agency mandated by the Endangered Species Act. After the listing of the summer Chinook salmon, what had been the jurisdiction by the local Forest Service Administration would now be controlled by NMFS. This Federal agency has limited experience in administering the Endangered Species Act on inland waterways. NMFS certainly is insensitive to outfitter proposals and local Forest Service management strategies. They are too far removed to understand a workable solution and seem to prefer to let the Forest Service make the necessary decisions. They would rather not be involved.

The four Upper Main Salmon outfitters had recently requested a meeting with Mr. William Stelle, the regional director of NMFS to establish a floatboating plan for late summer 1995. We felt this meeting must take place by June 1, 1995, after this date commercial outfitters are in season and business plans implemented.

The Forest Service just recently told the four outfitters that the area director for NMFS, Mr. Ed Murrell, would meet with the Upper Main Salmon outfitters either June 4 or 5. About 10 days ago the Forest Service told the outfitters Mr. Murrell did not want to meet with them at this time as he had higher priorities. Also NMFS would not make a decision on whether to shut the river down in August until August. Outfitters have groups booked and deposits paid. They cannot run their businesses on these of lazy decisions.

Suggestion for a solution: Keep the jurisdiction of the Chinook salmon on the Upper Main Salmon River with local Forest Service managers who have a hands-on knowledge of what is going on and a working personal relationship with the outfitters. Local representation. Local management. This country fought a Revolutionary War back in 1776 over local representation and we need that. We need to get it back home. The Forest Service management people live in our communities; their kids play with our kids; they pay the same bills we do; and we work together to make this thing work.

If we have a management agreement that is working, we can't have over entities come along and upset the process. NMFS and the Forest Service—the right hand does not know what the left hand is doing. The Forest Service people on the local level seem scared to make any decisions. Somebody's got to be accountable. They're passing the buck. We need your political help now. We can't wait 2 or 3 years for this thing to settle down, we've got to get moving on it now.

I'd like to hit just two or three points here in my facts and the rest will be submitted in the written testimony for you to read.

This case on the Upper Main Salmon is likely to set the precedent for all recreation uses on Federal and public lands. No question about it. We have hoped that our efforts might become a model for industry, demonstrating that we can live and work around the endangered species and the Act even if we do sacrifice financially. However, what we are learning is that despite our best efforts we can't. The ESA may be too strict and too complex to allow even the most caring, informed users and managers to implement it.

Where does this thing stop? It's madness.

Senator KEMPTHORNE. And Ron, if you could conclude your comments.

Mr. GILLETT. OK.

Senator KEMPTHORNE. And pick them up again during the Q and A.

Mr. GILLETT. All right. I would just say in closing that obviously you folks have held this hearing to want good suggestions. The resources are certainly here. We do need changes. The right thing to do is to change this Endangered Species Act so we can survive. Thank you.

Senator KEMPTHORNE. Thanks very much, Ron.

Next is Ray Brady who is from Grangeville, where he was a mill-worker.

Ray.

STATEMENT OF RAY BRADY, GRANGEVILLE, ID

Mr. BRADY. It says on this tag here that they gave me when I came in that I am a displaced mill worker. Well, that does not do justice to what's going on. There's a 100-plus people just like me that are in the same boat in Grangeville, and right now the economic impact hasn't quite been felt because we're not all of us run out of unemployment yet. But in 2 or 3 weeks that's going to happen and then the real impact is going to be felt there.

And I attribute this directly to the Salmon Recovery Act. I mean, whatever's going on with the salmon now, and the reason for that is because they've hamstrung the Forest Service to the point that they can't effectively work the way they should be. I mean, if they were to be left alone to do the job that they were supposed to be doing so they don't have this cost overrun and all the rest of it, then maybe, just maybe, they could get some progress going.

We lost out because we didn't have any logs to saw in that saw-mill up there and I think that has a direct relation to it. Now, because of this, I am only one of about five or six people that are coming to school and making the use of the Trade Adjustment Act. And we drive 150 miles a day while we're going to school. And this is an imposition on us. And, granted, it's something that was given to us, but by the same token, we should never have had that happen to us. We are doing it now as a matter of survival.

We had a choice of moving, of going someplace else. Why should we? I chose to live in a small community like Grangeville. I chose to work there. I worked there for 28 years and somebody else in a different part of the country makes the decisions that has cost me my job and my occupation and 28 years worth of experience. Now I'm having to start all over again. I don't have any income; I don't have any insurance for my family or myself; and I attribute it directly to this species Act.

Somebody's got to do something about it. I mean not in the future, I mean now. Now is when it's got to be done because it's affecting all of us. All of the families in Grangeville and all of the smaller communities that are going to be affected by it because, by golly, we thought that when the spotted owl came down that maybe, just maybe, it might end there, but it didn't. They dug up another one, and when the salmon is done, what are they going to dig up next? Are they going to dig up something else and make us move because they want the prairie for a buffalo habitat or something?

Mr. BRADY. I won't comment on that.

But anyway, it's something that has to be addressed now. People are being affected. Sure, I'm not an anti-environmentalist. I love the mountains, that's why I stayed there.

They can laugh if they want to, but this is not a laughing matter, though, because my family is being affected directly by this and—well, that's about all I've got to say, thank you.

Senator KEMPTHORNE. Ray, thank you very much.

And may I just again remind everybody to respect the comments that we hear. They are heartfelt no matter where they're coming from. And so let's allow it to be put out on the table. And in an atmosphere where we can do so without somebody trying to ridicule what's being said. OK.

With that, Jim Hawkins from Challis. Jim is the Custer County Agent.

**STATEMENT OF JIM HAWKINS, CUSTER COUNTY AGENT,
CHALLIS, ID**

Mr. HAWKINS. Thank you, Senator Chafee and Senator Kempthorne, honored panel, ladies and gentlemen. I'd like to thank you first for the opportunity to talk to you this afternoon. My task here today, as I understand it, is to try to talk to you about the impact on the local economies as the result of the Endangered Species Act. I'll try to do two things in the allotted time—and I hope that's not mine.

Senator KEMPTHORNE. That's not yours.

Mr. HAWKINS. First, I'll try to give you data on the impact in Custer County related to recent activities of the Endangered Species Act, and then provide an example of why local economies must be considered in any reissuance of any Endangered Species Act.

Custer County economies, as are many of the economies in Idaho and in the West, are dependent upon natural resources for their income. Whether our income is derived from grazing, timber, mining or tourism, we are at the mercy of the whims of the Federal Government. Public lands account for 96 percent of the 3.2 million acres in Custer County. Anything we do to make a living must in some way come from those public lands.

Currently, mining, agriculture and timber make up 71 percent of our economic base; visitors, tourism, and recreation account for about 10 percent of our economy; and government and all other account for the other 20 percent. Our employment base is dependent upon mining for 36 percent of the jobs; agriculture, 23 percent of the jobs; visitors, 18 percent; and government and all other, 23 percent.

Recent court activities point out very clearly what the effect of the Endangered Species Act can be on communities that are resource dependent. Had the injunction filed by the Pacific Rivers Council been allowed to stand, the impact could have been devastating to Custer County's economy and employment base. The shutdown of activities on National Forest lands would have amounted to a 38 percent decrease in our earnings, a 33 percent loss of jobs. There were five other National Forests and numerous other communities involved in the Pacific River suit that would have had a similar scenario.

One point to keep surfacing in every discussion since the first Environmental Impact Statement was written on the Challis Unit of the Bureau of Land Management in Custer County was that we could survive on tourism. Using a computer model developed for Custer and Lemhi Counties, I calculated what it would take to offset a 10-percent decrease in the income from the county's largest employer, the mining sector. A 10-percent cut equates to a \$1.8 million loss in earnings, and a loss of 51 jobs. If tourism was to

take up the slack, there would have to be a 375 percent increase in tourism dollars to offset that loss in earnings. Total employment would surge by approximately 280 jobs on the full-time equipment. But at what cost?

Tourism, at best, is seasonal, especially in Custer County. Typically the season in our county lasts from mid-June through Labor Day with a small spurt during the hunting season in the fall. If we call this very conservatively a 5½-month season, this would create part-time work force for 610 people. We have already seen the impact of a seasonal minimum wage-type jobs that are generally associated with tourism. This type of employee does not typically own a home, nor pays property taxes. Generally they do not have medical benefits; they buy very few goods and services; and if they—they tend to draw worker's compensation in the off-season; and they add to the cost of the indigent role of the county if they need medical care. And what about additional cost to the county for such things as emergency medical services, fire, police, garbage removal, all of whose support comes directly from tax revenues.

Even if there were ways to cope with the problems created by this increased employment, what are we going to say to the people that are supposed to pay the bills? There has not been a new campground built in Custer County since 1972, and the only reason that one was built was that it was funded prior to the creation of Sawtooth National Recreation Area. There are—there have been a few campgrounds since that time that have been upgraded, a few have been closed, but there have been no new ones built. Figures from the SNRA just this past week would indicate that we were turning something over 200 campers a day away.

We can build on private ground perhaps, but who's going to fund it? Do you know a banker that is willing to fund on a build-it-and-they-will-come attitude? Even if we could find the capital to build the facility, we are going to destroy the lands we are going to protect. Private ground in Custer County and other arid areas of the West are on the valley bottoms along the rivers and streams. In Custer County over 90 percent of the spawning beds for the endangered salmon are on private ground.

I hope that I have shown you the impacts of the actions under the current Endangered Species Act on small communities that are dependent on natural resources. If we are to maintain the social fabric and the viable economies of rural Idaho and the West, we must keep natural resource based industries healthy and functioning. To cripple them is to destroy the history, custom and culture of the rural communities in the West. And with their demise, so goes the county forms of government.

Thank you for your time. You have a large undertaking before you that is fraught with a lot of emotion, I wish you well and I hope you will keep my comments in mind.

Senator KEMPTHORNE. Jim, thank you very much.

Now Phil Church who is from Lewiston. He is president of the United Paper Workers International Union.

STATEMENT OF PHIL CHURCH, PRESIDENT, PULP AND PAPER RESOURCE WORKERS COUNCIL UNION LOCAL, LEWISTON, ID

Mr. CHURCH. Thank you. Good afternoon, Senators. Welcome to Idaho and thank you for holding this field hearing in Lewiston. And to you, Senator Kempthorne, a special thanks for bringing it here.

My name is Phil Church and I am the president of the United Paperworkers International Union, Local 712, representing about five hundred members.

I believe there's a consensus among our members that the Endangered Species Act as currently written and implemented represents a needless threat to our way of life and livelihood. The Act needs changing to make it more flexible and user friendly for those of us most affected by it.

I'd like to point out that we reach this conclusion after a long and frustrating effort to work within the current ESA. From the beginning, our union leadership has continually encouraged our members and the surrounding communities to strive toward middle-of-the-road, common sense solutions that strike a balance for the communities and the species involved. I might add that our members have been actively involved in a number of issues, but I'd like to emphasize our experiences with the reintroduction of the grizzly bear because it illustrates our frustration with the current system.

When reintroduction of the grizzly bear first came up, the Resource Organization on Timber Supply, or ROOTS organization, which our unions have participated in directly, decided to not take a wait and see approach. Instead we decided to get actively involved. Our initial position was no grizzly bear reintroduction. Very quickly we realized this was an extreme position and was not warranted by the facts. So we changed our position to support reintroduction of the grizzly bear as a nonessential experimental population in the Selway-Bitterroot Wilderness.

Interestingly, wildlife conservation groups and citizens groups quickly contacted us. By working with these groups we reached agreement on several key issues. We eventually achieved a solution that was biologically sound and supported by a wide range of wildlife groups as well as local community interests. Surprisingly, this broad-based solution had only one strong opponent—those in charge of implementing the reintroduction of the grizzly bear.

Those of us in the union movement are proud of the successes we have achieved and we are determined to seek common sense middle-of-the-road solutions surrounding the Endangered Species Act. But we need your help.

I think we have proven that some of our greatest successes can be achieved by giving communities impacted by the ESA the opportunity to determine how their concerns will be addressed. We all recognize the need for balance—balanced approaches that address the needs of listed species and those affected by actions taken to protect and recover the species. But we become rightfully annoyed when communities are invited to provide input, but realize early on that the final outcome has been predetermined by an inflexible Act that excludes the interests and concerns of the citizens. There must

be provisions in the Act for meaningful participation of those stakeholders directly affected by actions undertaken through the ESA.

There are many ways to improve the Endangered Species Act. Recognizing the families, jobs and communities involved and ensuring their voice is a part of the final resolution and is one very important way it can be improved, clearing the way for true balance to be achieved.

On the back of my testimony you will find—at the last page of my testimony, Senators, you will find a map of Washington, Oregon, Idaho, and California, Montana and identified communities that have been impacted through mill closures. There's very little balance with ESA when you look at the number of the communities impacted by this Act.

I thank you for letting me make this statement and I would be happy to answer any questions.

Senator KEMPTHORNE. Phil, thank you very much.

And now Sherry Colyer from Bruneau, Local Citizens Alliance.

STATEMENT OF SHERRY COLYER, LOCAL CITIZENS' ALLIANCE, BRUNEAU, ID

Ms. COLYER. Mr. Chairman and members of the subcommittee, thank you for allowing me this opportunity to testify before you today.

I come to you on behalf of the Bruneau Valley Coalition. This coalition represents the following five groups: the Idaho Cattle Association, the Owyhee County Cattlemen's Association, Idaho Farm Bureau, Owyhee County Farm Bureau, and the Owyhee County Commissioners. This Coalition was formed to defend the communities of Bruneau and Grand View, ID, from the listing of this six hundred fifteenth species that would be protected under the Endangered Species Act: the Bruneau Hot Springsnail.

Allow me to tell you the story of the Bruneau Hot Springsnail. This listing has threatened the livelihood of approximately 60 family farms and ranches, many of which have been in the same family for over 100 years. Bruneau is a small town by any standards. Agriculture is the sole economic base to support our school system. Part of my responsibility as a school board member includes budgeting. Without this stable economic base our school district would cease to exist. A century of productive, hard working, tax paying citizens would also parish.

The Bruneau Hot Springsnail is equivalent to the size of a poppy seed. It can be found of concentrations of a few to more than 20,000 per square meter. These snails mature and reproduce quickly and in large numbers.

In January 1993, the U.S. Fish and Wildlife Service, over the objections of the Idaho Department of Water Resources, listed the snail as endangered. This came after two conservation groups filed suit to force the U.S. Fish and Wildlife to list.

Because Bruneau is a high desert area, irrigation water is a necessary commodity to family farms and ranches. Annual rainfall is only 7.9 inches. Without irrigation water the family farms and ranches have no value. The only option the people had to protect their irrigation water was to file a lawsuit against the U.S. Fish and Wildlife Service, in essence, our own government.

In May 1993 the coalition filed suit against U.S. Fish and Wildlife Service on the grounds of numerous procedural errors under the Administrative Procedures Act and the Endangered Species Act. A lack of sufficient scientific evidence also existed. Tremendous disagreement among qualified hydrologists as to the inter-relationship between agricultural pumping and spring flows exist. Yet they will bet our livelihood they are correct and everyone else is wrong. No hydrologist can predict with any certainty that stopping irrigation will increase snail habitat.

In December 1993, U.S. District Judge Harold Ryan ruled the listing was "arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law." This was the first listing that was set aside through the court action. However, the decision was appealed by the two conservation groups who had become interveners to the Ninth Circuit Court of Appeals. That trial was held in October 1994 in Seattle, WA, and 8 months later we are still awaiting a decision.

We have spent \$163,000 in legal fees and research through the time the appeal was filed and another \$50,000 since the appeal. The people of these small communities had to raise the necessary money to support the legal expenses and research. There were no large corporations or sugar daddies bankrolling this effort. The money was raised through individuals assessing themselves and grass roots efforts.

The Bruneau Valley Coalition recommends a system with a balance of power. State and local governments need to be a part of the process in determining listings, critical habitat and recovery plans. Adequate science with independent peer review in consultation with locally elected officials is essential with any action. Agencies should be required to use more than the best commercial or scientific information available. Property owners need to be compensated if their business is affected by ESA. Currently, a tremendous imbalance of power exists. The U.S. Fish and Wildlife Service needs adult supervision and brought under control.

In the children's book, *The Little Engine That Could*, the little train keeps going up the hill saying, "I think I can, I think I can." That's exactly what these small communities have been saying for the past 11 years. Now we are asking for your help in rewriting the Endangered Species Act to provide greater protection against the government in taking away a precious way of life. Not only is this our way of life, but it is also our homes.

Thank you again for your time and consideration.

Senator KEMPTHORNE. Sherry, thank you very much.

We now have Dave Wilson, from Ketchum. Dave is on behalf of the Homebuilders Association.

STATEMENT OF DAVE WILSON, IDAHO HOMEBUILDERS ASSOCIATION, KETCHUM, ID

Mr. WILSON. Thank you, Mr. Chairman and Senators. Good afternoon. I'm pleased to be here on behalf of the National Association of Homebuilders and their 185,000 thousand members.

I'm not here to testify against the Act, but I'm here to let you know that NAHB supports legislation designated to protect endangered species. We merely want it to be effective, equitable and effi-

cient. Recently a group of builders, including myself, read and scrutinized the entire Act and its regulations. We wanted to fully understand the law and the legislative history before recommending any reforms to our board of directors. We want to be viewed as part of the solution, not the problem. Today I'd like to focus my statement on the three most important reforms. While no single reform is a panacea, reform in these areas can solve many of the problems homebuilders face with the ESA.

First, the listing process needs to be based on good science. Second, we want the government to follow its own rules on designation of critical habitat. Third, we want a permit process for private applicants that is fair and reasonable as the permit process is available to Federal agencies.

The keystone of the Endangered Species Act is the listing process. The listing of a species as threatened or endangered triggers significant land use restrictions and requires Fish and Wildlife approval of land development activities.

The process should be based on sound thorough science; it is not. The process should be open to the public at all stages; it is not. The listing process should include the identification of critical habitat; it routinely does not.

The second issue of importance is critical habitat and Fish and Wildlife's disregard for the mandate to designate it in a timely fashion, if at all. Just like us, wildlife species are dependent upon their home or habitat to survive. Congress understood this concept when it directed Fish and Wildlife to designate critical habitat for all the listed species. Critical habitat designation plays an important role in the act's goal for recovery. When critical habitat is not designated, Fish and Wildlife wields a de facto veto over all land use and all potential habitat—an Act clearly beyond the scope of their authority. Unfortunately, Fish and Wildlife has designated critical habitat for less than 22 percent of the listed species.

Congress should mandate the designation of critical habitat at the time a species is listed. There should be no exceptions. Listings should not be permitted without critical habitat designation.

The permit process also requires reform. Fish and Wildlife currently grants Federal agencies preferential treatment in the permit process and holds private applicants to a higher standard. The Section 10(a) permit known as the habitat conservation plan is the sole remedy to the act's land use prohibitions for most land owners. Unfortunately, since 1982 only 40 such permits have been approved.

In contrast, Section 7 permit is the process available to Federal agencies which includes firm deadlines for making decisions. There are no deadlines in Section 10. The permit process also allows Federal agencies to consult with Fish and Wildlife prior to submitting a permit application; the Section 10 process does not. Private land owners want the same treatment as Federal agencies. Congress should impose mandatory deadlines comparable to those applicable to Federal agencies. Applications under Section 10 should be permitted to request pre-act application consultations.

A written testimony includes a comprehensive list of reforms we'd like to see. Today I focused on the three most important. Builders want to be sure that species listed by the Fish and Wild-

life Service are truly threatened or endangered. A listing process on good science can clearly provide that. Second, builders need to know whether their activities are regulated. The designation of critical habitat will delineate what land is unconstrained from Federal land use regulation. Third, builders want the Section 10 permit process to be as predictable and functional as Section 10 is—excuse me—Section 7 process is for Federal agencies. Section 10 can provide that reform. Thank you.

Senator KEMPTHORNE. Dave, thank you very much.

Ron, let me ask you this question, from your perspective with outfitters and guides, you're a motel owner, how important is it to your business that your customers can go out and can catch salmon? If we were to lose the salmon, how adversely would that be to what you're trying to accomplish economically?

Mr. GILLETT. First of all, the salmon on the Upper Main Salmon River are doomed. As I said in the earlier statement, there were three to five redds last summer on the ten-mile stretch that we float. If you go on those figures, there are going to be no salmon redds in that stretch of the river this summer. The SNRA was established on August 22, 1972. The SNRA is one of the objectives in that it was to enhance recreational activities.

So, we have trout fishing; we have lake fishing; we run the river; we offer float trips. The little town of Stanley, ID, depends on tourism. It's seasonal, as this man suggested earlier, 85 to 90 percent of the income of our community is tourism. These people are going to take float trips; they're going to go right on with life. Nobody wants anything to happen to the salmon or to have them go extinct, but we're in a no-win situation. I mean, should we all go out of business because there's going to be no more salmon there? We've got to be reasonable. I hope that answers it.

Senator KEMPTHORNE. All right. Thank you.

Phil, Mr. Church, you've had firsthand experience, as you related to us, on the grizzly bear situation. What sort of advice could you give to other communities on how they could avoid conflict with ESA and, in your case, come up with a win-win solution?

Mr. CHURCH. I don't know if there's a way to avoid the conflict. Either way you're still going to consult with agency responsible for the reintroduction. The best thing I could recommend to the other citizens is to keep trying. When you're told, no that won't work, you know, form your own groups, communicate with them, bring together your own ideas. Keep sharing them, eventually you'll get an ear from one of those groups. That's the way we did it and that's the way it's been working for us so far.

Senator KEMPTHORNE. OK. And Sherry, in your case with the Bruneau snail, give me an idea as to the banks, their attitude whether there's even the supposition that something may be listed, what impact could this have on farmers and ranchers when they go to the bank to get a loan? Does that create such a cloud that the loan is in jeopardy? Or is the bank going to wait for the listing? What's the situation?

Ms. COLYER. Private lending institutions are very much uneasy about a listing in their area. We were—ourselves, when we went to the bank to get our operating lines for the year, we were ques-

tioned about what the possibility was going to be on the listing; what it was going mean to the irrigation water in the area.

We are very fortunate that we go to a private lending institution. There were 13 farmers and ranchers in the area depend on FMHA loans. And because of the listing and the consultation process, U.S. Fish and Wildlife Service is able to consult with FMHA and deny other farmers and ranchers their loans. To head that off we filed for summary judgment and reached a decision through the court system to—when the snail was delisted to defer any of those possibilities from happening.

So, so far we've been able to play a proactive approach and not had any adverse affects.

Senator KEMPTHORNE. All right. Thank you.

And Jim, just if you could, I think this is important, could you just sketch for me the income stream of the formal conditions for a county? For the schools? For your infrastructures—some of those that are impacted because of the Endangered Species Act?

Mr. HAWKINS. I read your question earlier; I'm still trying to figure out what you want. But, Senator Kempthorne, the normal stream would be the same stream we would have with an endangered species listed. Those moneys have to come from the private property taxes within the county. Currently, if we could give an example, our indigent budget is a \$122,000. That is 21 percent of the overall tax budget for Custer County. That figure conservatively would double or triple with the kind of growth that we talk about in the tourism industry, and the money would still have to come from the private land owner. That's where the money would come from.

Senator KEMPTHORNE. Thank you.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. Mr. Chairman, I think this is has been a very good panel, as was the previous one, likewise. And I think that the illustration that Ms. Colyer gave was very moving testimony. It does seem that something's going wrong here when all the burden on is put on you in the small community trying to raise money to contest a ruling that's been given out the way you've very vividly described it.

And it seems to me this gets back to the—to the point that both Senator Kempthorne and I made in our original remarks about trying to have some system whereby there's incentive if this springsnail is discovered, and if it is an endangered creature, there is some incentive for the landowner to take the steps and not at all be a punishing system the way it currently exists.

Whether it could be—and I'm not sure what kind of inducement it could be, but something that it wouldn't end up in the very adverse situation which your community is caught under.

Mr. Church, you included a map of the mills enclosed in the—in the—not only this area, but Oregon likewise. In looking at that, there's a lot of mills on that map. My question to you is this. What percentage—what number of those mills do you think closed because of problems arising in the Endangered Species Act? Do you have any rough idea or other governmental laws or what ones came about because of the circumstances unrelated to that? Have you done any studies to that effect?

Mr. CHURCH. I'd have to say 95 percent-plus. I've known several of those—a lot of them are my friends. My—I do a lot of communications with those people. And very, very few, if any of them, were not related to—directly to—the Endangered Species Act or government actions.

Senator CHAFEE. I meant the Endangered Species Act—that would be because they weren't permitted to take the lumber off the Federal forest due to the fisheries regulations or efforts to save the salmon, for example?

Mr. CHURCH. That's correct.

Senator CHAFEE. Would that be the usual circumstance?

Mr. CHURCH. Yes, sir. That's the spotted owls and—that's correct.

Senator CHAFEE. Yes, but I don't believe the spotted owl situation has arisen in Idaho?

Mr. CHURCH. Correct. But in western Washington, Oregon, and northern California it has.

Senator CHAFEE. OK. It seemed to me the points you made—Mr. Wilson, I think you're entitled to decisions and that's one of the things that is just not apparently forthcoming, also in your testimony I think you said having had made the decisions made by the—not by the NMFS but by the Fish and Wildlife. Is that what you were recommending?

Mr. WILSON. Well, NMFS—in our situation we have the outfitters on the Upper Main Salmon, we have the SNRA Forest Service management people, and we have NMFS. The Forest Service will not make decisions or the decisions that they do make are usurped by NMFS. But we can never get a chance to talk to NMFS.

Senator CHAFEE. Yes.

Mr. WILSON. And as there—

Senator CHAFEE. They're off in Portland someplace or in Seattle.

Mr. WILSON. Well, you're right. You're correct. And recently the man that we were supposed to meet with on June 4 or 5 doesn't want to talk to us because of higher priorities. But he is the same gentlemen who is going to pass along information back to Washington, DC, and somebody's going to make some harsh decisions on all of us.

Senator CHAFEE. OK. I see my time's up. Thank you very much, Mr. Chairman.

Senator KEMPTHORNE. Thank you very much.

Senator Gorton.

Senator GORTON. Mr. Church, I'd like to follow up on Senator Chafee's question. Do I take it correctly that what you're saying is that the overwhelming majority of these closed mills are relatively small independent mills that don't own—they don't own their own land and so with timber supply and they depend on government-owned timber for their own use?

Mr. CHURCH. That's 100 percent correct.

Senator GORTON. And that the primary reason for the closure of most of them was the drying up that supply?

Mr. CHURCH. That's correct. That is the primary reason. The drying-up supply; the supply of Federal timber is causing the declining jobs in the Pacific Northwest.

Senator GORTON. Mr. Brady, you work or did work at a mill that was relatively like that? How many people among your friends in the community are in your shoes?

Mr. BRADY. Practically all of them. And I would say probably out of a hundred of them, probably about 95 of them. There's a few of them that managed to find good-paying jobs or some of them moved out of the county, but for the most part, some of them are still hanging on because of the unemployment. There is a few of us that are going to school.

Senator GORTON. But that was—you sort of anticipated my next question. What other alternatives are there for you and the people who are in your situation?

Mr. BRADY. Just either leave and move or go to school. Because there isn't no other mills in Grangeville. There used to be—once upon a time there were about five of them and now there's none. There's a planter mill that used to be Idapine. That's the remnants of Idapine is bought out by Bennett Lumber and that's it. There are other alternatives, I suppose. There's a small business that's moving into the area according to the economic recovery people in Grangeville, but I haven't any concrete information on that.

Senator GORTON. What are you going to school to learn to do yourself?

Mr. BRADY. Hopefully I plan on starting my own business in major appliance repair, but that's 2 years away from now. And in the meantime, like I stated before, I don't have any insurance; I don't have any income other than unemployment, which runs out in 2 weeks and JTPA which was taken over by the TAA program. And while we're not in school that isn't in effect, so I wind up having to scrounge for whatever money I can get for my family.

Senator GORTON. Is there room for an appliance repairman in Grangeville or are you likely to get that?

Mr. BRADY. Yes, there is.

Senator GORTON. Thank you.

Senator KEMPTHORNE. Senator Thomas.

Senator THOMAS. Mr. Wilson, what do you think composes good science? And how do you get there?

Mr. WILSON. Well, we found in studying the Act entry in which a lot of the science—for instance, its listing of the fairy shrimp in California was based on four sentences on a piece of paper saying that the species was threatened without any backup documentation.

The only problem—current problem in the Act that you heard before is that there is no public view of that scientific data until the species is listed and the Act takes full effect. And so what we're concerned about is that the best available science is used in the listing process that's opened so that land owners can, if their land is going to be affected under the designation of habitat, that they can also produce their own science to try to bring credibility to the listing of the species before it is listed.

Senator THOMAS. So this now, not only is good science, but it's none at all?

Mr. WILSON. That's correct. And our opinion is still that—be that you're always going to get scientists to disagree. And we're not here to propose that we do that. What we do propose is that the sci-

entists meet some minimum standard. And we don't under, I think, the current Act, there is no standard of what science is.

Senator THOMAS. Well, but I suppose it's hard to define. Is the notion that you mentioned the first time over it that some of the local academic institutions should be asked to participate? Would that provide good science?

Mr. WILSON. Yes. And we'd like to see the local government and local property owners notified if their species—if their habitat is designated in that area so the private land owners and developers so that they can hire scientists or biologists to come up with a rational conclusion.

Senator THOMAS. What was the appeal process, Ms. Colyer, or the substance of your lawsuit? Was it the science? Validity and the value of the science?

Ms. COLYER. It was based on procedural errors that U.S. Fish and Wildlife Service did not advertise properly to let the people in the area comment on it. They closed the comment period early and before the comment period was even closed the Boise district office had sent over their final decision to the Portland office to make a listing.

So, in essence, the people's local comments had no input whatsoever.

Senator THOMAS. The appeal process needs to be reformed. I think we're looking at it and some other things in terms of perhaps there should be something the department should advertise that there is a need to do this. And the other is that to be able to appeal to a relatively neutral party.

Do you think there are Hot Springsnails somewhere else or are they all in your community?

Ms. COLYER. We don't really know. And I guess the U.S. Fish and Wildlife Service doesn't really know, because the Act as it is written doesn't make them go outside and look for the snail anywhere else.

Senator THOMAS. So, if there were a bunch of them down in Arizona that wouldn't count?

Ms. COLYER. There are only three trained malacologists that are west of the Rockies to be able to go ahead and be able to positively identify the snails. So there's a lot of hot streams all over the United States and we feel that these snails could be elsewhere also.

Senator THOMAS. Seems to me that—like the caribou thing—there's no shortage of caribou or no shortage of wolves, for that matter. And that may not be in that particular case.

You had 97 percent, did you say, public land in your town?

Mr. HAWKINS. Ninety-six, yes.

Senator THOMAS. What's the breakdown between forest and BLM?

Mr. HAWKINS. About 67 percent of it is forest the remainder is BLM.

Senator THOMAS. Do you see a particular difference in the way that environmental Act or the Endangered Species Act is administered between those?

Mr. HAWKINS. I'm going to have to do one thing. You're now asking me something that is beyond my role as an educator, so I'm

going to pick up my hat and put it over here. I'm no longer the county agent; I'm now a citizen of Custer County. All right?

Senator THOMAS. Put it wherever you want.

Mr. HAWKINS. What we see now is that the BLM is following the Forest Service's lead. Back when the AIS's were written in 1973, we were the first DIS written under the NRDC suit. The BLM wore the black hat. Now today I think that is kind of turned around; the Forest Service tends to kind of have the black hat on. The BLM is, maybe smartly, is following the lead of the Forest Service. The Forest Service seems to be catching the flack with the BLM following suit.

We're seeing the same kind of regulations imposed by the BLM even though they haven't got any direction to do so. But the Forest Service is enacting, especially, with National Marine Fisheries Service and the salmon situation.

Senator THOMAS. Thank you very much.

Senator KEMPTHORNE. Senator Craig.

Senator CRAIG. Mr. Chairman, for the record of the committee, I thought there were—while all testimony was tremendously significant, I thought there were two points that were extremely valuable as you examined the Act itself.

Sherry Colyer from the Owyhee County in Bruneau and the experience they've had down there is really a conflict in agencies and science and the interpretation of science. We've all thoroughly discussed that and are frustrated by the absence of good science and peer review in the public eye. For the record, it is important to recognize that the Idaho Water Resources and U.S. Geological Survey disputed the analyses of U.S. Fish and Wildlife Service as it relates to water qualities, quantities and the risk of the springs in which the salmon resided in were at.

Now that was known before the listing, Mr. Chairman, but it was ignored openly and blatantly. And that is partly procedural, but it is clearly science. And while the Federal judge ruled on procedure, many of us for the purpose of arguing the science wished he had ruled on the science because there was clear dispute between credible agencies. I'm not disputing the U.S. Fish and Wildlife Service. I'm saying, Mr. Chairman, when those kinds of differences exist, there ought to be a pause to examine. There was no pause, in fact there appeared to be a rush to judgment.

Second, Phil Church has mentioned something that is extremely interesting. The creation of the organization ROOTS and their effort to work cooperatively with environmental groups, and for them to come to common ground to be ignored by the Federal agencies. That to me is unbelievable. We have groups here today who are in conflict in their interests over this Act, and yet here is an example of the conflict resolved or largely resolved in common ground found only to be ignored by the Federal agencies involved. And, of course, that speaks to the Act and the inadequacies of the Act in the ability of those agencies to accept those kinds of resolutions.

So, Mr. Chairmans—Chairmen, plural—as we examine this Act, I think those are two very loud examples of some of the problems we face. What Mr. Gillett has also said, you, Dirk, and I have been involved since last year in trying to solve their problems. Now we have challenged the Federal agencies involved as much as we can

politically. Not on the decision they ought to make, but on the fact that they ought to make a decision, and they ought to do it in a timely basis. We did not prejudge them, nor was it our intent to; our intent was to kick them in the behind to make a timely decision. And as you have just heard, they have chosen yet not to do so.

Therein is a phenomenal frustration just in the sheer management of business which associates with public lands.

Let me thank the panel very much for some very insightful testimony.

Senator KEMPTHORNE. I, too, want to add my appreciation of the this panel for all of your input for the situation that you have related to us. So, thank you very much.

Let me now please invite the third panel to come forward. Our first speaker on this panel will be Rick Johnson who is the executive director of the Idaho Conservation League.

Rick, welcome.

STATEMENT OF RICK JOHNSON, EXECUTIVE DIRECTOR, IDAHO CONSERVATION LEAGUE

Mr. JOHNSON. Thank you. I am pleased to be here as a representative of the conservation community. We're talking about threatened species. I think as a conservation representative—

Senator GORTON. Could you pull the mike a little bit closer?

Mr. JOHNSON. I think as a representative to the conservation community, I'm probably one step removed from the bottom of the food chain myself in the political world right now, but I noticed there are no Federal employees here, so I may be at the bottom.

We're here because the ESA has been turned into a symbol, a tangible target of fear and frustration with the Federal Government, and anger over Federal agencies that appear clueless in the face of collapsing watersheds, ecosystems and economies long dependent on public lands.

Frustration, frankly, is understandable. We've heard some good reasons to be frustrated, but the ESA's the wrong target. Getting the agencies to follow other environmental laws would be considerably more useful.

Senator KEMPTHORNE. You have helped preserve habitat along the Boise River and at the Snake River Birds of Prey Conservation Area. It is my hope that you go back out to Birds of Prey, and take some time in the empty silence above the Snake River as you consider your momentous task. I also urge to you to come home, Senator. Please hold a hearing in Boise and hear what your neighbors say their concerns are in the Endangered Species Act. I have many names here from all over southern Idaho, folks that couldn't come today because of distance involved. Idahoans are looking for a fair deal and that means following the laws. In most of all the celebrated conflicts over species protection under the ESA, if other conservation laws were followed, there would not have been the need to use the stricter measures of the ESA. The reasons other laws are not enforced are simple. They lack the teeth required for compliance; they're subject to political interference; and generally don't punish the slow and ineffective plodding the Federal Government

has raised to an art form. The ESA is unique in its enforceive action. Other conservation laws don't.

For instance, had the Northwest Power Planning and Conservation Act been followed, we still might have a viable salmon population in Idaho. If the National Forest Management Act had been followed in the Pacific Northwest, we may never have heard of the spotted owl.

It is vital that we as a society understand that certain values we cherish cannot be addressed in simple market economics or even local politics. Clean air, clean water, Idaho's wild rivers and wild places, they're values we as Idahoans care for just as much as our safe streets and decent schools. How do we put a value on these? Perhaps it's impossible. Perhaps it's more likely irrelevant. These are benefits of being Americans, and more to the point, benefits of being Idahoans.

There are, however, very real issues of economic justice to consider with protecting species. The ESA has not had a harmful effect on State economies. A March 1995 study by MIT "strongly contradicts the assertion that the Endangered Species Act has had harmful effect on State economies."

The ESA is not blind to people and economics. The MIT study concludes or continues, "political, economic and social considerations permeate the listings process. In fact, for every tale about a project, business or property owner allegedly harmed, there are over one thousand stories of virtual 'non-interference'."

The ESA is not having a significant impact on Idaho's timber industry. Despite claims of lost revenue and board feet due to ESA consultations, Idaho's timber industry employs more people today than it did a year ago, and public land timber sales being offered this week have gone by without bidders from industry because of a directed market.

This changing economy of the West is leaving Americans behind and that is wrong. In their hurt and anger, these Americans are lashing out at what they can see, public policy to conserve and restore species. They are not lashing out at what they cannot see, but which affects them far more, the vagaries of economic uncertainty in places which usually or that have always had volatile economies.

We ask the committee not right these wrongs by writing law which helps species less. The ESA emergency room is in a situation where the whole health care system needs repair. Don't gut the ESA in response to frustration with other issues.

It is time we view the big picture. We need to protect entire ecological systems, be it prairies, watersheds, mountains or valleys, city green spaces or the Arctic.

For the good of the natural world and for the good of the public's confidence in government, we wish you luck.

Senator KEMPTHORNE. All right. Ladies and gentlemen, again, we'll allow that and call that our seventh inning stretch. But I would just encourage you not to clap out loud. We now have others who feel they must respond. So, we'll get it out of our system and move on now.

Sam Penney from Lapwai, who is the chairman of the Nez Perce Tribe.

STATEMENT OF SAM PENNEY, CHAIRMAN, NEZ PERCE TRIBE,
LAPWAI, ID

Mr. PENNEY. Thank you, Senators. My name is Sam Penney, I'm chairman of the Nez Perce Tribal Executive Committee, which is the governing body of the Nez Perce Tribe. The Nez Perce Tribe has originally advertised territories that encompassed all of north central Idaho as well as extended portions of northeastern Oregon and southeastern Washington. And also Docket 175 from the Indian Claims Commission reports that the Nez Perce Tribe had exclusive use and occupancy of 13 point two million acres at one time.

I would like to welcome Chairman Kempthorne and the distinguished Senators to Nez Perce country. And I'm glad that you're having this field hearing here in this area where a lot of the issues are.

There are two things that I have come across that I think are very important when we look into these issues of reauthorizing the ESA. And I think they apply because I think when you undertake this difficult work of trying to determine what should be in the ESA, I think if you keep these in mind, I think there should be a guide in how this reauthorization should take place.

The first one was that regarding Adlai Stevenson II when he said, "We can chart our future clearly and wisely only when we know the path which has led to the present." So, I think we need to look at all things that have had happened up to this point, and hopefully we will not make those mistakes again. But I think that saying we should keep in mind at all times.

The other saying is from one of the past tribal leaders, and I'm not sure exactly which tribe it was from, but he quoted that "It is not for ourselves here that we are speaking; it is for those that are to come." So I think I'm speaking on behalf of future generations of people that will inhabit this earth after we are no longer here.

The Nez Perce people have always had a unique relationship with the natural environment and that of the surrounding cultures. Salmon, for example, have been an essential food for the Nez Perce people since time immemorial. Fish are also of great cultural and spiritual significance to the Nez Perce people. Salmon have been and are an integral part of our very existence. The demise of the salmon, likewise, means destruction of these traditional religious and cultural practices.

In 1855, when the Nez Perce Tribe was contemplating the treaty with the United States, certain rights were retained and reserved by the Nez Perce people. The Nez Perce Tribe, in doing their part regarding of the some of the species that are in question, the Nez Perce Tribe has imposed self-limitations on exercise of treaty reserved rights has been necessary for several years because of the Tribe's belief that resources are at risk.

Consider, for example, the fact as a matter of tribal regulation, we have not allowed a fall Chinook fishery within our reservation activity area for over 30 years. Our practices and objectives have always been similar to the intent and purpose of ESA.

Today the ecosystems have been so degraded that the original state of balance may never be regained. This is a very depressing prospect for the future, but it is no reason to eliminate the protections afforded under ESA.

One of the questions asked of me in Senator Kempthorne's letter that I received is, is the Endangered Species Act working. Clearly the Act has not been as successful as it was envisioned. However, the remedy for this problem is not to throw out the protective language of the Act, but to administer the law in such a way as to have a direct and positive effect on the ecosystem.

An example of questionable implementation of the ESA is the application of the jeopardy standards in determining the risks that a certain action has on a listed species. It is simply unreasonable that operation of hydroelectric dams is considered not to jeopardize the endangered fish runs while the taking of minimal numbers of fish for tribal ceremonial and subsistence purposes is held out as a possible threat to the same runs.

Some of the other problems that the Tribe sees with the ESA are some of the definitions that are utilized. One being the definition of an evolutionary significant unit and the other would be the distinct segment population. We feel that some of these determinations on some of definitions that are utilized have a detrimental effect to recovery efforts.

Also when we talk about timber salvage logging, that I think if there are necessary protections that are done that are to protect the recurring runs of fish habitat that the Tribe, with those measures in place, could possibly support such logging.

Also, Mr. Chairman, I know my time is almost up, but I had several things that I wanted to talk about while I was here and it is in my testimony. I think one of the things that has been of great debate has been the economic impacts resulting from enforcement of the Act. And we do have several tribe members that work at Potalatch Corporation. I myself have worked at Kamiah Mills for 10 years before I had taken a position within the Tribal Government.

Mr. Chairman, I would like to conclude that when we urge any consideration of ESA that the Nez Perce Tribe would like to recognize and honor. And back on January 14, 1879, Chief Joseph spoke to a large group of the cabinet members and congressmen and diplomats of Washington, DC, and what he said was, "I've heard talk and talk but nothing is done. Good words do not last long until they amount to something. I am tired of talk that comes to nothing. It makes my heart sick when I remember all the good words and all the broken promises."

So we've heard a lot of good words spoken today and all I can hope for is that these words do not come to nothing, that some action is taken to address the reauthorization of the Endangered Species Act.

Thank you, Senator.

Senator KEMPTHORNE. Sam, thank you very much.

Now Dr. Falma Moye from Challis with the Blue Ribbon Coalition.

STATEMENT OF FALMA MOYE, BLUE RIBBON COALITION, CHALLIS, ID

Dr. MOYE. Good afternoon, Mr. Chairman and distinguished members of the committee. Thank you for bringing this forum to the great State of Idaho.

I wear many hats today as I speak to you; a geologist, an educator and a recreationist. The Endangered Species Act has impacted all facets of my life. As a scientist and an educator, I am appalled by the science run-a-muck in the administration of this Act. In my profession I must evaluate the level of success or failure of my work. Success brings much satisfaction, but failure requires accountability and mandates answering two specific questions. What went wrong? And what change is necessary to ensure success?

You have a challenge to reform the Endangered Species Act, an Act that was written with the noble intent of saving species on the brink of extinction. By all measures, that Act has been an unequivocal failure. Since inception, more than nine hundred species have been listed in the United States and only 11 delisted. Five of those went extinct and six were delisted because of bad science. None has been delisted due to recovery. Species are not being saved.

The current Act is flawed with ambiguous definitions and direction. It does not set the stage for success; instead it rewards failure through continued funding of programs and Federal agencies which repeat the mistakes of the past and require no accountability for money spent or lack of recovery.

Rather than dwell in the past, I prefer to look to the future and remind you that the key to reaffirmation is "maximize recovery at reasonable cost."

First, science is the absolute basis for the listing, recovery and delisting stages. Best available science is a poorly defined concept. Inadequate science is not the best available science for making major decisions.

In the past 6 months in Idaho there have been at least two cases where State and university scientists have presented data which contradicts that of Federal leads agencies. Our scientific expertise has been ignored and the scientific controversy not resolved, potentially at devastating costs to species and exorbitant costs to the taxpayer.

To ensure best science, the Act should be revised to require outside peer review and agreement beyond those who benefit from the listing. Specifically, I recommend that scientific data from the lead agency be the basis; however, that agency should be required to resolve conflicting science from other sources which petition to present data into the record. Resolution should be done by unbiased, qualified third parties who have no potential for future benefit regardless of whether the species is listed or not.

Second this Act, as would any other federally funded program, should have management goals, accountability, and defined yearly budget. No more open checkbook. I recommend that the listing process and the recovery effort be streamlined to remove duplication of effort by multiple Federal agencies. Congress should allocate a specific yearly budget for species recovery and develop a system to prioritize recovery efforts and allocate those budgeted dollars to appropriate teams, whether they be local, State, Federal, or contracted.

Reformation of the Endangered Species Act should follow the lead of successful business by developing management strategies

and assessment milestones to increase potential for recovery success.

In summary, I ask you to consider this thought as you reform this Act. A healthy environment and biodiversity will only occur in a country with a healthy economy. For this reform Act to work, we as a Nation need a paradigm shift in how we perceive man's interaction with environment.

Reaffirmation should include: Stringent guidelines to define good science and resolve scientific controversy; require goal-oriented recovery efforts and accountability for dollars spent; develop incentives to promote success and encourage local and State oversight to avoid duplicity of spending and administration. Thank you very much.

Senator KEMPTHORNE. Falma, thank you very much.

Now Mitch Sanchotena. He's from Eagle, ID. He's president of the Idaho Salmon and Steelhead Unlimited.

STATEMENT OF MITCH SANCHOTENA, PRESIDENT, IDAHO SALMON AND STEELHEAD, UNLIMITED, EAGLE, ID

Mr. SANCHOTENA. Thank you, Chairman Kempthorne and Chairman Chafee, Senator Craig, Senator Thomas.

I think the best testimony I can give you today is to tell you the story of our organization's changing view of the Endangered Species Act. There are over 250,000 fishermen and women in Idaho; these people are not a bunch of preservationist obstructionists. Our board includes a restaurant owner in Riggins, ID, fishing guides in Challis and Ketchum on the Salmon River, a bank manager in Orofino, a sporting goods manager in Idaho Falls. Most ISSU members are just plain Idaho folks interested in one of Idaho's great renewable resources. They are users of the resource and business people depending on using this resource.

For many years, ISSU members viewed the Endangered Species Act with great skepticism. We were fearful that the ESA would be used to close down salmon hatcheries built expressly to mitigate for the Idaho sport fisheries loss due to Federal dams, and therefore shut down the already-meager sportfishing opportunities Idahoans enjoyed on hatchery salmon. Our business members feared that this in turn would harm or destroy fishing-based economies. In short, we feared hardship for our dwindling sportfishery and related economies without positive gains for the fish.

Some of our fears have been confirmed. The Federal Government has not stopped the Federal Government from killing Idaho's salmon. As we sit here today, the Federal dams are killing thousands of Idaho juvenile salmon. Tomorrow they will kill thousands, and tomorrow and tomorrow. All the while the Federal Government, spurred on by the aluminum companies continues going after the easier, marginal targets. Idaho's hatcheries are being restricted. Some steelhead guides are not working because the Federal Government says their activities harm salmon. You will hear many people today wail about lost jobs due to salmon, but the fact is that the only people that have really lost jobs due to the salmon listings are fishermen and fishing-based business people.

And yet I come before you today directed by my board members to tell you that ISSU supports the Endangered Species Act, and in-

deed that we support strengthening it. Ordinary Idaho fisherman who know quite well how this law can be used against us, nevertheless ask you today, Senator Kempthorne, to keep the Act strong and mandatory. We think our fish and our fishing are probably lost without it.

Rather than rely on the ESA, our members would prefer that the Federal hydroagencies get serious about changing their operations so the Columbia River can generate both fish and electricity. But they are not. Our members would prefer that Idaho's elected leader make a commitment to restore salmon and steelhead, and then go into Congress and before the Administration to make it happen. But you are not. Neither Idaho's Governor nor any of our Congressmen are fighting with us to restore our salmon fishing, hang onto our Steelhead fishing, and protect these fishing-based economies.

ESA, while it isn't working well for salmon and is being badly administered for salmon nevertheless is, to be blunt, one of the few points of leverage which Idaho fishermen seem to have anymore on accountable Federal bureaucracies and on Idaho elected officials.

We want our wild salmon and steelhead restored. We do not believe the extinction of Idaho salmon and steelhead is acceptable. We know the ESA isn't perfect, that it has been misused and probably will be again, and then when it is misused, it can threaten our fishing and fishing-based jobs. But we also know something more important: Idaho's salmon and steelhead are disappearing.

Idaho's fishermen have watched the Federal Government ignore the Indian treaty rights. We have watched the Federal Government ignore the Northwest Power Act. We have watched for 10 years while Idaho's elected leaders, with a very few exceptions, did nothing to restore these fish. We have watched the Endangered Species Act, despite its problems, start to make a little bit of difference.

I'd like to give you five quick suggestions on how to improve the ESA for salmon. First, get National Marine Fisheries Service out of the ESA in all inland waters. It wastes money and resources to have the U.S. Fish and Wildlife Service enforcing the ESA for some fish in Idaho and NMFS enforcing it for other fish. NMFS lacks the expertise and competence needed to fairly administer the Act.

Second, make Northwest States and Indian tribes real partners in Northwest salmon and steelhead restoration. The Federal Government has a direct conflict of interest since its dams are primarily responsible for the looming extinction of these fish.

Third, make it more explicit that recovery efforts should be focused proportionally on the largest sources of mortality. The Federal hydrosystem is responsible for 75 to 95 percent of all human-caused mortality on the Snake River salmon and steelhead, yet you hear Ron Gillett saying NMFS is putting as much effort into the smaller sources as it is in the hydrosystem.

Fourth, ISSU strongly opposes changes in the Act which would tend to make Alaskan or Canadian salmon equivalent to Snake River Salmon. Congressman Chenoweth notwithstanding, an Alaska spring chinook is not a Snake River spring chinook, genetically, economically or socially. Snake River salmon and steelhead are distinct stocks, with their own life histories and their own unique, irreplaceable roles in the rivers and communities they inhabit. Idaho fishermen simply will not accept our Members of Congress writing

off our fish by rewriting the ESA to lump them with healthy stocks elsewhere.

And the rest of it is, as you know, in my testimony.

Senator KEMPTHORNE. Thank you, Mitch.

OK. Now Mr. Charles Ray from McCall who is with Idaho Rivers United.

**STATEMENT OF CHARLES RAY, IDAHO RIVERS UNITED,
MCCALL, ID**

Mr. RAY. Thank you, Senator Kempthorne and committee members. The organization that I represent here today, Idaho Rivers United, is working to restore Idaho's salmon and steelhead runs to healthy self-sustaining harvestable levels. We're also working to restore the economies, cultures and traditions that depend on harvestable, self-sustainable runs of these fish.

The remnant run that we enjoy today was once part of a run of salmon and steelhead entering the mouth of the Columbia River every year up to 16 million fish, representing some 300 million pounds of protein coming back from the ocean, virtually free of charge.

Today our remaining run is the lowest in history. You will see less than 300 wild spring and summer chinook come back to Idaho this year. Coho have already been declared extinct. Wild steelhead are nearly the same.

Nearly all scientists not in the hire of industry agree that the critical limiting factor to the survival and recovery of these fish is the operation of eight Federal hydropower dams on the Snake and Columbia Rivers. Fifteen years ago Congress and the public thought the Northwest Power Act would restore these fish as it promised. Five years ago we thought the Endangered Species Act listing of these fish would change the operation of these dams. Neither has happened.

This committee will hear—probably has heard already—that Snake River salmon are the same as salmon in Alaska or somewhere else. That is clearly untrue. Genetic testing DNA analysis proves irrefutably that these fish are separate, they're distinct, and they're unique.

If the public and the Federal Court system in this county places enough credence on DNA analysis to use it to send a human being to the gas chamber, DNA analysis of the uniqueness of these fish should be afforded the same respect. The citizens of Idaho receive no comfort anyway knowing that there's healthy runs of fish left in Alaska.

Now since we're also interested in restoring the economies that depend on these fish, we looked into the economics of the ESA in salmon. And I don't mean in any way to diminish the impact that the ESA listing may have had on individuals or individual communities. But we looked at the eight counties in Idaho that contained critical habitat for these fish. We looked at them in 1991, the year before the fish were listed, and we looked at them as of April of this year. We found that in those nine—in those eight counties unemployment has dropped significantly. Unemployment is 21 percent lower today than it was before the fish were listed. The total

work force has increased by 14 percent and the per capita income is up 25 percent.

Clearly the ESA has not wreaked economic havoc on Idaho as a whole or on the counties containing critical habitat for listed salmon except in one sector, and that's the steelhead fishery. A steelhead fishery comparable to the run we had in 1989 and 1990 is worth \$27 million to the Idaho economy, which represents 35 percent of the total natural resource based payroll in those eight counties.

The problem with salmon and steelhead in Idaho is not the Endangered Species Act. The problem with salmon and steelhead in the Northwest is not the Endangered Species Act. The big problem with salmon and steelhead is not private property rights or water rights or State's rights. The big problem is big government. Federal agencies in charge of the Columbia and Snake River dams are defying the law; they're defying acts of Congress; they're defying the court; they're ignoring the public trust they're supposed to uphold; and they're abrogating treaties with both Canada and sovereign Indian nations. They're destroying what was once the world's largest run of anadromous fish, and they're spending taxpayer and ratepayer money to do it.

The citizens of Idaho, the Northwest, and the United States value these fish. The majority of the people wants to keep intact and even strengthen the Endangered Species Act. Nonpartisan and bipartisan polls have consistently showed that. This hearing should not be about fixing the Endangered Species Act. It should not be about changing the Act so that Federal agencies that have mismanaged the Act and the public resources can continue that same behavior. It should be about making those agencies more responsible. This hearing should be about fixing the government.

If this committee and the U.S. Congress weakens the Endangered Species Act or allows these Federal agencies to continue that lawless behavior, salmon and steelhead will soon be extinct in Idaho. There will be no more salmon in the Salmon River.

To me, that's the worse kind of Federal mandate; it's the worst kind of taking. That needless extinction would be the most profound environmental loss, cultural loss and economic loss this region—has ever befallen this region.

If you allow these fish to be driven to extinction, you as individuals, you as Senators, you as members of our government, no matter what else you do in your career as a public service, you as individuals—not the industry lobbyists who wrote Senator Gorton and Senator Craig's bill, not the people who testified against the Act here today, not the government agencies that have bungled the administration of the Act, but you as individuals will be remembered for it. And I certainly hope that doesn't happen. Thank you.

Senator KEMPTHORNE. Charles, thank you very much.

All right. Let me—folks, again, I'm going to ask you to, please—I've asked you before, but please, refrain so that we can keep moving because I want to get as many folks as possible. We're getting good testimony; it's helpful.

So with that, Rick, I appreciated your comments. And in Roseburg on Thursday, we had a—one of the panel members who stated that—who was very much in support of the existing Endan-

gered Species Act, but he referenced it as the emergency room situation, which conjures up, of course, the image that it means things have gotten very bad. We're in a dire critical situation if you think of it as the emergency room.

You make a point that these other Federal laws are not having the impact that perhaps they should. And that, therefore, maybe it is setting up the ESA as that emergency room because there is failure elsewhere. So, can you give me an idea, because I think part of what this committee does need to look at are the interrelationships of some of those other laws.

Could you sketch a couple of those, identify them, give me a little of your perspective of what they're not doing or they are doing that needs to be corrected?

Mr. JOHNSON. One key factor of the Endangered Species Act is it doesn't have the words, "we're practicable." Many of these other pieces of legislation obviously do. The—this is sort of, you know, one of these where-the-buck-stops-here kind of laws. You know, the Endangered Species Act is the target of so much frustration because it just is inflexible. And I'm not going to defend how the Federal agencies have managed it; that's a whole different issue. But the law itself, I believe, is sound. But all these other laws—you know, we talk about the—and I think the analogy is right about health care. We talk about the emergency room. All of these different pathways that you travel to get to the emergency room—call it your health care system—they are not—they do not have the teeth. The National Forest Management Act does not have the teeth. Forest planning—I think Senator Craig would certainly agree—forest planning did not work in the State of Idaho. We might disagree on the reasons for it, but by and large, it didn't work for anybody. But—and that was implementing the National Forest Management Act, so I think that's just one example that's touched Idaho very directly.

Senator KEMPTHORNE. All right. I appreciate that.

Mitch, first, thank you for joining us yesterday for the field trip.

Mr. SANCHOTENA. Thank you for having us.

Senator KEMPTHORNE. It was helpful.

Mitch, I found it interesting, your suggestion that NMFS, or the National Marine Fisheries Service, be taken out of the management of the anadromous fish. I would imagine there are a lot of Federal agencies that would agree with that. Would you give me—I mean, if we remove NMFS from that equation, what, if anything, do you replace it with? How do we make this thing work?

Mr. SANCHOTENA. Mr. Chairman, thank you. First of all, by removing NMFS, you remove one level of bureaucracy, and I think everybody has said we need to reduce bureaucracy within the ESA. Right now you've got the U.S. Fish and Wildlife Service doing consultations on all the other Endangered Species Act on public lands and waterways in the State of Idaho. And then you've the Forest Service and BLM dragging NMFS of along to get consultations. The PRC suit was not against land use activities; the PRC suit was because NMFS didn't finish entering the consultations with the Forest Service, so by removing the levels of bureaucracy can expedite administration of the Act, and probably reduce a lot of the frustration of the people that you have heard testify before me.

Senator KEMPTHORNE. All right. I appreciate that.

Charles, do you agree that we ought to take NMFS out of this part of the Act?

Mr. RAY. I think that—

Senator KEMPTHORNE. Or out of the Act entirely?

Mr. RAY. Well, no. I would be willing to cede the areas outside the coastal United States to NMFS. Let them have the ocean.

Senator KEMPTHORNE. But not the inland waterways?

Mr. RAY. Well, I think NMFS has proven time and time again in the short time that they've handled this issue that they're—they lack the experience to do it; they lack the manpower to do it; and they have proven unwilling or unable to bring the Corps of Engineers or Bonneville Power to heel.

So I think it would be a good idea. I, instead, would rather see the U.S. Fish and Wildlife Service working in partnership with the State fishery agencies and tribes managing inland problems as they relate to salmon.

Senator KEMPTHORNE. So are you—would you be supportive to see the Endangered Species Act take on a greater delineation of authority to the States and to local governments?

Mr. RAY. I would be supportive of seeing the Endangered Species Act hand over greater authority to the State fishery agencies.

Senator KEMPTHORNE. Mitch, do you agree with that?

Mr. SANCHOTENA. Yes, I do. I also—if I could make a suggestion, we heard Rick say other acts are flawed. I think if you were to make the Northwest Power Planning and Conservation Act regulatory, you probably wouldn't need the ESA for anadromous fish. That act really—you gentlemen that were there then really set up a good act to solve our steelhead and salmon problems. But, yet, I think the agencies and tribes must be a key role.

Senator KEMPTHORNE. I would just note as an aside, at one of the hearings that we held in Washington, DC. I asked one of the Federal representatives from NMFS why the National Marine Fisheries Service, which is now charged with the recovery of an endangered species is in the Department of Commerce, which, of course, their primary mission is to generate revenue from harvest.

So, all right. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. Several of the witnesses here on this panel have said that the real villain is the U.S. Government and the eight dams that lie between here, Lewiston and the mouth of the Columbia. But those eight dams are there; they're not going to go away. And so my question is, what are we going to do about this fish problem? And now Dr. Moyer says what we need is better science. I don't know what is the better science. One group—Mitch there says, let them go over the spillway. Somebody else says, transport these fish around by barge. Somebody else says haul them by truck.

All I know is, whatever's being tried isn't working. What do you say, Mr. Johnson?

Mr. JOHNSON. Well, I think that—

Senator CHAFEE. And don't suggest that we're going to take away the dams. I just don't think that's not—I don't think that's going to happen. And maybe—maybe the dams are producing electricity for the aluminum industry and so forth, but I think we've got to

be realists here and recognize what is going to happen and what isn't.

Go ahead, if you would, please.

Mr. JOHNSON. Well, in this particular circumstance, I'd prefer to yield the question to the two fisheries experts here. But I think first and foremost, you do something. And inaction is our greatest villain at the moment. But I'd like to yield the question—

Senator CHAFEE. But they are doing things. We saw yesterday and heard the statistics and intercepting the fish as they come down, putting them in tanks where there's a 1-percent loss—they tell us a 1-percent loss while they ship them down below the Bonneville Dam and everything's wonderful except no fish come back.

Go ahead, Mitch. What would you do?

Mr. SANCHOTENA. Mr. Chairman, Chairman Chafee, as we mentioned, we need to go back to what's worked for 10,000 years. I agree the dams don't have to come out. We can—we're in an energy surplus in the spring of the year, we're in high water right now. We can lower the spillways on those dams, spill water over those spillways on a controlled spill for a few hours a day during the peak migration of the fish. The energy impacts of this are quite negligible.

Second, the dams need to be modified in a way that they can operate on a sliding scale so that in low water years the volume in the reservoirs can be lowered and juvenile migration moves faster. This is not complicated science. If you look at the science, all the scientists on the side of the fish, the Fish and Wildlife Agency, the Four States, the Agency—the scientists for the Indian tribes and the scientists for U.S. Fish and Wildlife Service say fix the dams, spill the water, lower the reservoirs. Fix this and go about getting the burden off of the little guy. The scientists, the advocacy science who support aluminum companies, utility industries and others come up with the other science that keeps the issue muddied up.

Senator CHAFEE. Well, you can always challenge some scientists' motives.

And what do you say, Mr. Ray? What would you do?

Mr. RAY. Well, I would defer to the expertise of the fishery agencies and tribes just as Congress told the hydrosystem managers to do in the Power Act. And the consensus amongst the scientists, the hydrologists from the State fishery agencies and tribes is that during the juvenile migration season we must make the river work more like a river by doing two things, by spilling fish over the spillways and by increasing the current speed in the river. The biological compromise, not the best for the fish, not the worst for human beings, is a spillway level drawdown of the four lower Snake reservoirs, 45 feet for 2½ months a year, and a minimum operating pool drawdown of John Day Reservoir on the Columbia.

Senator CHAFEE. Is that the best science, Ms. Moye?

Dr. MOYE. I'm not really sure what the best science is in terms of dealing with the dams. I will say that I don't think removing the dams is the answer because there is a large of volume of silt accumulated by those dams and were we to remove one, the environmental disaster that could occur would be phenomenal. So, I don't see that as an option.

Senator CHAFEE. I don't think you have to spend time thinking about removing the dams. I just don't think that's going to happen. Let's recognize the dams look pretty permanent to me.

Dr. MOYE. I think we do have to yield to the scientific expertise of fisheries biologists and have them make the ultimate decision of what will be the best way to get smelts across the dam and back to the ocean.

Senator CHAFEE. Let me ask—Mitch, let's—under the current system, they seem to be getting to the ocean, then they disappear. Now what have we got? The world's best fed sea lions down there or what's the problem?

Mr. SANCHOTENA. Mr. Chairman, Senator. There are predation problems, no one doubts this. In fact, we applaud the committee for—and Congress for amending the Marine Mammals Protection Act to help solve the problem animals.

The problem is that we're taking fish out of the river—juvenile fish out of the river, and we're putting them in trucks and relieving grain in the river from Lewiston to Portland. We need to change the river so that the juvenile fish are left in the river.

When the barging program started as an experiment—today we talk about spill as an experiment. Spill was the preferred method of passing fish through these projects when they were authorized and built. Spill is the preferred method of passage in the mid-Columbia.

Spill worked for 10,000 years and it worked until we finally went to a barging program. Barging started as an experiment 22 years ago. It's never undergone NEPA, yet at 22 years of one experiment, I would think the scientific community would finally agree that that's long enough to experiment with something before we moved on to—

Senator CHAFEE. Thank you.

Thank you, Mr. Chairman.

Mr. SANCHOTENA. I'm sorry.

Senator KEMPTHORNE. Thank you. No. It was a good answer.

All right. Senator Thomas.

Senator THOMAS. For someone who's not very familiar with the fish thing—but all of you talked about you want science, but it sounds like you want your own science. And that's sort of curious and a little difficult, as a matter of fact.

What about—do you think all species ought to be handled the same, Mr. Johnson, under the Act?

Mr. JOHNSON. I'm not sure what you mean. All species?

Senator THOMAS. Any species that's threatened. Any species that may disappear. Any critter at all ought to be handled the same?

Mr. JOHNSON. Well, I think that's one of the good things about the Endangered Species Act is it does look—I'll amend that. While I would support multiple listing habitat or multiple species habitat plans, one of the good things about the Act is it looks at each species and then comes up with a different habitat conservation plan to address that particular critter.

Senator THOMAS. But my question is do you see them all as deserving equal consideration?

Mr. JOHNSON. Yes. I think so if the science said they're deserving of listings—

Senator THOMAS. All species?

Mr. JOHNSON. If they're deserving of listing, yes.

Senator THOMAS. But you say if they're deserving of listening. I'm saying do you think they all require the same consideration? Whether it's a wolf or whether it's a beetle of some kind?

Mr. JOHNSON. Yes, sir.

Senator THOMAS. OK. What about private property? Do you have any concern about private property under the Act?

Mr. JOHNSON. I think the biggest problem with private property is—as was addressed in the earlier statements—is a bit much of a punitive issue. You know, you protect this critter or else. It should be the other way around. What we should be doing are providing incentives for protection of endangered species or threatened species on private lands. We should be providing opportunity for conservation easements. We should be providing incentives for—

Senator THOMAS. What would that cost? Do you have any idea?

Mr. JOHNSON. I think they would be quite reasonable costs. I think one example of a place you could get that cost would be if we were to implement the land and water conservation fund the way we're supposed to and put some of those funds that were supposed to be for protection of habitat and greenspace and put into those kinds of programs.

Senator THOMAS. Do you have any idea what it would cost?

Mr. JOHNSON. No, I don't sir.

Senator THOMAS. Do you think it would be in the billions of dollars?

Mr. JOHNSON. No, I don't.

Senator THOMAS. You don't. OK. Good.

Mr. Penney, do you—are—is the endangered species operated the same on the tribal lands as it is on the other lands?

Mr. PENNEY. If I could comment real quickly on the agency—

Senator THOMAS. I guess my questions is, do the tribes administer it themselves under 638 or anything?

Mr. PENNEY. No, we don't. The tribe's philosophy has always been that before—even with the Endangered Species Act that when there is a concern for the species, I don't think we should sit back and wait until it's petitioned or listed. I think there are times when the Tribe becomes concerned with the species and would take actions to try to head that off.

A good example is that on some of the current listed stocks in the Snake River, the tribe has had proposals for recovery of some of the salmon stocks since 1982.

Senator THOMAS. But you don't administer the same Endangered Species Act on the Tribal lands as the Federal Government administers?

Mr. PENNEY. I think we work cooperatively with the Federal Government.

Senator THOMAS. OK. I see. And your position is that the tribes ought to be handled differently—that their traditions and so on ought to be handled differently?

Mr. PENNEY. I think so. And I guess I somewhat disagree with some of the statements made earlier about all these things being administered by the State, because I think you Senators well know

that the Treaty of Nez Perce Tribe is between the Tribe and the U.S. Government.

The State of Idaho has no trust responsibility to the Nez Perce Tribe. So I would disagree that the State should handle all these issues; the Tribe should have a role on how ESA is implemented.

Senator THOMAS. On the Nation to Nation agreement?

Mr. PENNEY. Yes.

Senator THOMAS. Mr. Ray, you said that if the State did it, you'd like to have the State fishery agency do it. Does that exclude the legislature and the Governor and the control agencies over the fisheries?

Mr. RAY. Yes, it does.

Senator THOMAS. Now how can you do that?

Mr. RAY. Well, using the wolves, for example, the Idaho State Legislature excluded themselves from wolf management and prevented the Idaho Department of Fish and Game from being involved in that.

Senator THOMAS. But you don't argue with the notion that your fish and game comes under your State government, do you?

Mr. SANCHOTENA. No, I don't argue with that notion.

Senator THOMAS. You know, right or wrong, Mitch—and apparently it's wrong—we just had a hearing recently and I think we spent rate-payers' and taxpayers' in the billion dollars in the dam. I think also the rate that's now being charged is almost uncompetitive with private sector. It's not a lack of money, apparently, is it?

Mr. SANCHOTENA. Mr. Chairman, Senator, no it isn't. We have spent—the Army Corps of Engineers and BPA have spent a lot of money on salmon. Unfortunately, they have spent it in the wrong places. We have—we are in a situation of repetitive science, you might say, in the fact that after 22 years of failed barging experiment, the new NMFS plan continues to be a barging plan.

So, you're correct. We have spent a lot of money; it's been in the wrong places. I think that the BPA rate-payer has spoken loud and clear in the surveys I've seen they're willing to pay the price to save salmon.

Senator THOMAS. Thank you.

Senator KEMPTHORNE. All right. Senator Craig.

Senator CRAIG. Thank you very much, Mr. Chairman, and to all the panelists. Let me thank you for your testimony.

Rick, you had mentioned in your testimony that more people were working in the timber industry today than last year in the State of Idaho.

Mr. JOHNSON. That's my——

Senator CRAIG. Where did you get those figures?

Mr. JOHNSON. That's my understanding from the department—the State's Department of Employment.

Senator CRAIG. Really?

Mr. JOHNSON. That's my——

Senator CRAIG. That's documentable?

Mr. JOHNSON. That——

Senator CRAIG. And the reason I'm saying that, Rick—I'm calling off my head the closure of the Grangeville mill and the closure of the Council mill.

Mr. JOHNSON. I'll be happy to get you the source.

Senator CRAIG. I would appreciate that. I'm fascinated by that statistic.

Mr. JOHNSON. That's why I brought it up.

Senator CRAIG. OK. Thank you.

Mitch, on page five of your testimony you've made an interesting statement about the amount of money that has been poured into the Federal Columbia River Power System, and then you go on to say, "Right here in Lewiston, socialism is alive and well. The Port of Lewiston would not exist without millions in direct Federal subsidies each year. Those subsidies are killing our salmon and steelhead. If we can't afford the greatest renewable resource in Northwest history anymore, we surely can't afford the State-supported uncompetitive enterprises either."

I don't dispute the generalness of that statement. Would you not say that fish, since the passage of the Northwest Power Act, have received a phenomenal amount of Federal subsidy dollars?

Now I'm not agreeing—I'm not disagreeing whether it does or doesn't work. I mean, let's make the record straight, here. I'm up to \$3 billion in direct Federal subsidies to fish in the last decade in this region.

Mr. SANCHOTENA. Yes. Mr. Chairman and Senator Craig, we are putting a lot of money into salmon. I don't think it's subsidies, particularly, when I see the Bonneville debt for nonoperating nuclear is in 49 percent of their budget. The Fish and Wildlife debt for Bonneville Power is one point 1 percent of their budget. I think Bonneville borrowed against our fish to pay off bad gambling debts from WWPS. And I think now it's time to pay the bills for borrowing from those fish. And if the burden is put where the burden belongs, on nonoperating nuclear and in other places, and we go back to spilling water, we wouldn't have to charge every drop of water that goes over a spillway to a fish, because the fish and wildlife program—

Senator CRAIG. Answer my question, Mitch.

Mr. SANCHOTENA. The Fish and Wildlife program—

Senator CRAIG. Are we not subsidizing fish to the tune of over \$3 billion in the last decade?

Mr. SANCHOTENA. No, we're not.

Senator CRAIG. OK.

Mr. SANCHOTENA. The Fish and Wildlife program—

UNIDENTIFIED PERSON. Hostile witness.

Senator CRAIG. No. We don't have a hostile witness here. I'm just trying to set the record straight. I think it is terribly unfair to suggest there's subsidies somewhere when other subsidies are ignored.

Mr. SANCHOTENA. Mr. Chairman, Senator, I apologize.

Senator CRAIG. Yes.

Mr. SANCHOTENA. I guess I don't perceive those to be subsidies—

Senator CRAIG. OK.

Mr. SANCHOTENA [continuing]. For fish.

Senator CRAIG. That clarifies the record. Thank you, Mitch.

Now, all of you, this question, because, Mitch, you said something that I think is more valuable than you realize. One of the biggest conflicts we have are the interagency squabbles of who's on

first, who's on second and who has the best science. And that's a tremendously big problem.

Ray, you've suggested that fish—State fish and game agencies might have a greater sense, and you've mentioned the Indian tribes and their abilities. One of the things we're struggling with with this Act is the role to place the States in. I think we've heard a great deal of testimony today that there ought to be a greater sense of local control, local participation, State involvement.

What would you say if I suggested that in the areas where we have multistate interests in the Snake and Columbia River systems or in other systems where there was regional species endangered, that we would give some exclusivity in decisionmaking and management of that threatened or endangered species equally to the States and to the affected interests, including Indian tribes, and that their decisions would be considered sufficient in the eyes of the law? Mitch.

Mr. SANCHOTENA. Mr. Chairman, Senator Craig, I thought we were doing that with the Northwest Power Act. That was a regional body that had been deferred to the States and to the tribes. It involves a tremendous public involvement procedure, and as I said earlier, I think if the Northwest Power Act was regulatory piece of legislation, we would resolve our complaints.

Senator CRAIG. Well, we're tracking together. Now my point is this. Take me one step further. But their decisions are not sufficient in the eyes of the Endangered Species Act. If we were to change the law to cause that to happen, would you agree with it?

Mr. SANCHOTENA. If the law was regulatory, yes, Senator, I would.

Senator CRAIG. Ray? Mr. Ray.

Mr. RAY. I believe the intent of Congress, at least the way I read it in the Northwest Power Act, is quite satisfactory. I don't think Congress ever intended for the NMFS, the BPA and the Corps of Engineers to openly defy the power council's recommendation. Before we use the Endangered Species Act and insert sufficiency into that, I would like to see the Power Act made to work.

Senator CRAIG. Rick, would you respond to that general comment?

Mr. JOHNSON. The issue of where the——

Senator CRAIG. The issue of creating a regional authority with equal footing for States and their affected interests?

Mr. JOHNSON. I think there is one, Senator, and I think it's called the court of law.

Senator CRAIG. No, no, no, no, no. That's not what I am talking about. I'm talking about the same premise to the same question that I asked of both Mitch and Charles. How would you respond to that?

Mr. JOHNSON. Well, I haven't thought about that before, but I don't assume immediately——

Senator CRAIG. Well, that's a fair answer then. I appreciate that.

Mr. JOHNSON. I don't think it would be necessarily bad, but I don't know the in and out of it.

Senator CRAIG. Sam——

Mr. JOHNSON. But I think the court of law does that.

Senator CRAIG. Sam, if Indian interests were appropriately placed inside that kind of decisionmaking and authority structure, could you agree to it?

Mr. PENNEY. I think probably one of the latest examples we have, Senator Craig, is the Nez Perce Tribe has been working with Benewah County, and there are representatives from Benewah County present at this meeting working on some of the issues in northeastern Oregon.

And I think it's been a good relationship. We've made a trip back to Washington, DC about 2 years ago and it's not only addressing the needs of the Tribe, but I think any of the projects that the Tribe was proposing regarding to recovering some of the fisheries, that we feel would be a benefit for the whole Northwest and also the local people as well. So I think that we have our input into those issues.

One of the problems that I guess I'd have with the power planning or Northwest Power Planning Act would be some of the projects that the tribe proposes and, of course, the representatives of the Power Planning Council are appointed by the Governors, and that almost puts a political overtone to some of the projects that are proposed.

And we always run into the problem that if we propose a project, it's not a good idea. But yet, 3 or 4 or 5 years down the road, either a State or another entity proposes that same project, then it's a good idea. And we constantly run into that problem. And I think it's hurt as far as some of the recovery of some of the species that now are listed or petitioned.

Senator CRAIG. Thank you.

Mr. PENNEY. And if I could add one thing. I forgot to mention to Chairman Kempthorne is that he did, on some of the scientific issues, put our fisheries resource manager on a team that is working out of INEL regarding some of the problems with turbines. So, I'd like to thank the Senator for that.

Senator CRAIG. Mr. Chairman, my time is well overdue. Thank you very much, lady and gentlemen. Thank you.

Senator KEMPTHORNE. Sam, I appreciate you mentioning that. That's has to do with fish-friendly turbine, where we have actually now appropriated the money so that we can begin prototype of fish-friendly turbine. Because I think we're all in agreement that the major dilemma for the fish are the dams and so that's why I've been an advocate. We've got to get on with these modifications to the dams, Say Whitman is part of that.

So, all right. With that, I thank this panel. You've been excellent as the others have and good information that you have imparted to us.

Senator CRAIG. Mr. Chairman, I'd like to join in the thanks to this panel also.

Senator KEMPTHORNE. All right. And now we—I will call forward the final panel.

The first speaker will be Bill DeVeney who is from Riggins, and he is with the Idaho Farm Bureau.

Bill, welcome.

**STATEMENT OF BILL DeVENY, IDAHO FARM BUREAU,
RIGGINS, ID**

Mr. DEVENY. Good afternoon, Mr. Chairman, members of the committee and ladies and gentlemen.

I am a rancher near Riggins in Central Idaho.

Senator CHAFEE. Bill, I wonder if you could pull that mike closer, please.

Mr. DEVENY. Is that better?

Senator CHAFEE. Yes. Speak right into it because it's a little harder to hear.

Mr. DEVENY. I'll move closer.

I'm a State director for Idaho Farm Bureau and I am testifying on behalf of myself and the Idaho Farm Bureau Federation. My concern is that the Endangered Species Act is being used to control land and people—not to protect endangered species. Protecting endangered species is important, but the way we are going about it needs to be changed. The economy, strength and viability of this whole country is based on wise utilization of natural resources. A revised Endangered Species Act must recognize that mankind has a place in the environment and a right to utilize natural resources and use the resources beneficially.

Currently the law is being used to manipulate activities and the reasons are not always based on sound scientific evidence. The impacts in some cases are small, but the accumulative effects are having serious adverse consequences.

Here are several examples. One part of the allotment of Idaho County was eliminated from use this year because of the National Marine Fisheries in consultation with the Forest Service was concerned that the cattle might disturb salmon spawning. This was in spite of earlier decisions that the area was not likely to affect salmon habitat. The pasture is used in the spring from June 1 to early July, and rapid river is running at high water generally at that time. The salmon spawn in August and September. The decision to eliminate grazing use on this part of the allotment was strictly arbitrary and did not do one single thing to improve or protect salmon habitat.

Near my home the discovery of a peregrine falcon nest was used as an excuse to disrupt the timber sale contract, even though the falcons are nesting successfully in such populated places as a sugar factory in Nampa and also formerly in downtown Boise on the West One Bank building.

As of now disputes are resolved through the courts. This is unworkable and expensive. Small entities affected by a decision cannot afford the exorbitant costs involved in court cases. When a Bruneau Hot Springsnail in Owyhee County was listed as endangered, threatening the livelihood of families in the area, friends from around the State joined with Owyhee County to challenge the listing. The challenge was that the agency personnel had not followed the applicable laws, regulations, and that the listing was based on faulty data. The judge agreed and ordered the species delisted. The cost of this litigation to date is \$190,000 plus many thousands of hours of donated time from other groups and individuals. A better way needs to be found to resolve disputes, and at the

same time, hold agency personnel accountable for their actions. Protect individuals against this insidious act.

The introduction of the wolf into the Yellowstone Park and central Idaho is another example of abuse of the intentions of the Act. Saying that wolves were not a threat to human health and safety and that there is no documentation to show that a wolf had ever harmed a person is false. The Fish and Wildlife Service criteria for documentation is: No. 1, the wolf had to be killed and found to be healthy; No. 2, proven never to have been in captivity; and No. 3, the person must die from their wounds. Bites are not considered attacks. Using this criteria explains why no historical account of a wolf attack on a human is considered to have occurred.

Private land owners have a real aversion to having an endangered species on their land because of the drastic punitive measures for harming one. The law should encourage incentive-based measures to protect species and eliminate, or at least minimize punitive measures, particularly those involving habitat modification. This probably would do more than any other single thing to help endangered species recover with less expense and animosity.

In summary, the new act should provide for protection of private property rights; work to truly protect endangered species rather than be used as a vehicle for land and people control; hold agency personnel responsible for their actions and decisions; provide a forum to resolve disputes other than court action; and encourage voluntary and/or incentive based compliance rather than punitive measures.

I thank you for the opportunity to comment.

Senator KEMPTHORNE. Bill, thank you. I appreciate your comments.

And now Mike Guerry from Buhl with the Idaho Wool Growers Association.

**STATEMENT OF MICHAEL A. GUERRY, IDAHO WOOL GROWERS,
BUHL, ID**

Mr. GUERRY. Mr. Chairman, Senators, I appreciate the opportunity to discuss the Endangered Species Act as it affects public lands, ranching industry and more specifically, the western sheep industry today. I commend the members of the committee for their efforts in conducting field hearings in the West and for allowing participation from the Multiple Use Industries directly affected by this Act.

As was stated, I'm representing the Idaho Wool Growers here today as their vice president, but I'm also representing the American Sheep Industry Association as the director and the National Public Lands Council as their secretary/treasurer, as well as being a third generation rancher here in Idaho.

The National Public Lands Council, the American Sheep Industry and the Idaho Wool Growers Association supports Senate Bill 768 introduced May 9 by Senators Gorton, Shelby and Johnston to amend and reauthorize the 22-year-old Endangered Species Act.

We strongly support the bill's efforts in protecting species while providing for economic needs of landowners and permit holders in providing incentives for non-Federal species protection efforts, and in creating a system for reasoned development of conservation

plans. We also support its requirement that the U.S. Secretary of the Interior set a conservation objective, its allowing for cost-share arrangements on certain activities, and very importantly, its requiring that the Act be administered to minimize the impact on the use and value of private property.

We are very optimistic that these above-mentioned changes will in the future help to avoid such situations as when the Alliance of the Wild Rockies filed suit in Federal Court asking that all national forests in Washington, Oregon, Idaho, Western Montana, and Northern Nevada shut down grazing because the Forest Service failed to provide for the long-term viability of Bull Trout in the Forest Management Plans. As you're well aware, Bull Trout at this point is listed as a sensitive species rather than threatened or endangered. And it's become more apparent in the last couple of days there are recommendations to move it back further down the list.

We're also hopeful that under these amendments when the Forest Service addresses situations such as the Bull Trout in the future, they will come up with better conservation planning than just no sheep grazing after August 15, whether or not there are any fish present in the stream, as they are presently trying to implement in the Sawtooth National Forest.

It is also the opinion of the associations that I represent that as good as this bill is, it needs to go even further. Some of the additional items that we believe need to be addressed are as follows: No. 1, Section 6 of the Act for both plants and animals needs to be amended such that the State rather than the State Agency is given the authority to conserve resident species as determined by the State or the Secretary to be threatened or endangered. It is our opinion that this change would not allow the Fish and Wildlife Service to bypass the executive and legislative branches of the States involved, and deal only with the State Fish and Game Departments in making their determinations.

Second, effects to the budget of the Animal Damage Control Program administered by USDA APHIS by programs developed under the Endangered Species Act must be mitigated. An example of which being the additional manpower and equipment costs to ADC program in Idaho associated with the wolf reintroduction project. These funds must be replaced in order to maintain an effective program, and it is our opinion that the replacement funds should come from the U.S. Fish and Wildlife Department's budget.

Third, delisting language needs to be more adequately addressed, as it has become extremely difficult if not impossible to downlist or delist a species once it's been recovered under the individual plan. Case in point being the downlisting of the Eastern Timber Wolf from endangered to threatened after it had reached the plan's population goals, which would have allowed limited wolf predation work to resume. However, a lawsuit was initiated at that point by environmental groups, the outcome of which was an overly restricted, ineffective Animal Damage Control program.

In closing, I would like to state that it is the belief of myself and the organizations that I represent that an Endangered Species Act that is properly amended can be something that works for all the citizens in the United States, and that it doesn't have to cause the

range livestock industry or other multiple use industries to become endangered themselves.

As additions to my testimony today, I'd like to submit for the record copies of Elaine Allestad's testimony on wolves before the U.S. Senate Subcommittee on Parks, Historic Preservation and Recreation in May of this year and the American Sheep Industry Association's paper on the Review of the Wildlands Project.

Thank you for the opportunity to testify here today.

Senator KEMPTHORNE. Mike, thank you very much. Appreciate it very much.

Bob Adams from Priest River with the Chamber of Commerce.

**STATEMENT OF BOB ADAMS, CHAMBER OF COMMERCE,
COMMUNITY GRIZZLY BEAR PLAN, PRIEST RIVER, ID**

Mr. ADAMS. Priest Lake. Priest Lake Chamber of Commerce.

Senator KEMPTHORNE. OK. Priest Lake Chamber of Commerce. I'm sorry.

Mr. ADAMS. Thank you, Mr. Chairman and Senators. I appreciate the opportunity to testify. I intend to briefly summarize my written testimony.

Ours is a small rural community where everyone is dependent one way or another on the environment for their livelihood. This includes, among others, resort owners and their employees, loggers, outfitters, lumber mills, berry pickers, and restaurants. I would like to share a few of my thoughts on the grizzly bear recovery plan which is being implemented in our area.

Under the guidelines of the Endangered Species Act the Forest Service tried to impose a grizzly recovery plan based on a seventy percent road closure which did not take into consideration the uniqueness of our area and the local community's dependence on the forest in order to make a living. Nor did it deal with the problems of illegal shootings.

By forcing local communities to make all-or-nothing choices in species recovery plans, the ESA undermines the support of people who live on the land. No threatened or endangered species will survive for a significant period of time with this kind of approach. In short, the plan was bad for the bear and bad for the local residents. In spite of our history, over 100 years of managing our lake and forest in a responsible manner, and coexisting with the bears and other wildlife, we were now being told by the Federal Government that we don't know what we're doing.

We were able, after much arm twisting, to convince the Forest Service representative in our area to allow a coalition of community businesses and concerned citizens to present an alternative plan for grizzly bear security.

It was truly a cooperative effort. We included in our discussions, among others, the Idaho Fish and Game conservation officer for our area and also the wildlife biologist responsible for the bears' recovery. We developed a program to improve public education and a locally owned sawmill provided funding for the State Fish and Game to hire a full-time conservation officer.

When the final plan for the grizzly recovery was announced last month, it incorporated many of the ideas which were proposed in the community plan. While not perfect, it gives everyone some of

what they wanted. More importantly, it shows what cooperation and common sense can accomplish. All too often, the bureaucrats that administer the Endangered Species Act take the easy road and implement their plans without any consideration on how it will affect the people and the economy in a given area.

For example, closing roads when bears are in hibernation does not make much sense. If the Federal Government wants respect, then it must listen to the concerns of the people who are working and paying taxes and pay a little less attention to some of the special interest groups that would just as soon close the forest, lakes and streams with complete disregard for its effect on people who live and work in a given area.

In conclusion, I feel we must change the Washington-knows-best mentality of species management and delegate significant authority to individual States for the development of a recovery plan.

Thank you.

Senator KEMPTHORNE. Bob, thank you very much and I am sorry I didn't say Priest Lake.

Mr. ADAMS. So am I.

Senator KEMPTHORNE. As a kid I went there often and that's where we honeymooned. So, wonderful place.

Ted Hoffman, Dr. Ted Hoffman, Mountain Home, Idaho Cattlemen Association.

STATEMENT OF TED HOFFMAN, IDAHO CATTLEMEN'S ASSOCIATION, MOUNTAIN HOME, ID

Mr. HOFFMAN. Thank you, Mr. Chairman, committee members. I certainly welcome you here. I'm glad you came out personally to understand our concerns with this Act.

Ranchers care about the economy and society and the environment we will leave to our children. It follows that we care about the effects we have on the population and habitats of various plants and animals which may correctly or incorrectly be referred to as endangered species.

We care for scientific reasons because we understand ecological interrelationships. That's how we make our living. And we care on an emotional or symbolic level too. That battered old salmon fighting his way upstream has a lot in common with old ranchers trying to hang onto the outfit so that they can die on it and watch it pass to the next generation. But the Endangered Species Act today is not working, not working for the salmon and certainly not working for the rancher.

In Idaho, Federal cooperation with State and local government is almost nonexistent, and we've heard comments on that today with regard to salmon, wolves and the Bruneau snail. The Act intended to protect species has had the opposite effect. If endangered species or a suitable habitat are found on land you own or depend upon for your living, you face dire economic consequences.

More and more people understand they must choose between the Endangered Species Act and personal financial ruin. Now we don't want that and we don't think many people in this room want that. Just like that salmon, we have a will to survive too. Let's turn that around, let's harness Federal funding with State and local organization and knowledge and individual initiative and all pull in the

same direction. Ranchers are can-do people and America can be a can-do society again. Why do we have an Act that only results in a long list consisting of you can't do this and you can't do that?

Here's one example of why we feel so threatened by the Act regarding Bruneau Hot Springs snail. Shortly after it was listed as endangered, Dr. Charles Lobdell, the chief of the Fish and Wildlife Service's field station office in Boise stated in a press release that the farmers and the ranchers in the Bruneau Valley would not be harmed by the listing. Within 1 month he informed the Farmers Home Administration that through Section 7 consultation powers, he would deny the renewal of operating loans to 13 farmers in the valley.

He informed the Soil Conservation Service and the Agricultural Stabilization and Conservation Service that they must withdraw their program support from the 59 farmers and ranchers in the valley who irrigate with groundwater, thus putting these farm and ranch families at such a competitive disadvantage with the other commodity producers in our country that they would eventually go out of business.

Fish and Wildlife Service had no legal right or authority to interfere with these farmers' water rights unless they condemned the water rights and compensated the farmers. Instead they chose to interfere with the farmers' legitimate use of their rights indirectly by destroying them financially so they were not able to use their own property. Farmers who can no longer farm cannot afford to sue for just compensation under our constitution.

Fortunately, we won our lawsuit and we reversed the listing of the snail before Fish and Wildlife Service bankrupted the valley, but they will be back.

How I would change the Act. First and foremost, no change to the Endangered Species Act will be effective unless the people who implement the Act are changed. These are not your stereotypical Federal bureaucrats merely putting in their time.

Many, if not most of the members of the Fish and Wildlife Service and their coordinating counterparts in BLM, Forest Service and Bureau of Reclamation and so forth are very capable individuals who are highly motivated. Not motivated to serve the people or to serve the government, but to serve their own environment agenda. This agenda has been shaped to a large extent by the so-called environmentalist nonprofit corporations whose funding, payrolls and future depend on constant stirring of the cauldron of environmental hysteria. These people frequently feel they are not bound by specific points of law.

We need a system of checks and balances established that prohibits any endangered species activity in a State or county unless that State or county agrees to that activity. State and local government must have real power. We must be equal partners or we will continue to play Simon Sez as Representative Barrett said.

Because we are dependent on Federal lands here in the west, the requirement for State or county approval should also apply to restrictions or actions on Federal lands. Private property rights of citizens must be specifically protected. Now compensation is not our end goal here. Cooperation and coordination are the goals so

that State and local government and private citizens can devise effective strategies that do not impair property rights.

Those parts of the Act that allow Federal agents to be individually responsible for failures to enforce the Act should be removed or balanced with individual responsibility for uncompensated or unnecessary takings of private property rights. Federal decision-makers should no longer be stampeded by environmentalist corporations and their batteries of lawyers.

Finally, voluntary programs based on economic incentives should be the primary form of recovery actions. I've condensed about eight pages of written comments into two of oral. And I have many more examples of the economic harm and recommended changes in my written comments.

I thank you again.

Senator KEMPTHORNE. All right, Ted. Thank you very much. We appreciate that.

Dr. James Peek from Moscow, ID, the University of Idaho wildlife biology professor.

**STATEMENT OF JAMES PEEK, UNIVERSITY OF IDAHO
WILDLIFE BIOLOGY PROFESSOR, MOSCOW, ID**

Mr. PEEK. Thank you, Chairman Kempthorne, Senators. I'm pleased to be here, pleased to have you around for the last and least speaker as well here.

I've been listening to the commentary and I'm going to take notice to what your aide said, Chairman Kempthorne, and deviate from the written documents a little bit and offer this because I think it may have some merit on your deliberations about the ESA.

First, you know the problem is obviously a communications issue in many ways. A lot of it has to do with wildlife biologists. And I've been training wildlife biologists for 30 years and you have to wonder sometimes what it takes. Our curricula have a lot of communications courses in them. And then I hear some of the dialog today about science and whatnot.

Well, I don't necessarily think that we need to encourage more research or more science necessarily in the traditional sense, I think we really need to retrofit our way of doing business in natural resource conservation and management in a lot of ways for a lot of reasons—and there is another way, it was first and formerly postulated out of the University of British Columbia in 1986, and is called adaptive management. And it does incorporate all the players right from the start. It—there's no secrets. Everybody—all their cards are laid out on the table. And the only thing we have to do is agree that we're going to participate. To really make this kind of thing go it means that all the players have to participate, but they all have to be present. And that means the administrators as well.

And the first part of this approach is first we have to define problems and then we have to decide what's known about them. And we have to separate what we think we know from what we really don't know, but we think we know. And that can be a fairly difficult thing to do.

Then we have to recognize that there's a lot of uncertainty in this. You know, we're talking about the dams and the salmon.

We're talking about issues with caribou and grizzly bears. Quite frankly, there's a lot of uncertainty, there are a lot of unknowns. And we need to portray those kinds of issues. What do we know and what don't we know and what they're—and we have to be honest about it. I think that's hard for professionals sometimes. To say that, you know, to give up a measure of their authority. I think that's an issue.

And I think there's some credibility involved, professional credibility in this kind of thing. I think professionals are information providers. But they need to know what information they actually have at their fingertips to provide and what we don't.

When this is all done, I think we also have to recognize that the science, whatever that means, does change. And that's one reason you have to involve the public right from the start on these issues. And where we really lose out if we appear to switch horses in mid-stream because of some new knowledge and we haven't brought the public along, no wonder everybody's upset. And that has happened. We see examples of that today.

Another issue is once we get an action, if we're going to learn something, we're going to have to do something. If we don't do anything, we don't learn. It's just—we have to do some kind of action and then we have—whatever we're going to do, we have to monitor it. And we're going to have to evaluate it.

And then as we see that we need to change, we readjust and recycle the program. And if it requires that the agencies relinquish a small measure of authority—we have to define issues and organize the public involvement much more effectively. We have to all agree to participate and we have to recognize exactly what we know and what we don't.

And if we do this kind of thing and if you can build some of this kind of thinking into any revision that you might postulate for the ESA it would be very appropriate in my opinion.

Thank you.

Senator KEMPTHORNE. Dr. Peek, thank you very much.

I would like first, too, to thank you for joining us yesterday for the field trip. And one of the things we looked at at Lower Granite Dam were the pit tags that were put in some of these fish.

Can you tell me, I know there's different types of tags, but what's the situation with regard to harvest—offshore harvest? And do we have any situation today where when some of these commercial fisheries or fishing boats come in that a magnetometer is used to find out if our fish are in that catch?

Mr. PEEK. Yes, sir. You're getting me out of my bailiwick. I'm a big game biologist by trade here, but my feeling on a lot of this is that I think that it's pretty obvious that a lot of the downstream, the dam issues, really need to be addressed. We actually have to do something differently.

I think from what I hear from colleagues in Oregon that are very knowledgeable about these things, there are biogeoclimatic cycles involved in what's going on offshore as well as very intensive offshore harvest that really needs to be addressed. But when el Nino comes up these southern runs that extend up into Washington and occur in Oregon and down into California, diminish in size and a

lot of that is due to offshore ecological phenomena, some of it has to do with predation and whatnot.

Senator KEMPTHORNE. What is your view as to the habitat of our streams in Idaho?

Mr. PEEK. Well, sir, I've had occasion to ride extensively in the middle fork of the Salmon which is a steelhead anadromous fish stream. I've spent a lot of time up in the east fork of the Salmon in Herd Creek, which is a major tributary and a major anadromous stream. I've spent a lot of the time in the south fork of the Salmon and over in the Selway. Now the south fork has been modified, but the middle fork—the Herd Creek and the Selway—especially the Selway are almost pristine streams and their tributaries. They are unaffected by humanity and they sure don't have the fish runs in them.

Senator KEMPTHORNE. So the habitat is there; the fish are not?

Mr. DEVENY. The habitat is there and the fish are not there. Now this doesn't mean we shouldn't be careful of what we're doing up here in riparian zones, and we don't need to manage them, but I think it speaks to the issue downstream.

Senator KEMPTHORNE. OK. Bob, you pointed out, again, this cooperative effort of different communities, different special interests, folks that maybe normally don't go have coffee together, but you worked out a grizzly bear plan. It sounds to me, the bottom line is, you worked it out, but the Federal Government didn't work with you; is that right?

Mr. ADAMS. Essentially, that's correct. In the end we got a margin of cooperation, but as you know, some of it was with your help and Senator Craig's help. We had to go appeal the higher powers, if you will, to get some of the Federal agencies to cooperate with us.

But our experience was that if you involved the local communities in these plans and everyone cooperates, you can come up with a viable workable plan. We sat down with all of the Federal agencies and everyone that would show up, we had a few groups that chose not to participate, but we spent the first half a day with everybody going around the table talking about their personal agenda. And we got all of that out of the way and then we got down to the business. And you knew where everybody stood before we started drawing up our plan. And it was a very effective way to do it. And I think it shows that cooperation and involving the local communities is the only way that the current act or a rewritten act is going to work.

Senator KEMPTHORNE. All right. And I think it's an excellent model.

My final question is, Bill, Mike, Ted, any of you that would like to grab this, but is it worth aggressively pursuing real incentives—real incentives that would encourage you to step forward and help with recovery and conservation of these species, these unique species that may be in trouble?

For example, the inheritance tax—I know that the idea of keeping that land in your family and passing it on to the your heirs, the estate tax is a problem, if we could modify that, is that an incentive? And should we be pursuing this sort of thing?

Mr. HOFFMAN. I'd be happy to speak to that. You bet. I don't think just the inheritance tax itself would be adequate. I'd say jump out there and pay farmers and ranchers, professionals at growing things, at steward husbanding herds and being stewards of resources. Pay them to grow these fish, grow these frogs, grow these snails. We could grow more Bruneau snails in 1 year in Bruneau Valley than have been on earth since the being of time. They're not hard to grow.

Senator KEMPTHORNE. OK.

Mr. HOFFMAN. It would be a whole lot cheaper than fighting about it.

Senator KEMPTHORNE. Mike or Bill?

Mr. GUERRY. I'd just add a little bit, that even without those incentives, those type situations are taking place today. There's several small reservoirs in our area that we worked in conjunction with the Fish and Game and the Fish and Wildlife Service to provide wildlife habitat to help some of these species. Those are ongoing situations. We, too, want to try and assist in this process. Your proposal, I think, would just add to that.

Senator KEMPTHORNE. All right. Thank you.

Bill, any followup.

Mr. DEVENY. I would agree with that, that I think there should be some incentive.

Am I close enough?

Senator KEMPTHORNE. Uh-huh.

Mr. DEVENY. I would definitely agree with that.

Senator KEMPTHORNE. All right. Thank you very much.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Adams, you said people are killing bears because they have no stake in their survival. And my question is how do we rewrite the ESA to give people a stake in the survival of the species that existed in its area? One of them, of course, is this financial inducement that you were just referring to.

Mr. ADAMS. I don't think the financial inducement is as important as the public education and the feeling that everyone in a local community where the grizzly, in our case, is being recovered has a stake in it and everybody realizes they have a stake in it. We involved the local educators, we involved the local press, we involved all of the local organizations, including environmental groups, in our discussions.

And I think that the plan that we brought to fruition is an example of what cooperation will do. And I don't think the financial incentives are as important as educating people and making them realize that they have a personal stake in that bear's recovery, and by shooting the bear all they're going to do is get those areas completely closed down. And we're not going to be able to live in that area or make a living in that area.

Senator CHAFEE. OK. Well, Mr. DeVeney, you suggested that we find a better way to resolve disputes under the Act. What were you thinking about? Some kind of an arbitration procedure or administrative procedure or some kind of an informal process? Did you have anything particular in mind?

Mr. DEVENY. Not definitely, Senator. What I found out when you appeal to an agency as a small entity, you were ignored. Your only alternative is the courts, which doesn't work for the likes of me.

Senator CHAFEE. Well, I agree with that.

Mr. DEVENY. As a very small entity, I have to have some other way to be heard. I guess to really show you what I mean as a small permittee, my son and I very tactfully pointed out to the local Forest Service ranger here a few years back that he was not following the rules and regulations. He is a rather short solidly built fellow. He said, Well, ha-ha. Why don't you sue me. And he made a motion of keeping his sides from splitting. That's it.

Senator CHAFEE. Mr. Guerry, you were talking about the Idaho sheep industry loss. If I've got it right, 19,000 sheep and lambs to predators last year. That seems like a lot. What were the most common predators?

Mr. GUERRY. The most common predators in the State of Idaho in the sheep industry are the coyote and the mountain lion. That information—

Senator CHAFEE. Coyotes and the what?

Mr. GUERRY. Mountain lion. That information is acquired annually by the Idaho Ag Statistical Service through a survey process that they do.

Senator CHAFEE. And you think it's pretty accurate?

Mr. GUERRY. Yes, I do because I participate in that process.

Senator CHAFEE. Dr. Peek, you mentioned something you referred to as adaptive management. I'm not sure I quite understand what that is. Could you touch on that again?

Mr. PEEK. I'd be happy to, Senator. It basically requires people to cooperate with each other, that's what it boils down to, and to recognize what we know and what we don't know and then seek to learn more. One of the goals in it is to provide better understanding for all involved.

Senator CHAFEE. And you think that might be helpful in, say, developing effective recovery plans?

Mr. PEEK. Absolutely, sir. You bet.

Senator CHAFEE. Fine. Thank you.

Senator KEMPTHORNE. All right. Ladies and gentlemen, we're going to go to Senator Thomas and Senator Craig in just a moment, but this is the last panel. But a number of you filled out a blue card indicating that you would like to speak. I will tell you that 500 folks, initially, when we first announced there would be a hearing in Idaho, all contacted the office asking to be members of the panel, 500; 480 were disappointed.

But what we're going to do—you saw that they were put in one of the big bins out there. We randomly selected two people from the audience to draw these names. We're going to put names up here. Twenty have been selected, so I'm going to ask for your full cooperation on this. If your name is up there, after we complete this panel and those chairs are vacated, if you see you're up there, I'd like you to then come and take one of these chairs and we're just going to keep moving through. You have 3 minutes. There won't be rebuttal.

You will find that I think there's only 17 or 18 that will actually speak because one individual who I will not name was very innova-

tive and stuffed the box and won three things. So, too bad there wasn't a real door prize to this.

But anyway, that's the order in which the cards were drawn, and, again, once these chairs are vacated—and too, by doing this, I'm going to go over. If you look at your watch, you will see that we are right on course and we're going to finish this right at 6 o'clock which was the stated time, 2 to 6. But I'm going to stay over so that we can accomplish this because I appreciate all you folks sitting out there, and we're going to give a few of you a little chance to say something.

Senator Chafee and Senator Thomas, I know, also have flights and schedules. So, if you see them depart, it's not because of disinterest; it's because we're all fighting with schedules rights now. So, they're going to hang in there just as long as they can, but let me go ahead and ask for an exception. Could you just, in an Idaho fashion, let Senator Chafee and Senator Thomas know how much we appreciated that they came to Idaho to listen to us.

And we do mean that with all sincerity. It's been tremendous to have you here and we urge you to come back as often as possible, and I will join you in your States as well. So when you read that I am in some other State instead of Idaho, you know why I would do that.

All right. Senator Thomas.

Senator THOMAS. And I intend to hold you to that.

Senator KEMPTHORNE. Yes, I know you do.

Senator THOMAS. I'm interested in this animal damage control, predator thing because it's a big deal. And our numbers would be higher than yours. What—but I don't quite understand the relationship between endangered species and predator control.

Mr. GUERRY. We have a situation taking place with the animal damage control program where it is a cooperatively funded program, funded both with Federal dollars, State dollars, and private dollars. Those dollars are shrinking on the Federal level every year. As there are more requirements on that program for work with the Endangered Species Act such as on the wolves, and there have been requirements for manpower and consultation to this point and they expect there to be a lot more, it takes away from a program that is facing a budget cut of approximately \$6.2 million, as I think you are aware.

Senator THOMAS. It's the competition for money you're talking about.

According to our growers, the largest predators are coyotes and eagles.

Senator CHAFEE. Eagles?

Senator THOMAS. Eagles. Oh, yes.

Senator CHAFEE. Taking the lambs?

Senator THOMAS. And they really gobble up lambs—a lot of them.

Mr. DeVeny, you mentioned in the course of your comments "truly significant." Do you think this Hot Springsnail is truly significant? Or how do you determine truly significant?

Mr. DEVENY. I think it's real significant in that the agency did not follow their own rules.

Senator THOMAS. But you said that you agreed with protecting truly significant endangered species. I guess I'm asking you, does this fall in the category of a truly significant endangered species?

Mr. DEVENY. As one of those rednecked ranchers, I really have a hard time seeing any significance to a snail the size of my pencil point when there are a lot more of them out there. We don't even know how many there are or where they are. Why get worried about them until we know more about them?

Senator THOMAS. I think, you know, it's easy to say we're going to protect everything that might be threatened, every plant and every animal. And that may be a nice idea—to when we really get practical, I suppose there will ultimately be some level of importance attached. I don't know how you do that; it's difficult to do that. But it's one of the probably inevitable things.

You're very optimistic, Dr. Peek. I think you suggested that what we need to do is get everybody to agree.

Mr. PEEK. No, sir. I think what I really mean is I think we have to get everybody to agree to learn and move with the scene.

Senator THOMAS. We're talking about—

Mr. PEEK. In other words, we've got to—first, the only thing we have to do is agree to participate. If we will just do that. And we can't even do that in many cases.

Senator THOMAS. I understand. It's difficult. I think, when we deal with these issues. Many of them are multiple use issues. And inherent in multiple use issues are conflicts.

Mr. PEEK. Right.

Senator THOMAS. As many people see it from a different point of view, and so I think it makes it terribly important that the process allows for a resolution because you're not going to have all one big happy family all agreeing with everything.

All right. Well, you mentioned in one of your points, Dr. Hoffman, allow Federal agents to be individually responsible for failures—well, parts of the Act that allow individual agents to be responsible for failures to enforce the act should be removed. I don't understand that. What do you mean?

Mr. HOFFMAN. Federal agents perceive that if they are sued by citizens or groups and found to be failing to enforce the Act that they will be held individually responsible. They, therefore, achieve a state of near panic and hysteria wherever endangered species are mentioned and trot out the big long list. Don't do this, don't do that, and don't even think about this, rather than trying to find a creative solution.

Senator THOMAS. I can understand what you're saying. I didn't—you know, we had a hearing—in fact, I think it was Senator Craig's hearing with the chief of the Forest Service, and there was some agreement among the leaders of the forest, that they are driven—sometimes decisions are driven by the potential litigation. And you know, when there's a decision to be made and you think you're going to be sued, you tend, maybe, to lean toward avoiding that.

We need—I guess, just as a final observation. With all these laws, NEPA and all of them, that affect—we aren't allowing land managers to manage very well. They're not—we talk about science here, and we're not allowing land managers to manage as well as

they know how to manage because of the input of these surrounding statutes and surrounding regulations.

Mr. Chairman, thank you very much for the invitation to be here. I've enjoyed it. You'd be interested to know how similar your feelings are to our feelings in Wyoming. So, thank you very much for allowing me to be here.

Senator KEMPTHORNE. Craig, thank you very much. It's an honor to have you here.

Senator Craig.

Senator CRAIG. Mr. Chairman, let me only thank all of these committee members for, I think, some very excellent testimony. And I think what I am hearing from Dr. Peek is exactly what, in kind of a "micro" way, is occurring here and there around the country. When agencies will demonstrate flexibility in some instances, and where diverse groups can come together and find common ground. And the tragedy that happened in Bob's turf is that we had to kind of politely bludgeon the Forest Service into opening their eyes and listening. And partly the reason was exactly what Senator Thomas talked about. They were frightened to do otherwise, when, in fact, cooperative efforts encourage produced potential possibility of saving grizzly bear in the Priest Lake area.

I find it unique that we have created this phenomenal gridlock of indecision out of fear and sometimes indecision that is a product of something I said in the opening of my testimony, that when you use regulation and punishment as the tool to cause something to happen. It doesn't work very well. But when you develop a cooperative understanding, it does, or it can in some instances.

So, gentlemen, thank you very much for your testimony, and I think reinforcing some of our concerns that the law has to be changed to accommodate the ability to accommodate. Thank you all.

Senator KEMPTHORNE. Larry, thank you very much, and, again, too, I think we've had excellent panels throughout the day and you certainly added a great deal to this, and I appreciate that.

[Whereupon, the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

1995 JUN 12 AM 11:51

727 Braunda Dr.
Roseburg, OR 97470
June 7, 1995

The Honorable Dirk Kempthorne
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Washington D.C. 20510

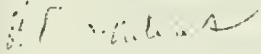
Dear Senator Kempthorne:

We attended the hearing on the ESA in Roseburg, OR. It is our opinion that the original intent of Congress is not represented in administration of the Act. We recommend that the ESA be reformed to accomplish the following things:


1. The act needs to be selective in determining which species are to be listed. There is no reasonable way that we can give protection to every possible obscure species that may be in jeopardy. This act has the very real potential of bankrupting this nation unless some discretion is used in its application. We must put a priority on the species about which we are most concerned. This assessment should consider costs and practicality of recovery.
2. The scientific data upon which decisions are made regarding listing a species needs to be adequate and verifiable. We should stop listing species based upon incomplete research. The Northern Spotted Owl appears to be an example of a species that was incorrectly placed on the endangered list. As more data is collected it appears that the owl is more numerous than originally thought and less dependent on so called "critical habitat".
3. The States and local communities need to be given a greater role in administration of the Act. Local people have a great deal of knowledge about their areas that should be given consideration.
4. It has been recommended that compensation be made for reduction of private land values or incentives for managing private lands to assist in recovery plans. Fairness and justice may necessitate such payments if private lands are affected. However, we recommend that, if possible, regulations should omit private lands with emphasis for recovery of endangered species placed upon federal lands. The greatest challenge to our nation at present is to balance the budget and reduce the deficit. We cannot justify spending more dollars to solve a problem that can be avoided.

5. The law should be modified to require that before listing a species, the criteria for delisting will be established. Definite goals for recovery must be stated, so that when the goal is met the species will be delisted.

Sincerely,



H.F. Anderes



Patricia J. Anderes

cc: Senator Bob Packwood



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May 30, 1995

The Honorable John H. Chafee, U.S. Senate
Chairman Environmental and Public Works Committee
c/o ESA Hearing
Roseburg, Oregon 97470

Re: Reauthorization and Reform of ESA

Dear Senator Chafee:

The Association of Consulting Foresters of America, Inc. (ACF), appreciates the opportunity to provide information regarding our views and experiences in dealing day-to-day with the Endangered Species Act (ESA). ACF members are self employed consulting foresters or employees of consulting firms. We provide forestry services to over 22,000 landowners each year, including small woodland, industrial, institutional and government ownerships. We impact over 50 million acres each year and manage 16.8 million acres of non-industrial private forest lands under long term agreements with the owners. We sell about 3 billion board feet of timber valued at about 1 billion dollars for our clients each year.

The ACF has members in 36 states and two Canadian provinces. We were founded and incorporated in 1948 by consulting foresters who believed it to be in the public interest to form a national organization for consulting foresters dedicated to establishing and enforcing exacting minimum professional and ethical standards for its' members. Although membership is entirely voluntary, the ACF has grown steadily without compromising the ideals and strict standards established by our founding fathers.

ACF members deal with the ESA daily, throughout the entire nation. The intent of the current law is being abused by special interest groups, and yes, by certain government folks with personal agendas. There is a phrase that's become popular in Washington, D.C. recently: "mean spirited". To a small woodland owner, "mean spirited" means having his retirement income taken away by the ESA regulations without just compensation. A timber community that's suffering from a ban on the sale of federal timber likely considers the ESA "mean spirited".

The Act was no doubt conceived with enviable intentions, and at first, appeared to function in a reasonable and effective manner. The recovery of the bald eagle is an early example. However, some argue that the eagle began its recovery before ESA, after DDT use was discontinued. About five years ago, however, the Act began to be interpreted and administered in a manner different from that which the authors had anticipated. Consequently, litigation has become the rule, and the courts adjudicate biological theories without any consideration of the human impact of the Act's requirements. As a result, grievous and unnecessary hardship has been visited upon workers, families, and communities previously dependent upon federal timber in the northwest. Additionally, the administration of this Act has had serious and detrimental impacts on private timberlands, and has often precipitated environmental degradation. Examples include landowners cutting and liquidating their timber before its mature and creation of large harvesting units because they're afraid regulations will get worse. Other examples occur when a landowner is forced to build roads on unstable terrain to avoid crossing federally owned land. This increases the miles of road, erosion and land slide potential.

Its common for landowners to prematurely harvest timber to avoid creating spotted owl or some other endangered specie habitat. The fact that landowners prematurely harvest their timber out of fear of the possibly creating habitat for the spotted owl and becoming subject to a takings is not only unfair to the landowner, but it robs the environment of potential benefits that would otherwise be obtained if the timber reached "old growth" status.

The following are some problems we feel need to be addressed in a reauthorization of ESA:

- 1) The law is being used by special interest groups to stop prudent forest management in areas where a species is on the outer edge of its range. Two examples: Salal, a brush species found commonly in the Douglas fir region, is on the federal threatened list in Southeast Alaska. Salal is not endangered. In fact, its a vigorous growing scrub in its primary range of western California, Oregon and Washington. It often causes reforestation problems in these states because of its aggressive growth that quickly occupies a growing site. Southeast Alaska is the northern end of salal's natural range. Its only normal that plants and animals on the edge of their range may not be abundant.

The reverse is true for the marbled murrelet. Its primary range is Southeast Alaska and coastal British Columbia. Coastal Oregon and California are on the southern end of its range. The murrelet has been listed as threatened by the federal government and recently listed by the State of Oregon. Again, the murrelet is not in danger and doing well in its primary range. Murrelets exist from Victoria, B.C. to Japan. The laws are being abused by making listings based upon the population in the outer range of the species habitat and ignoring what's happening in its primary range.

- 2) There are often conflicts between state regulations and federal guidelines for recovery of a species. If a landowner's property provides habitat for a listed species, it's likely that his ability to manage this land will vary radically from state regulations to federal guidelines. This leads to uncertainties. The best way to encourage a small woodland owner to harvest timber too young is to make him uncertain about the future of government regulation.

- 3) Just compensation, of course, is a big issue. It's not just an issue but a reality. Many of our clients have had timber sales cancelled because of habitat requirements. These small woodland owners aren't the rich; they are school teachers, policemen, farmers and so forth. In some cases, the timber has been in the family for generations and all have been good stewards of the land. Yet, the government can, and is, telling a couple ready to retire, "We're sorry, you can't harvest the timber that your family's owned for generations. We know you spent decades growing and protecting the forest, but you can't harvest it. And by the way, the government's not going to compensate you for the regulatory take, and don't even think about asking for a tax write off".

Many of these landowners have little else except their timber to provide for retirement and their children's education. We think everyone agrees laws should be fair. The ESA should be amended to provide for compensation of lost private property rights or amended so that less restrictions are placed upon private landowners. The law needs to address the difference between ownership; private, state and federal. I would remind the Committee that 62% of the nation's forests are owned by non-industrial, private woodland owners. In the South, that figure approaches 75%.

- 4) The science upon which listing decisions are made needs structure. It's not acceptable to make listings that have enormous economic and social impacts based upon the soft science commonly used today. The first criteria for a listing should be fundamentally sound scientific research finding beyond any doubt that a species is threatened or endangered. Too many species are being listed with very weak supporting data. The marbled murrelet is an excellent example. Common sense and a very introductory study of historical geology indicate that many species of plants and animals become extinct long before man ever influenced the environment. The current law presupposes that man is the cause of all species' extinction. Obviously, that isn't always the case.
- 5) The law needs an amendment that considers the effect of a listing on people. The costs and benefits of listing should be intensely studied. As written, the ESA considers only the possible extinction of a species. It's possible that the economic base of an entire region can be devastated by a recovery plan that has no chance of saving a species. Common sense must be included, or eventually the process will fail.
- 6) The ESA is being used by some federal agencies to force their forest management policies on adjoining landowners. For instance, if a small woodland owner needs a hauling permit to use a federally controlled road, the federal government will want to know the specific activity or harvesting proposed on private land. They will then assess habitat needs in the area. If the government feels the landowner's timber might be needed for habitat, they'll consult with the U.S. Fish and Wildlife Service. The criteria for examining the activity's impact will be federal guidelines. Should the U.S. Fish and Wildlife Service determine the private timber is needed for habitat and shouldn't be cut, they will either deny the hauling permit or force the landowner to conform to certain conditions. The consequences of even the threat of these permit problems is having anti-environmental impacts. Landowners that need access to their land via federally controlled roads are reluctant to commit to long term forest management investments

because of the uncertainty of future federal policies. Secondly, the landowner will build roads on private land to avoid dealing with federal permits and intrusions on their property rights. This means more roading is required, resulting in increased soil erosion. In order to avoid federal land, the roads are often located on terrain that has potential negative environmental impacts.

- 7) The ESA has substantially created a ban on the harvesting of federal timber in the west. This has created tremendous impacts to a state such as Oregon, which contains 62 million acres of forestland. About 56% is federally owned. Since 1989, the public ownership share of the annual harvest in Oregon has dropped from 54% to 19%. To offset the reduction in harvest from public land, private timber harvests have increased from 46% to 81% of Oregon's annual timber harvest. Similar statistics are found in California where public harvests have dropped from 44% in 1989, to 17% in 1994 while private harvests increased from 56% to 83%. Too much pressure is being put on private land to produce commercial timber. The public land consists of older, mature timber age classes while some of the privately owned timber is young and not mature.

Landowners are being forced to harvest immature timber instead of mature timber which increases harvest unit size because of the lower volumes per acre found in immature stands.

The ban has resulted in timber volumes under contract on Forest Service and BLM lands to reach record lows and continue to decline. Our public forest lands go unmanaged and no effective timber sale program exists. The Clinton administration endorses a northwest forest "plan" which prohibits commercial timber harvest on 83% of the 24.5 million acres of public land within the range of the northern spotted owl. Even this small harvest can't be implemented because of continued lawsuits. The Umpqua National Forest headquartered right here in Roseburg is supposed to sell 83 million board feet annually under this drastically reduced "plan". So far this year, it has not sold 1 million board feet.

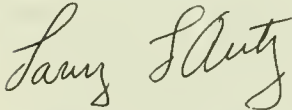
The effects of the federal timber sale bans are now becoming clear. Many mills have closed and more are closing daily. Lumber and log imports are increasing, tax revenues are down, and support for local government and needed services have diminished. The reduced harvest levels are well understood in their impact upon unemployed workers; lost homes, dislocated families, increases in drug and alcohol abuse, as well as domestic violence and a lack of family or community stability. In addition, western counties are losing substantial financial support because of lack of revenue that has historically taken place. Private lands are being over-cut and trees at their most productive age harvested too young in an effort to help meet the country's need for logs. Non-industrial tracts are cut based solely on the fear that they may soon be prohibited from harvest under a governmental "recovery plan". Log and lumber imports are acknowledged to simply shift their accompanying harvest "pollution" to other countries which have little or no environmental concerns.

ACF supports the concept of good land stewardship and a healthy ecosystem. However, the ESA is not accomplishing what was intended by the legislation. Strengthened scientific evidence along with a strong economic and social impact analysis is needed before a listing should occur. ACF does not support a reauthorization of the ESA without amendment. These amendments should, at a minimum, include the following:

- The Act places too much weight on single species management and fails to recognize the need for multiple use of our nation's forests. All forests cannot be targeted for management of a single specie. We can't legislate what nature can't provide. Decisions must be made about which roles the various public and private landowners will play in providing habitats for plants and animals that depend on forest structures.
- Require structured scientific data before listing. Soft science should be disregarded.
- The costs and benefits of a listing should be thoroughly studied. The potential for the success of a recovery plan to prevent extinction should be high before a listing is approved and should be compatible with the economic costs.
- Regulatory policies should distinguish between private and public ownerships. Individual private landowners shouldn't be required to carry the heavy burden of the ESA, as they're currently doing.
- Changes are needed to stop the abuse of the laws intent, such as considering the population of species on the outer edge of their range and ignoring the populations in their primary range.
- Lastly, the law must be changed to be just by providing landowner compensation for a regulatory taking. Compensation to landowners would help police the law and insure that the government is concentrating on recovery efforts that have high potential for success and benefit to society.

We appreciate your Committee's consideration of the input of the Association of Consulting Foresters of America, Inc. and we will make ourselves available as requested.

Very Truly Yours,



Lanny L. Autry, President
Association of American Consulting Foresters of America, Inc.

BARNES FORESTRY CONSULTANTS

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Rick Barnes
Professional Forester

June 1, 1995

Committee on Environment and Public Works
Subcommittee on Drinking Water, Fisheries and Wildlife

Re: Hearing regarding Endangered Species Act
June 1, 1995 in Roseburg Oregon

Committee Members:

I own and manage Barnes Forestry Consultants. We currently have 6 foresters working for us. We provide a multitude of forestry services to private landowners. Our clients range from those with 5 acres to the large industrial landowners. The majority of our clients own from 20 to 1,200 acres. As we assist private landowners with the management of their lands, we have found areas where the Endangered Species Act (ESA) needs revision to better meet its intent. I would like to specifically discuss three areas where I believe the ESA needs revision:

1) **Section 4D:** This section of the ESA has the potential of requiring private landowners to provide habitat for Threatened or Endangered Species. If this portion of the bill is not revised, it will result in landowners taking action to see that they do not create habitat. I would like to explain two situations which I have encountered in the last year.

I have had two different clients in the last year who have lived on their property for many years. Both of them are widows who's husbands passed away years ago. They have nurtured their tree farms for many years creating, with their families hard work and long term financial commitment, forests which are now considered habitat for Northern Spotted Owls. Both of these ladies are now at the age where they must move into a retirement center (reluctantly I might add) because they can no longer take care of themselves. Both of them are depending on the value of the timber to provide the funds they need to pay the expenses of the retirement center. To have laws on our books which can allow the federal government to take these assets away from people like this is wrong.

Approximately 2 years ago when the Clinton Administration was threatening to enforce the 4D rule, my phone was ringing off the hook. People wanted to make sure they got their trees cut before the government confiscated them. At the time I urged them to watch the situation closely, but I urged them to not cut the trees prematurely until there was a better indication that the government was going to follow through with their plan. Fortunately the government temporarily backed off of this threat.

In all cases, people told me if it looked like the government was going to follow through with confiscating their timber assets, they were going to harvest them.

Many of the landowners in Douglas County have owned their forest land for many years. Many have nurtured cut over timber land into forests that are now providing habitat for species such as the Northern Spotted Owl. We want to maintain the incentive for private landowners to grow trees and provide habitat for species such as the Northern Spotted Owl. We must also recognize that a portion of this habitat will be cut each year as land owners make their personal financial decisions to harvest. But at the same time, we will see other landowners have their forests reach a stage that can provide habitat for species needing mature forests. We will also see landowners reforest their cut over land as required by the Oregon Forest Practices Act.

If we don't revise section 4d we will see landowners do one of two things, 1) they will change their property from forest use to some other use, or 2) they will grow trees on a very short rotation and cut them at a very early age before the trees can be considered habitat for species such as the Northern Spotted Owl. Both of these situations would be detrimental to our communities as well as detrimental to the wildlife we are trying to protect.

2) Definition of Species: I urge the committee to take a close look at what we are considering a species. It appears to me that we are trying to go way beyond the intent of the Act by trying to protect individual subspecies rather than dealing with species. If we deal with the protection of species, I believe we will take care of the subspecies at the same time. To get down to a level where we need to do genetic testing to determine if it is a different species, is only resulting in total havoc as we try to administer this law. To illustrate my point about species I would like to take a close look at us human beings.

Homo sapiens, better known as man, is the only specie of the genus Homo. Although we are all the same specie, many of us look different, ie. Japanese vs. American. We also have different habitat preferences. Most of the people who live in eastern Oregon prefer the dry, sunny climate of eastern Oregon. Most of us that live here in western Oregon prefer the milder, although wetter climate of western Oregon. These different habitat desires does not mean that we are different species. Nor does it mean that those of us that prefer the climate of western Oregon could not adapt to the eastern Oregon climate if we had to.

We must keep these type of differences is mind as we try to administer the ESA. We need to focus at the species level and not get hung up on the specifics of subspecies. We must not forget that living organisms do have the ability to adapt. If we do what is necessary to protect a species, the subspecies should be able to adapt.

3) **Specie range:** We need to take a close look at how we are looking at species at the outer extent of their range. All species populations decrease greatly as we get to the outer extent of their range. We need to take a look at how the species is doing in its primary range and not get concerned with limited populations of species in its outer range. If species are healthy in their primary range, I think the intent of the ESA is being met. I would urge the committee to recommend addressing this issue in a revision. We should only get concerned if we see a substantial decrease in the species primary range or see a true threat to the species in its primary range.

I thank you for the opportunity to provide input to your committee. If you have any questions regarding any of my suggestions, feel free to give me a call.

Sincerely,
BARNES FORESTRY CONSULTANTS


Rick Barnes

63051 Prairie Creek Pl.
Joseph, OR 97846
June 13, 1995

Senate Environment & Public Works Committee
SD-410

Washington, DC 20510

Dear Sirs:

My husband and I want to add our voices to all those who are requesting that the Endangered Species Act be amended in such a way that hasty, harmful actions are not taken in the process of listing any species as endangered. There has been far too much unscientific, hasty, action taken; based not so much on extensive and intense ~~research~~ as on emotionalism and political expediency. The human element has been ignored, and private property rights have not entered into any consideration of the actions taken.

We appreciate your desire to serve the needs of the American citizens fairly.

Sincerely,

Florence and Arthur "Mike"
Brennan

Steve Shimberg
 Director of Environment and Public Works
 506 Dirksen Senate Office Bldg.
 Washington, D.C. 20510

Dear Steve,

As you are aware, the reauthorization of the Endangered Species Act (ESA) is due this year. It has been put on the back burner for the last two years, but really needs to be addressed NOW. I propose the following recommendations be incorporated into the ESA:

- A. Establish strict guidelines on the length of the consultation period for government agencies to make listing decisions. Government agencies have prolonged the defined 90-day limit on consultation by manipulating the definition of the starting date of consultation, thus delaying decisions for up to 18 months or longer. FWS and NMFS have a great deal of freedom in making crucial decisions on these processes. In fact, both agencies have made decisions which appear inconsistent and arbitrary. FWS has continually violated the ESA concerning the time limit on consultation. The ESA specifically states that consultation, ". . . shall be concluded within the 90-day period beginning on the date of which initiated". Standards need to be imposed and strictly adhered to on the length of the consultation period. Millions of dollars are tied up in obscure lawsuits while billions of board feet of timber are rotting when they could be going to local mills to keep the economy of the region healthy and viable.
- B. Redefine and distinguish "threatened" from "endangered" species in the ESA, allowing appropriate levels of protection for each classification. Also, a clarification is needed of Congress' intent of protecting listed species viability which may not include maintaining the species in every geographic region.
- C. Prohibit the future addition of subspecies and populations to the endangered list unless by specific Congressional decision.
- D. Allow citizens to file lawsuits to challenge a decision to add a species to the list. Currently, citizen lawsuits can only challenge the decision not to add a species to the list.
- E. Use incentives rather than punitive regulations to encourage privately owned habitat. The law currently punishes people with listed species on their land by restricting the land's use. Reward them for providing good habitat by offering tax breaks.
- F. Recovery Teams and Recovery Plans, which develop recommendations to federal agencies and have non-federal employee members, should be subject to FACA, which ensures balance in committee membership of all impacted parties.

Please consider the recommendations I have made to enhance and balance the ESA. I have lived under the auspices of this Act too long to know it will not cure itself. DO NOT let this "devil in disguise" abide in it's present form - transform it into a balanced, rational guideline 'we the people' can live with.

Thank you.

Respectfully submitted,

Kevin P. Champion
 740 Placer Rd.
 Sunny Valley Orc, 97497.

June 5, 1995

The Honorable Dirk Kempthorne
 United State Senate
 "ESA"
 Washington, DC 20510

1995 JUN -9 PM 2:38

Dear Senator Kempthorne

Please work with your fellow members (Senators, Representatives, and Administration) of office to reauthorize the Endangered Species Act this session. We desperately need a sensible rewrite of the act with language that requires cost/benefit analyses when declaring threatened and endangered species.

I live in Sweet Home, Oregon (25 years) which is located at the base of the Cascade mountain range. I work for James River Corp. in Halsey, Oregon (22 years) as a Process Operator in the recycling plant. I am one of the original workers to start up this new plant in 1992. I mentioned this to only assure you I know what I'm saying when I tell you how our wastepaper cost have at least doubled at the minimum since June 94. Our pulp in fact cost more today than virgin pulp from our sister mill in Washington. At start up it surely did not! Recycling is good and helps but its not the total answer. A final note on myself I'd like to mention I am a Sweet Home School Board member and know first hand of the lost revenue over the years from lack of timber sales, lost jobs and businesses closing.

The ESA as is has proven to discourage, hindered and prohibited effective conservation and habitat stewardship; failed to conserve endangered and threatened animals and plants; created perverse incentives which promoted destruction of privately owned endangered species habitat and wasted scarce resources.

The ESA has failed in large part because it violated the rights of individuals; destroyed jobs and depressed human enterprise on private and public lands; imposed significant burdens on state, county and local governments.

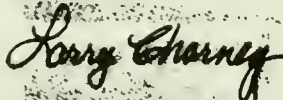
Sweet Home Ranger District which is in Region 6, and Willamette National Forest covers about 200,000 acres has really been limited to the amount of timber sold from it. Sales from 1990 to 1994 have gone from 100 million to 40 million to 4.7 million to between 300,000 and 400,000 and in 1994 431,000 board feet. This year they are planning to put up for bid and salvage 545,000 board feet of dead timber that has been down since January 1990. In these last 5 years the amount of timber harvested off of private lands has gone sky high and for how long this will last no one knows for sure. When this does dry up then all of the Northwest will be impacted dramatically right away but you know as I know lost jobs, industries, and opportunities aren't limited to county or state lines!

Page 2

June 5, 1995

The saddest thing is I'm convinced this isn't needed, right or fair to not only the people but the health of the forest and environment we all so much value. May God really be with all our leaders and show them direction and certainty on such issues as the ESA.

Sincerely



Larry Charney
28100 Liberty Rd.
Sweet Home, Or.
97386

June 5, 1995

Mr. Steve Shimborg
Director of Environmental & Public Works
% Sen. John Chafee
506 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Sir:

In regard to the Endangered Species Act (ESA) and it's renewal or revision, I would like to make you aware of my opinions on the subject.

1. I do not believe that man should completely disregard the existence of any species.
2. I do not believe that man should be completely disregarded for the existence of any species.
3. I think the ESA should be revised in the following ways:
 - a) List only species that need protection based on true facts (not biased computer models, and guesstimates.)
 - b) List only species, not subspecies, local strains and geographic groups.
 - c) List species for protection only after a plan for recovery, with assurance of success, and a goal have been developed.
 - d) Protect the species, not the habitat (most species that cannot adapt to changes in their habitat or environment will probably become extinct regardless.)
 - e) Consider the costs and effects on other species (including humans) when deciding on the protection of any species.
 - f) Change the ESA to establish definite limits on the government agencies who administer the ESA to remove the limitless power and authority they have assumed under the present ESA.
 - g) Most importantly, provide rules that incorporate some common sense and reason in the Act.

Respectfully yours,



Robert Dahne

6-5-95

1995 JUN -9 AM 10:48

Senator Dirk Kempthorne
Environmental & Public Works Committee
SD 367
Washington DC 20510

RE: ESA HEARING
ROSEBURG OR- JUNE 1-95

Dear Senator Kempthorne and Committee Members,

I am a small woodlot owner and concerned citizen living downstream from BLM properties who had the opportunity to attend the Roseburg Field hearing on June 1. I wish to thank you for allowing testimony to reflect a balanced viewpoint.

I would like to express support for a strengthened ESA. The ESA protects humans as well as plants and animals by giving us early warning indicators for environmental degradation which in time could effect us all.

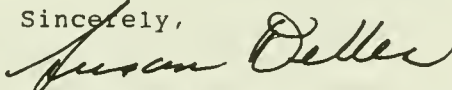
Oregon's economy is doing better in most sectors right now because we are in the process of diversifying. As we move from a timber and wood products base to other areas, we broaden our economic support system so we don't just depend on one industry for that support. It is important now, more than ever that the fishing industry be revitalized and we can only do that through strong habitat protection. We need to look at the long term effects the decisions we are making today will have on future generations.

We need to move toward real sustainability when managing our forests so we have trees and jobs for the future and so that, at least a part of the necessary habitat remains for species that indicate the health of the forest.

We also need to move toward ecosystem awareness and management as the fragmentation of the last remaining old growth forests is one of the major problems we are now facing.

Thank you for your consideration.

Sincerely,



Susan Delles
2801 Sykes Creek Rd
Rogue River OR 97537

6-3-75
 Russel DeKorset sr
 1438 SE Strong
 Beavercreek Ore
 97117

Mr. Steve Shimborg
 Director of Environmental and Public Works Committee
 c/o Senator John Chafee
 505 Dirksen Office Building
 Washington, D.C. 20510

RE: ESA Suggested Changes

Dear Mr Shimborg:

I have lived in Oregon my entire life. And I am trying to raise four children. My family enjoys to camp, hunt and travel in Forest of Oregon.

When you write the ESA you need to consider those of us who live here. When we ask you to get hearings the same consideration as cuts that is not so much to ask. And when you stop logging on private lands you need to pay a just compensation.

Thanks for your time to read this letter

cc: Senator Hatfield
 Representative Patrick
 Senator Kistner

Russel DeKorset

MARK A. DVORSEK

1995 JUN 19 PM 2:24

353 Buffalo Lane
Roseburg, OR 97470

Senator Dirk Kempthorne
456 Dirksen Senate Office Bldg.
Washington, D.C. 20510

RE: ESA - suggested changes

I am employed in the forest products industry and I see the ESA, as it is currently used, to be a serious threat to my family and to private property rights in general. I believe that we should protect other species but we need to have a little more flexibility.

I think we need to have recovery plans developed at the local level. We also need to take into account the needs of people as well as plants and animals. We also need to realize that some species would be on the road to extinction without any human influence. Also, I fail to see why every sub-species and minor variation needs to be treated separately. Finally, the taking of private property to protect endangered species needs to be ~~it~~ compensated to the property owner.

I sincerely hope that these issues can be addressed in a revised ESA.

Thank-you
Mark A. Dorsek

Attachment #3

April 1995 update - page 5

PAUL F. EHINGER & ASSOCIATES
Consultants to the Forest Products Industry

MEMORANDUM

FROM: Paul Ehinger
DATE: February 1995
SUBJECT: Costs of Spotted Owl/Clinton Plan - 1989 to Present

We have examined the costs of the Spotted Owl management program and its further implementation identified as the Clinton Plan or Option 9. The public needs to know some of the real costs of this course of action. The further extension of these policies throughout the Northwest assures that neither regionally or nationally will there be any recovery in the near future. The earlier hollow promises of modest harvest levels proved to be based on expedient politics of the moment and not on any attempt to alleviate the serious problems of timber supply needed to help the people of the Northwest and consumers throughout the country.

This analysis shows the total disregard for the economic or human costs in the forest communities of the Pacific Northwest which are in the front line of the disastrous program. The policy has lead to an exorbitant number of mill closures, and in our analysis, we have looked at each mill closure since 1989 in the Spotted Owl/Option 9 area and eliminated those closures that we believe are not related to this issue. The total is show below with the loss of jobs related to the closures, both mill and logging.

1200 HIGH STREET, SUITE 22
EUGENE, OREGON 97401
Phone 503/686-9687
Fax 503/686-8124

Industry & People Impacts in Option 9 Area

Option 9 Area Only:

Mill Closures - Owl Related	142
10% Not Owl Related	<u>15</u>
Total	157

Job Losses - Owl Related	18,905
14% Not Owl Related	<u>3,132</u>
Total	22,037

We have not developed a method to apply costs to this segment of the problem.

There are other factors involved in these traumatic changes that take their toll on the communities and their people.

COST TO THE WORKERS

1. Loss of wages
2. Cost of retraining
3. Loss of value in homes in timber communities
4. Cost of moving to new location for new job
5. Often lower wages with new job

COST TO THE COMMUNITIES

1. Loss of business because of high unemployment in the community
2. Loss of value of forest product businesses and lost of asset value of numerous businesses in the service sectors of the local economy.

COST TO COUNTY AND LOCAL GOVERNMENTS

1. Loss of timber revenue which ranges from 25% to 50% of federal timber receipts. (Partially offset in Option 9 area by federal government safety net.)
2. Loss of tax base for the community/county due to
 - a. closure of mill

- b. devaluation of residential property.
- c. closure or loss of value of the numerous small businesses on main street as the economy declines.

The effect of these closures is not limited to the specific mill town, but radiates throughout the surrounding area. The loss to the particular business owner can often lead to bankruptcy or insolvency which has broader community implications. It is difficult to precisely quantify the impact of these losses on specific localities and regions, but they represent the real costs attributable to the activities of the federal government. The University of Idaho has conducted some research in this area and has quantified some of these losses for specific areas.

EXCESS COSTS TO THE CONSUMER - 20 BILLION DOLLARS IN THREE YEARS

The national and international impact in the marketplace has been overlooked, because it is spread not only throughout the country, but throughout the world. The magnitude of the Clinton Plan and related programs is such that the withdrawal of timber from the marketplace has impacted prices around the world.

For the purposes of this document, we have limited our analysis to the United States and show the impact of the dramatic price increase on the consumer of softwood lumber and structural panel in this country. We recognize that the inflation caused by this artificially created wood scarcity has a much broader area of impact than just the U.S. It has affected Canada and Pacific Rim countries most noticeably. Market changes have increased prices also for hardwood lumber, hardwood panels, non-structural boards (i.e., particle board, hardboard, MDF, etc.) and the chips and sawdust used for pulp and paper production. The impact on the consumer has been all pervasive.

To determine the excess cost, we have used the composite price indices for softwood lumber and structural panels. The Spotted Owl management program which later became Option 9 in the

Clinton Plan began to impact the industry in 1987 or 1988 with the initial litigation and curtailments of federal timber offerings. The process began to reflect in the marketplace in mid 1991 when these prices briefly reached new highs. The real sustained level of high prices did not occur until 1992, and from that time forward, the country experienced one of the most dramatic price increases of wood building commodities in history. Even with recent declines in the market, prices continue to remain at levels well above those prior to 1993.

The analysis the period is from 1984 through 1994. 1984 was the year immediately after the recession in the early 1980's and is the beginning of a period of increasing demand which peaked for lumber in 1987 with US. Lumber consumption over 50 billion board feet and structural panel consumption at 27 billion square feet. The combined level of lumber and panel consumption has not been reached before or since.

During the 1984 through 1991 segment of the analysis period, the lumber prices increased at a rate of 2.6% structural panel increased at a 2.0% rate, and the consumer price index increased at a 4.6 percent rate. The dramatic price increases began in 1992 and continues through today. We projected for 1992, 1993, and 1994 the Random Lengths price index at an annual increase of 5% (the CPI increased at only 4% during these 3 years.). This was double the rate of the previous 8 years for lumber and panel prices. We took the annual difference between the projected 5% inflated index and the actual prices. The actual prices increased 25% annually for lumber and 18% annually for plywood for the three year period. We multiplied this difference by the total volume of U.S. softwood lumber consumption and the total volume of U.S. structural panel consumption to arrive at the inflated costs paid by the consumer during the three year period. This calculation shows that the premium paid by the consumer has been over 20 billion dollars for the 3 year period. The graph and supporting data are attached and a part of this memorandum.

As in all such matters where the government is involved, the consumer and/or taxpayer always foots the bill.

SPOTTED OWL COSTS TO THE CONSUMER

PAID BY CONSUMER DUE TO INFLATED COSTS OF LUMBER AND
STRUCTURAL PANELS AS A RESULT OF TIMBER SCARCITY

LUMBER	1	2	3	4	5
Year	Random Lengths Softwood Lbr. Index	5% Inflation* from 1991 Base	Difference 1-2	U.S. Softwd. Lbr. Consumption Thousand Board Ft.	Penalty Paid by Consumer (3x4)
	\$/MBF	\$/MBF			
1991	\$235	\$235	\$0	42,285,000	\$0
1992	\$287	\$247	\$40	45,736,000	\$1,829,440,000
1993	\$394	\$280	\$134	45,811,000	\$6,138,674,000
1994	\$410	\$273	\$137	46,000,000 (E)	\$6,302,000,000
				Total Extra Cost	\$14,270,114,000

STRUCTURAL PANEL	1	2	3	4	5
Year	Random Lengths Struct. Panel Index	5% Inflation* from 1991	Difference 1-2	U.S. Panel Consumption Thousand Square Ft.	Penalty Paid by Consumer (3x4)
	\$/MSq. Ft.	\$/MSq. Ft.			
1991	\$241	\$241	\$0	24,285,000	\$0
1992	\$309	\$253	\$56	25,985,000	\$1,455,160,000
1993	\$348	\$286	\$62	26,318,000	\$2,158,078,000
1994	\$370	\$279	\$91	28,500,000 (E)	\$2,415,500,000
				Total Extra Cost	\$6,028,738,000
					\$20,298,850,000

* Increased index prices using 1991 as base year with 5% annual inflation through 1994.

Annual rate Consumer Price Index (CPI) 1991-1994 = 4.03%.

Inflation 1984 - 1991 Lumber 2.6%

Structural Panel 2.0%

CPI 4.6%

Year	Housing Starts Thousands Units	CPI	Related Data		Softwd. Lumber Consumption Million Board Feet	Struct. Panel Consumption Million Square Feet
			Random Lengths Lumber Composite Index	Random Lengths Structural Panel Composite Index		
1984	1,749	103.9	\$207	\$222	42,832	21,968
1985	1,742	107.6	\$203	\$225	44,240	22,836
1986	1,846	109.6	\$218	\$227	47,492	25,633
1987	1,621	113.6	\$244	\$228	50,557	27,001
1988	1,488	116.3	\$236	\$215	48,513	27,203
1989	1,376	124.0	\$241	\$256	47,968	26,490
1990	1,193	130.7	\$230	\$231	46,003	26,337
1991	1,014	136.2	\$235	\$241	42,225	24,285
1992	1,200	140.3	\$287	\$309	45,736	25,985
1993	1,288	144.5	\$394	\$348	45,811	26,318
1994	1,440	148.3	\$410	\$370	46,250 (E)	28,500 (E)
1995			\$371	\$372		

Compiled by Paul P. Bringer & Associates OWL COSTS 3/86

Sources: Random Lengths Publications, Western Wood Products Assoc., APA-The Engineered Wood Assoc., Nat'l. Assoc. of Homebuilders.

June 7, 1995

Senator Dirk Kempthorne
Subcommittee on Drinking Water, Fisheries & Wildlife
U.S. Senate, Washington, DC. 20510

Dear Senator,

I am writing to you to voice my concern about the present status of the Endangered Species Act. I believe that not only is it being interpreted inconsistent with the intent, but that the act itself needs to be changed.

"Verifiable science" must be the basis for listing species. I strongly believe the Spotted Owl is the best example of a species being listed without verifiable science. It truly was a smoke and mirrors effort and damned what the scientific facts were. "We want it listed and will make the facts support that listing"!!

The input of local folks and the impact on them has to be taken into consideration. Whole communities have been economically ruined and many lives destroyed under the present ESA. People should and do count!

I work for a Company with large private holdings and their property rights, my job security, must be protected.

Definitions in the Act, specifically "take" and "harm" must be scientifically verifiable. Someone can't just say this or that and activities be halted. Again, there must be science to back this up.

Sub-species should not be listed. Only true biological species should be listed. Under the current trend, the sub-species listing is being used-abused and is a sham of the intent.

All critical habitat must be delineated in the listing process. A good example here is the Chinook salmon and the omission of the Ocean as critical habitat. It is my belief that the over fishing of Chinook has had a major effect on their decline, but fisherman and other Ocean users want the finger only pointed at inland habitat and that is ludicrous.

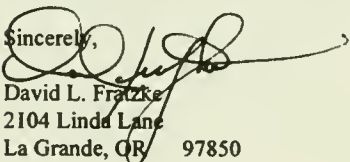
A provision that allows citizen lawsuits against private landowners must be eliminated. Again, this is being abused way past the intent.

The ESA might work better if local elected officials and local citizens were empowered to protect species and habitat. Any such scheme should be incentive based.

Any significant changes to the ESA must include that law enforcement actions come from local jurisdictions. This going to a "friendly court" regardless of where it is located is devastating and a bunch of garbage. Some judge sitting down in San Francisco doesn't have a clue about managing woods in the inter-mountain region of Oregon, Washington, Idaho, yet he/she is making all of the decisions.

My family and I would ask that you do what you can to amend the ESA into a living, workable piece of legislation that is fair to people. Species have come and gone since the beginning of time and this should not be altered to the degree preservationists want. Significant changes need to be made in the ESA, especially for the sake of the working people of the Northwest.

Sincerely,



David L. Fratzke
2104 Linda Lane
La Grande, OR 97850

June 1, 1995

PO Box 344
Cave Junction,
Oregon 97523

Steve Shimberg, Majority Staff Director
Senate Environment and Public Works Committee
Subcommittee on Drinking Water, Fisheries and Wildlife
SD-410
Washington, DC 20510-6175

Re: Endangered Species Act Field Hearing Testimony

Dear Mr. Shimberg:

I am writing to describe my experiences in dealing with the Endangered Species Act (ESA) as it is currently administered, and to make suggestions as to how it should be modified. **I want this statement to be included as testimony for the Field Hearing Record.**

My name is Walt Freeman and I am a self-employed mining engineer. Mining is my chosen profession. My family has been mining here in the Illinois Valley of southwestern Oregon for sixty years. In recent years, however the ESA has had a major impact on my ability to earn a living mining, so I have had to look for work in other areas.

Over the course of the last decade I have earned a significant part of my annual income mining on one particular claim which is under Bureau of Land Management (BLM) jurisdiction. I have always taken pride in my mining operations in this area because I have been able to reclaim ground that was mined in the 1800's as well as in the area of current operations.

In 1992 after I had prepared all my equipment for the season's work and filed a notice of intent to conduct operations with the BLM, they informed me that they had recently discovered "sensitive" plants growing in the general area of my operation. Further, my operation would not be allowed until an evaluation of the "botanicals" was conducted. The plant of principal concern is known as *lomatum cookii*, a wild carrot that was not a "listed" plant but one that had been proposed for listing. Since it had been proposed for listing, it had to be treated as if it were listed until such time as the decision to list or not was finalized. To make a long story as short as possible, I have not mined at this site since. Since then, *lomatum cookii* has been discovered at a number of other sites--twelve recorded locations in the local area plus two unrecorded sites that I have found personally. This particular plant seems to prefer ground that has been disturbed by human activities such as mine tailings and logging skid roads. It appears to me that man-caused surface soil disturbance has **enhanced** the abundance of this species because I have never seen it in any other setting.

Senate Environment and Public Works Committee
June 1, 1995

Page 2

In my opinion, this application of the ESA has deprived me of my legal right to mine my claim. The ESA should be modified to require the petitioners under the Act to adequately demonstrate that the species in question is in fact threatened or endangered. As it is, the ESA is the easy weapon of choice to restrict the exercise of legitimate property rights.

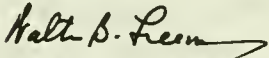
I would also like to see the Act modified so that each species proposed for listing is run through some sort of rating formula to determine the importance in the overall scheme of things of the species in question. *Lomatium cookii* is just one variety of an otherwise fairly common and well distributed species.

It is obvious that the *Lomatium cookii* plants on my claim are not the only ones left in this world. My mining operation will not cause extinction for this species. Under these circumstances, I think it is absurd to expect me to totally shut down my business. The Act needs to be flexible enough to allow its application to be tailored to individual situations. For small businesses such as mine, assessment of the economic impact of listing a species should be taken into consideration.

I know the authors of the ESA meant well, but it is plain that the law is being used to accomplish a much broader agenda than was ever intended by its authors. Based on my experience, I believe the ESA has been used as a weapon to keep me from earning a living and has caused the unnecessary expenditure of significant amounts of public resources--all in the name of protecting a plant that seems to be doing just fine and coexisting rather successfully with human activity.

Thank you for your time and consideration.

Sincerely,



Walter B. Freeman

Kenneth R. Harrison
621 Parkway Drive
Wenatchee, Or 97446

June 13, 1995

Mr. Steve Shenberg
Director of Environmental & Public Works Comm.
C/o Senator John Chafee
505 Durkin Office Building
Washington, D. C. 20510

Re: ESA - Suggested Changes

Dear Mr. Shenberg:

My name is Ken Harrison and I'm a resident of Douglas County where my wife and I own property. I have been employed in the timber industry for 35 years, plus my wife and I own a small retail business that employs 9 full & parttime employees. When time is available I enjoy fishing, hunting and hiking.

Local people most affected by the results of the Endangered Species Act must be a part of the process in developing recovery plans. Funding come from the Federal Government, but the local land managers (the real stewards of the land) have very little or no input into the process. Management plans & recovery plans developed locally have the greatest opportunity for success and maintaining species.

If private property must be used in recovery, then the property owner must be paid for any losses they incur. Many government bureaucrats view private property as free for the taking, this must be stopped and any property taken must be compensated for.

In closing please remember when rewriting

the E'SA, that people must be a part of the equation, local participation must be included and private property rights must be protected and compensated for.

Thank you for letting me share my comments.

Sincerely,

Kennel R Harrison
631 Parkway Dr.
Worster, O 47496

CC: Senator Hatfield
Representative De Fazio

June 2, 1995

Steve Shirmberg, Dir. of Environmental & Public Works
 % Senator John Chafee
 505 Dirksen Office Building
 Washington DC 20510

Dear Mr. Shirmberg:

I am glad I was able to attend the Senates hearing on the Endangered Species Act which was held yesterday in Roseburg, Oregon. Most of this letter was already typed and ready to submit at that time but some things mentioned caused me to add a few thoughts.

I very much appreciated the manner in which Senator Dirk Kempthorne conducted the meeting and the close attention and pertinent questions that he, Senator John Chafee, and Senator Bob Packwood gave and asked.

When solving any problem every applicable factor must be included to reach an accurate solution. If any portion of information is missed, either accidentally or on purpose, the answer is flawed.

As an interested and affected individual watching the application and use of the Endangered Species Act to "protect" the northern spotted owl has left me appalled. Consider the following matters

1. The number of acres we were told that a single pair of these owls needed for survival.
2. Neglecting to even attempt to count the number of these owls in our vast "Wilderness Areas" which have been set aside here in Oregon.
3. The absolute refusal to include those found contentedly nesting in second growth timber.
4. Having the last "Owl Committee" who came to Roseburg tell us that 2,500 pairs of owls would be sufficient to sustain the species, admit that more than 3,600 pairs (at that time) had been found and then listening to their response when asked to remove the northern spotted owl from the endangered species list and drop the rest of their unnecessary hearings with "We are not empowered to do that."
5. Seeing the use of the "Act" to halt and appeal sales made of timber for both harvest and salvage.

Noting the use of the "ACT" in seeking answers for the drop in numbers of some species of salmon while several very pertinent factors are over-looked, under-rated and sometimes ignored. For example:

1. Several years of below normal rainfall in this area.
2. Increasing numbers of now protected seals and sea lions. We are now regularly seeing them several miles inland on our rivers bringing appetites that are often filled by salmon

(page two)

3. The drastic drain of our food-chain resources that were permitted by foreign fishing fleets accompanied by canning and processing ships just off the west coast. This had to have impacted the well-being of our fish that go to sea to mature. How long this action will continue to be detrimental has not been determined.

4. Some years ago when the media was show massive tragedies brought on by famine in India, my wife's step-father (who had served as a missionary on the Tibet-China border until forced to move to India by the Communist take over in 1950) stated "They will never solve their problem until they change their religion". He was referin to the belief in Animisim that puts, among other things, the Sacred Cow and Its needs above the people.

Now it seems this belief has infiltrated thinking in this country as plants, animals and birds are being considered before the needs of people. Jesus, after noting the price of a sparrow, stated "YOU are worth more than MANY sparrows." It seems to me that we would be well served by a return to the rating scale suggested by Christ.

When children come home from school having been taught by liberal philosophers that their hard working fathers who are engaged in commercial fishing or the wood products industry are villians, something is terribly wrong. As paid commercials blame every problem the environment faces on loggers, once again something is wrong.

I wrote several letters to Forest Service Officials during earlier stages of the spotted owl controversy in which I noted that Oregon's largest "Clear-Cut" stretched from Bend to Crater lake measuring from the crest of the Cascades across Highway 97. It was brought about, not by greedy loggers, but by radical environmentalist who prevented our Forest Service from dealing with a destructive beetle invasion. At that time I mentioned signs standing along Highways 97, 58 and 138 which warned "DANGER - Falling Trees - Beetle Kill". Major salvage logging was then allowed. This past month I again came south from Bend on Highway 97 and west on Highway 138. This time I saw a rapidly recovering forest and only two of the afore mentioned signs.

Senator Chafee mentioned the beauty of our State. I trust he will also tell people along the east coast of our Country that we are not (inspite of media and the loud radical environmental groups) about to cut down our last Douglas Fir tree and let our soil wash into the sea.

One reason folk in the west have been moving toward either private schooling or home schooling is the strong leaning within our public school system toward extreme liberal theories and their abandonment of the basic "3 Rs". Now it seems no one can fail, therefore in turn no one can really succeed. No problem is really our own, but one of our parents and past generations.

Two suggestions regarding the move to revise The Endangered Species Act that you are presently considering.

1. Immediately remove the Northern Spotted Owl from the Endangered List. Its placement there was never proven to be needed.
2. Require an Appeal Bond equal to the Performance Bond required

(page three)

presently by successful bidders on legal advertized timber sale by all our National Agencies. I know that the company, for which I work, has several million dollars tied up in these because somebody found a sympathetic Judge to halt any logging until the appeal is heard. A man, seated near me during the Roseburg meeting, said his was just a small company, but over a million and half dollars were now being held up by the appeals process. Multiply this many times over and you begin to see the effect this process has had upon our economy.

You folk are well acquainted with the Cost of Living Adjustments made in both federal and state government pay scales. With the \$.40 an hour raise I was given just June 1st, plus the \$.40 I receive for working Graveyard, I will almost be receiving for similar work during the 1978 and 1979 fiscal years.

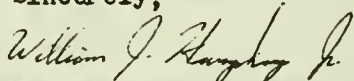
Has the "ACT" been detrimental to me. Nothing I buy, my tax bill, along with what I can set aside for retirement (which is just a year away) has dropped in price.

Can I survive? Yes! Because the God I serve, the same one Daniel found could even protect him in the lion's den, has promised that my needs will be provided. I trust in Him. Like those from Eastern Oregon said regarding the increased number of folk on government assistance programs, I long ago qualified to be asking for food stamps and hand outs. My God and personal integrity have prevented me from jumping on the "Welfare Wagon" that so many have made a life style.

Again, my thanks to the three Senators for coming to Roseburg, for their actions during the hearing, and for showing concern regarding this important issue.

It is my hope that this Committee, Our Senate, Our House of Representatives and Our President will move swiftly to revise The Endangered Species Act for all our good.

Sincerely,



William J. Humphreys Jr.
701 Jenny Lane
Myrtle Creek, OR 97457

Copies to:

President William J. Clinton
Senator Bob Packwood
Senator Mark Hatfield
Congressman Peter DeFazio

ILLINOIS VALLEY RESOURCES COALITION
Member Oregon Lands Coalition
PO Box 548
Cave Junction, OR 97523

June 1, 1995

Steve Shimberg, Majority Staff Director
Senate Environment and Public Works Committee
Subcommittee on Drinking Water, Fisheries and Wildlife
SD-410
Washington, DC 20510-6175

Re: Endangered Species Act Field Hearing Testimony

Dear Mr. Shimberg:

Please enter the enclosed comments from various members of the Illinois Valley Resources Coalition as testimony into the Field Hearing Record for the Endangered Species Act (ESA). The Senate ESA Hearing was held on a weekday and since we all work for a living, none of us were able to attend. These letters were written last month to the House Committee on Resources as testimony for the field hearing held in Vancouver, Washington, but we felt they would be of interest to your committee as well.

We are a loose-knit group of millworkers, miners, loggers, and local citizens who support wise and responsible management of our natural resources.

As a group, we support the following changes to the Endangered Species Act:

- Before any species is declared endangered or threatened, the scientific evidence that supports the listing should be subject to peer review to ensure that the scientific community is in agreement with the science used to support the listing.
- Consider research findings equally from all affected parties.
- Take into account economic impact of a species listing.
- Redefine and distinguish "threatened" from "endangered" species in the ESA, allowing appropriate levels of protection for each classification. As the law is written now, a "threatened" species is given the same protection as an "endangered" species.
- Allow all parties affected by a listing decision full participation in developing and implementing Recovery Plans. People who live and work in the areas affected by a listing often possess a lot of "on-the-ground" expertise and knowledge that could be utilized in these processes.

Senate Environment and Public Works Committee
June 1, 1995

Page 2

*Devise some means to evaluate whether it makes sense to list an obscure sub-species or variety when its more common cousins are thriving.

*Clarify Congress' intent of protecting listed species' viability but not necessarily in every geographical region. The marbled murrelet is a perfect example. The bird is common on the coasts of Alaska and British Columbia numbering over 250,000. There is no evidence that the marbled murrelets in Washington, Oregon and California are geographically separated from those in Alaska and British Columbia. Therefore, if no murrelets lived outside of Alaska, the species as a whole would continue to thrive.

Thank you for your time and consideration.

Sincerely,



Alme Allen
Chairman

SARA JAMESON

202 Boyer Road
 Grants Pass, Or 97526
 (503) 476-5024

JUN 16 11:16 AM
 1995

June 10, 1995

Senator Dirk Kempthorne
 United States Senate
 Washington, DC 20510-1204

RE: ENDANGERED SPECIES ACT -- Testimony/comments with regard to revisions proposed for the Endangered Species Act, resulting from the recent field hearing in Roseburg, Oregon

Dear Senator Kempthorne and members of the Sub-Committee,

I saw a bumper sticker recently which said "Loggers are an Endangered Species." it's true. And so are cowboys, becoming obsolete as pony express riders and morse code operators. That's the price of progress and technology. It's too bad but it appears to be inevitable.

Sure, we will always need wood products and thus there will always be some jobs in the timber industry, but we can't over-cut and waste our dwindling resources, sacrifice irreplaceable old growth, and eradicate animals just to provide a few more years (at most) of work for a few more loggers. That's just another form of welfare. The cost is too high. For all the noise and imagery and media coverage, logging is not Oregon's most important industry. Why should the whole state suffer for the few?

The Endangered Species Act makes a convenient scapegoat and a good target, but in truth many larger factors contribute to the decline of timber jobs: Downsizing the work force, automation, selling raw logs overseas, closing old mills no longer profitable to run or renovate, moving mills and tree farms from the Pacific Northwest to southeastern regions, declining supply of available new growth on public lands.

Yes, trees are a renewable resource but only if quickly and properly replanted, in sufficient numbers, thriving to usable size, on a dependable schedule. Sadly the reproduction rate on federal timber lands is still playing catch-up and is not yet meeting demand for sustainable yield. Hence the cries to make up the difference by cutting down the last wilderness areas.

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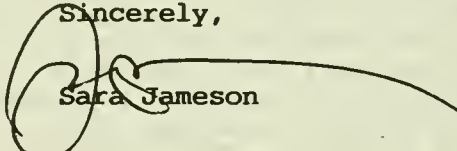
Senator Dirk Kempthorne/ Endangered Species Act testimony
June 10, 1995

The frontier myth of unlimited natural resources, there for the taking for private profit -- so easy to believe in when looking at the West's vast expanses -- is finally being revealed as the wishful thinking that it always was. We are reaching limits the 19th century never conceived of, but the death of this myth is a slow, hard one.

(Timber is just one of the publicly-owned natural resources that the federal government continues to sell below actual cost and market value -- mineral ores and grazing rights -- all of which are sold so cheaply to corporations that it amounts to a giveaway to the rich and a loss to the public treasury -- at a time when we are supposed to be balancing the budget. But that is another issue.)

We are now approaching the 21st century. The Old West is gone. The sad fact is that most loggers (and cowboys) will have to retrain and relocate. And we must help them. Why not put them to work planting new trees for sustainable -- though reduced -- timber jobs, instead of sacrificing the limited number of remaining trees for a short-term fix. As the wilderness and old growth disappears permanently, so will timber jobs. We must make the change now before we are forced to later.

Sincerely,


Sara Jameson

cc: Senator Mark Hatfield, OR
Senator Bob Packwood, OR
Senator John Chafee, RI

/species2

Mr. Steve Shimberg
Director of Enviornmental & Public Works Committee
c/o Senator John Chafee
505 Dirksen Office Building
Washington, D.C. 20501

RE: ESA - Suggested Changes

Dear Mr. Shimberg:

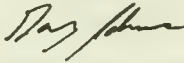
I am a middle class taxpayer who has worked all my life, paid my taxes, and raised a family to the best of my ability. We used to have a government who listened to the people, and tried to help people and families. In the last few years, this government started listing to the special interest groups who make a lot of noise so they can advance their causes.

Our government no longer cares for the families and people who made this country the great country it is, they care about controlling the people. We used to have property rights, but slowly the government is taking these right away, along with other rights our four fathers died for.

The Endangered Species Act is one way of government takeover. It lets a few people control resources, property, and people. Our pious representatives smile and say we are doing what is best for you, as they build their kingdoms.

If you in Washington had the guts and courage to do what was right and started letting the people have their country back, you would be a lot more respected then you are today. While watching the OJ trial, sit back and look at what our country has turned to. Our four fathers must be embarrassed at what the great country they started has become.

Sincerely,



Gary Johnson

Dear Mr. Clinton:

June 1, 1995

Hello, my name is David Lamphere. I have been an employee of Roseburg Forest Products since March 20, 1986. My family is totally dependent on my income from the wood products industry, as my wife is currently unemployed.

When I moved to Oregon in 1985, I thought once I got a job in a sawmill (I have 35 years experience in the mills), that my job would last until I retire. I am currently 53 years old. This means that I only have nine more years until retirement. I think about the younger people who have come to work at Roseburg Forest Products in the nine years that I have been there, and wonder if they too will have the chance to work there until retirement.

I was laid off from May 1992 through January 1994. This was due to the listing of the spotted owl on the endangered species list. At that time, there were supposed to be only 2000 pairs of owls in existence. As time went on, however, more and more owls were found in the Northwest. It was said that the listing of the owl would not cause the loss of many jobs. There have been (and still are) many people affected. It appears that there was no consideration of what would happen to these people who were involuntarily put out of work. For some of these people, this is the only job or type of work they have ever done.

Is it right to not take into consideration the welfare of everyone who has been affected? The Endangered Species Act, as it is now written, is outdated, is not fair, and does not take look at the economic impact that enactment of the law would have. Just as everything else, it needs to be brought up to date. Don't people get cost of living raises? These raises are to allow the worker's income to keep up with the cost of living. Don't companies and businesses update their policies and procedures every few years because they tend to become outdated and fail to meet the needs of the workers as well as the customers?

Now, I'm not saying that the ESA needs to be completely withdrawn, but there needs to be changes made to reflect the needs of the future. It is apparent that a twenty-two year old law is

not going to work in the 1990's and beyond.

Douglas County is said to be the one county in the entire United States to be the hardest hit by economic hardship because of the misuse of the ESA. Something has to be done NOW to give the people of Douglas County, Oregon their pride back. The people of this county feel that they are less important than a spotted owl or a marbled murelet. There needs to be a balance reached that will manage our forests, but still provide people with the means to provide for their families. What good does it do when one judge opens up some federal timber to logging, only to have another federal judge block the decision of the first judge? There are lawsuits that have been utterly ridiculous. It has got to stop!

I hope that all of the people in the timber industry, especially here in Douglas County, will be considered when the decision is made to change the Endangered Species Act. Listen to the people of this county and hear what they have to say. It isn't right for someone who doesn't live and work here, and perhaps isn't even familiar with this area, to make the type of decisions that need to be made without first hearing from the very people who will be affected the most.

Sincerely,

David Lamphere

David J. Lamphere
P.O. Box 1119
Winston, Oregon 97496

1995 JUN 19 PM 2:26

GEME LANDOLT

Box 441

WINSTON, OR. 97496

503-679-4482

MR. STEVE SHIMBERG
 DIRECTOR OF ENVIRONMENTAL & PUBLIC WORKS COMMITTEE
 C/O SENATOR JOHN CHAFEE
 505 DIRKSEN OFFICE BLDG.
 WASHINGTON, D.C. 20510

6-13-95

RE: ENDANGERED SPECIES ACT SUGGESTED CHANGES

DEAR MR. SHIMBERG:

I AM A PLANT ENGINEER WORKING FOR A SMALL SAWMILL IN THE MIDDLE OF DOUGLAS CO. OR. I SELECTED THIS INDUSTRY TO WORK IN BASED UP ON MY DESIRE TO LIVE IN THE PACIFIC NORTH WEST. I AM INVOLVED IN HUNTING & FISHING ACTIVITIES AND TRAVEL IN OUR LOCAL FORESTS ON A REGULAR BASIS. I ENJOY THIS VERY MUCH.

THE ESA AS IT IS BEING USED AT THIS TIME HAS ~~SEVERELY~~ DAMAGED OUR LOCAL ~~ECONOMY~~ ^{ECONOMY} MORE THAN ANY THING I HAVE SEEN IN THE PAST 30 YEARS.

THE PEOPLE WHO LIVE IN DOUGLAS CO AND THE PACIFIC NORTH WEST DO NOT DESERVE A MISGUIDED FEDERAL LAW/REGULATION/ENFORCEMENT (WLD)

POLITICALLY MOTIVATED PROGRAM ROLLED OVER
 THE TOP OF THEM. IF ANY THING IS
 TO BE DONE IT SHOULD BE DONE
 ON A LOCAL BASIS. WITH CORRECT
 SOUND SCIENCE BEING APPLIED TO THE
 MANAGEMENT PLAN.

IN CLOSING THE ESA AS IT STANDS
 CAUSES MORE DAMAGE THAN GOOD.

SINCERELY

GOLK LANDOLT

SWATHR NAT FIELD
 REP. DE FAZIO
 SENOZOL KEMPTHORNE

Written Statement by

Robert G. Lathrop, Forester

Submitted to the Committee on Environment
and Public Works

June 1, 1995

THE HISTORY OF THE
SPOTTED OWL SITUATION
by
Robert G. Lathrop
Forester

Prior to the lawsuit 1970-1989

It was not universally taught, but the forestry schools that taught the ecological basis for management such as the University of Idaho and Humboldt State, taught that forests should be managed as old growth for both economic and ecological reasons.

In the 1960-65 time period, we were taught that the Douglas fir forest should be managed at an age of approximately 180 years to meet the objectives of both economic needs and to maintain an ecological balance.

In 1970, in northern California, we were still planning allowable cuts basically as old growth, with a minimum harvest age of 110 years, with ten percent of the total land base left in stands of old growth in the harvest areas to maintain the oldest component.

By 1980, we were planning to liquidate the old growth. The allowable cut we were planning at that time had a minimum harvest age below 50 years and there was no plan to have the forest rotation ever be above 80 years.

Foresters had been specialized by then and few had anything to do with the allowable cut computation. They generally did not pick up the changes and few had the ability to understand allowable cut computations because their specialties did not require it.

By 1972, though, wildlife biologists had picked up the changes on habitat and noted the long-term effect on the old growth forest. The spotted owl was the next, but not the first, species to be in danger of extinction on the land base. Previously, the timber wolf, California grizzly, and the wolverine had become extinct in the same range of forest land.

During that time period, the wildlife profession unified behind the spotted owl as an indicator species of future old growth habitat loss. The line was drawn on that species needs as the minimum that could be left in old growth to maintain the old growth forest habitat.

From the beginning, they did not work with the foresters planning the forest harvest methods and schedule. Instead they unified and aligned themselves with outside environmental groups and other emotionally charged individuals, often going to the press and not working with those in the agencies who had the responsibility to change the plans.

The first owl was found in 1975, but by 1977 so many had been found that the impact on the forest harvest was such that we had little place left to go. The District Manager said we had to get out the cut, in spite of that fact, and we moved into areas of younger timber, and other areas where there was little timber left and no spotted owl habitat.

Although the first owl was found in 1975 in the working circles I was involved with, I had first heard about the possibility of a lawsuit by 1973.

Foresters would often spend more than a year preparing a sale plan only to have it thrown out by a cursory inspection on the sales by wildlife biologists who found owl nests. The frustration of having to do most of their work over, and the fact the wildlife biologists did not ask them how to achieve their objectives caused communication to break down.

Foresters, many of whom agreed with the wildlife biologists, and thought the forests should be managed as old growth, did not tell them how to meet their objectives, and wildlife biologists, maintaining a confrontational and abrasive approach to them, did not ask. As a result communication stopped.

At that time we had two professions managing two resources on the same land base, with diametrically opposed objectives backed by law, with the same managers managing both of them, and a crisis built when the situation was never dealt with directly.

This is the way the situation was when we went into the lawsuit.

After the Lawsuit

Congress was assigned the problem of finding a solution, but the only solution to this complex issue at the political level was to change the Endangered Species Act. This is a problem of scientific nature.

President Bush was sent the problem, but the same situation put him in the position of having to send the problem back to Congress.

Congress, still unable to come up with a solution, assigned the U.S. Fish and Wildlife Service the responsibility of making a plan. This was a mistake. The underlying cause of the problem was the way forests were managed and wildlife biologists did not have the ability to make the correct plans to alter the forest

planning. We do not plan for the effects of the thousands of species in the forest, though its effects on a single species as worse problems than the spotted owl situation can occur.

This would have been immediately corrected, presumably, if the forest managers and forest supervisors would have had their work forces develop plans, then had them sent to the Secretaries of Interior and Agriculture, explaining that the scientific nature of the problem was a forest management function for which a plan was already in the system for resolution. Instead the forest managers put their entire work forces under "gag orders," and blocked all forest management information from the problem solving bodies of the Senate and House.

Since the U.S. Fish and Wildlife Service did not know how to get the objectives they needed they held public meetings. All they gathered were angry comments from frustrated persons who attended. They had no one at the meeting who could present complex forest planning objectives and methods, the format did not allow the presentation of such a complex plan, and they had no one who could understand it at the meetings if one was presented.

As a result, they never got their information on how to use standard forest planning methodology and the plan they came up with is in direct conflict with nature and will ultimately destroy the very habitat they are trying to save.

What they are trying to do is preserve the third stage of a four stage plant succession in the Coast Range of the west coast. Douglas fir old growth is the final stage of third stage of the forest prior to its evolution into the climax forest. It is a seral (temporary) species in the cedar-hemlock zone.

Normally, the transition does not occur. Fires usually destroy the Douglas fir forest, and the cycle starts over. We are trying to preserve the forest in its most dangerous and critical time, when it is usually replaced by fire.

The preceding analysis was checked and approved without modification by more than 15 foresters and 20 or more years of experience from the BLM, USFS, Oregon State Department of Forestry and the timber industry.

A FOREST RECOVERY PLAN
 FOR
 THE ROSEBURG WORKING CIRCLE
 by
 Robert G. Lathrop - Forester

This plan was published in the Roseburg News-Review in April 1989 and subsequently commented on by:

Congressman Peter DeFazio, Democrat Oregon
 Senator Mark Hatfield, Republican Oregon
 Senator Bob Packwood, Republican Oregon
 Governor Barbara Roberts, Democrat Oregon (put in author for Clinton Summit)

USFS Region Six Forester
 USDI Fact Finding Committee, Roseburg 1992
 USFS and BLM Employees
 Staff Sun Studs Inc.
 Staff Roseburg Lumber Inc.
 Staff Congressman Foley, Democrat Washington
 Judge Dwyer ("it is against the law for me to talk to you")
 Jack Ward Thomas ("We had to stop the foresters from breaking the law")
 Local Democratic Committee
 Local Republican Committee
 Others - over 300 sent out over four years - Preparation by DTO

It was my observation that the executive level of government overrode the law making level of government, who knew generally what to do. I blame this on the management at the field level of the USFS and BLM.

THIS STATEMENT APPLIES TO ALL SPECIES ENDANGERED BY MAN AND SHOULD PREVENT MUCH OF THE BLOCKAGE OF ACTIONS UNDER THE ENDANGERED SPECIES ACT.

IT IS ALWAYS POSSIBLE, IF THERE IS A REMNANT SPECIES AND POSSIBLE FUTURE HABITAT FOR THAT SPECIES, TO SEPARATE THE SPECIES RECOVERY FROM THE HABITAT RECOVERY AND EITHER RESTORE THE HABITAT OR INTRODUCE THE SPECIES INTO SIMILAR HABITAT ELSEWHERE THAT IS SUITABLE.

THIS IS AN ACTION THAT HAS ALMOST NEVER BEEN LOOKED AT, BUT HAS BEEN DONE WITH THE CALIFORNIA CONDOR, THE TIMBER WOLF, THE ELK, THE BUFFALO, AND OTHER SPECIES. IT ALWAYS IS AN OPTION.

For twenty years, wildlife biologists have concentrated on analyzing the habits of the Northern Spotted Owl as a method of preserving its habitat, and the old growth forests.

Ultimately, then, when a court decision was made protecting that species, the effect was to focus the problem solving process on a symptom, rather than on the basic cause of the problem, which is; a reduction in old growth habitat (a term that needs redefinition) on lands managed by forest industry, federal, and state land managers.

The problem solving process is now distorted, as those who do not understand the basic purpose of the lawsuit by the environmentalists, are now trying to solve the spotted owl situation by focusing on the symptom, a decrease of spotted owls, rather than on the causal factor, the way forests have been managed in the past.

The purpose of this short analysis is to determine the steps necessary to solve the underlying problem through allowable cut planning, and not by political action dictated by the need to enforce the law.

The problem solvers now must determine if solving the problem for the spotted owl will also prevent a similar situation from happening in the near future, when another endangered species is found outside of the owl old growth preserves.

The spotted owl preserves must be managed, not set aside indefinitely, as they are in a fractured state, and are no longer natural as fire has been kept from them for nearly a century. They are also surrounded by lands which will be as it is now envisioned, managed for shorter rotations, putting extremes of forest types in contact. What of the species in transition ages?

The ideas presented here form a thought process that will lead to a single solution that will put the problem solving process more soluble by scientific methodology, than emotion. Currently, we are again looking at short term "profits," instead of long-term investment to solve a major problem in our country. If we do so, we may leave ourselves open to repeat the same procedure shortly, here, or on another forest, when a change is determined to be needed.

RATIONALE

Preserving old growth will ultimately lead to the harsh reality of nature's harsh harvesting methods: fire, wind, and pathogens. When these methods start impacting the owl preserves, we will be able to determine the true extent of our loss.

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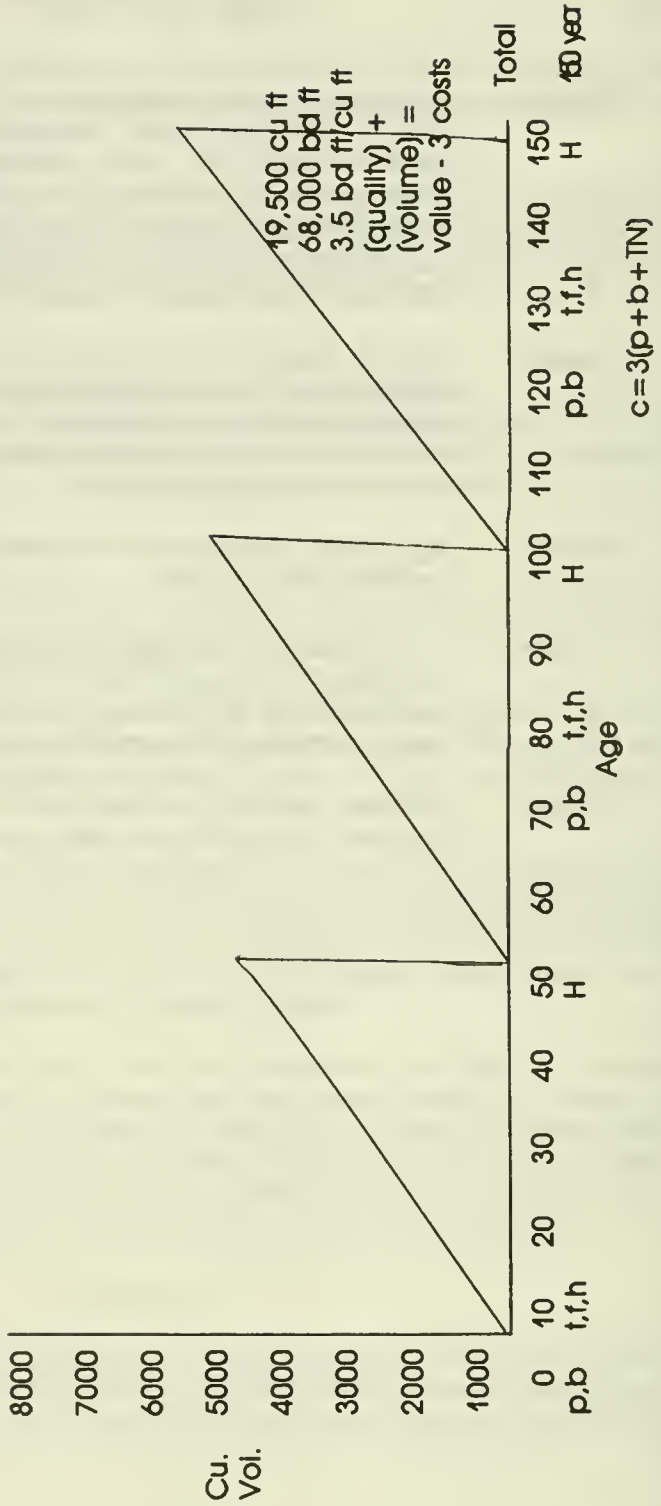
- Table 1 Current allowable cut plan used by BLM and USFS for next three rotations after liquidation of the old growth. Approximately 40 years remain on federal lands at the previous rate of cutting. This type of allowable cut is what brought about the current spotted owl crisis, and is not fully accepted by foresters, as it conflicts with studies relating to soil formation and productivity done by Maser and others.
- Table 2 Growth table for a stand on a 150 year rotation. Note the difference in board feet/cubic ratios with age. This may be used as a measure of quality. At this age, remnants of older stands must be left to provide the older component necessary for cavity dwelling species.
- Table 3 Age class distribution for Roseburg working circle (appx) available for harvest.
- Table 4 Spot check of acreage of old growth at the minimum level of old growth on public land - BLM Roseburg acreage of 100 year old and older forests available for spotted owl habitat (approximately 22 percent of intermixed land base).
- Table 5 Problem solving process that can lead from the current situation to a managed old growth forest.

Table 1

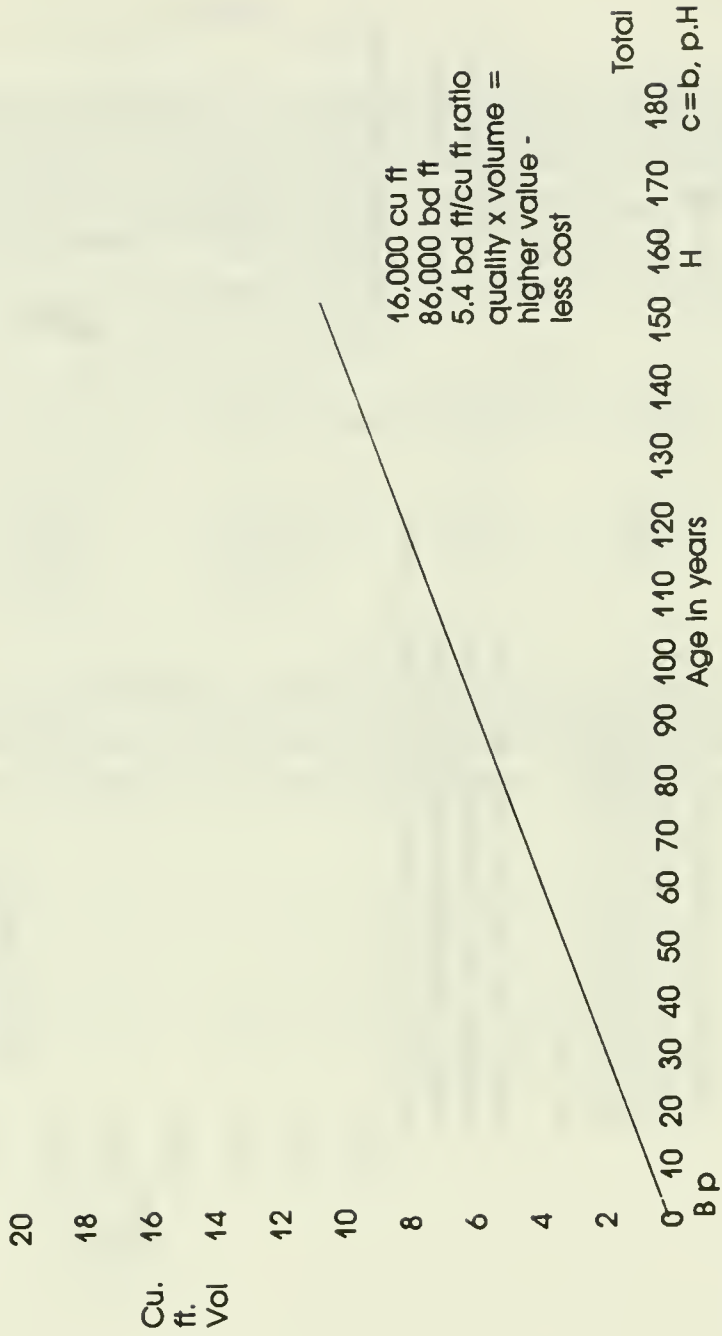
Current situation Rotations 2, 3, and 4
Trees 7" and larger SI 140

This data is for a naturally, fully stocked stand. Under these guidelines 3(6.5m x 3.5 cu. ft/bd ft) - 68 M in 150 years. This can be increased by a factor of X percent by using super trees, fertilization and thinning. Minor species may have to be under planted. Costs (c) per rotation are (p) planting, (b) burning-site preparation, (f) fertilization, (h) herbicides, and (H) harvest. For comparative purposes only a natural stand will be shown.

Total - 150 years 19,500 cu ft. 68,000 bd ft. $i = 0$



Single 150 year rotation
 Trees 7" and larger. Site index 140 (from schedule 21)
 This is for a fully stocked stand - here we will have
 16,000 cu. ft. x 5.4 bd. ft./cu. ft. = 86M bd. ft.
 "c" will be less, as they will only occur once - l = 0
Inclusions from older stands will be needed



16,000 cu ft
 86,000 bd ft
 5.4 bd ft/cu ft ratio
 quality x volume =
 higher value -
 less cost

Table 3

Estimated age distribution on U.S. lands - 120+ used as starting point for old growth - it is actually a function of site index, and species composition.

Depart from non-declining even flow - substitute industry volume for 60 years. Political incentive to industry must be made to cut costs/raise profit, manage older.

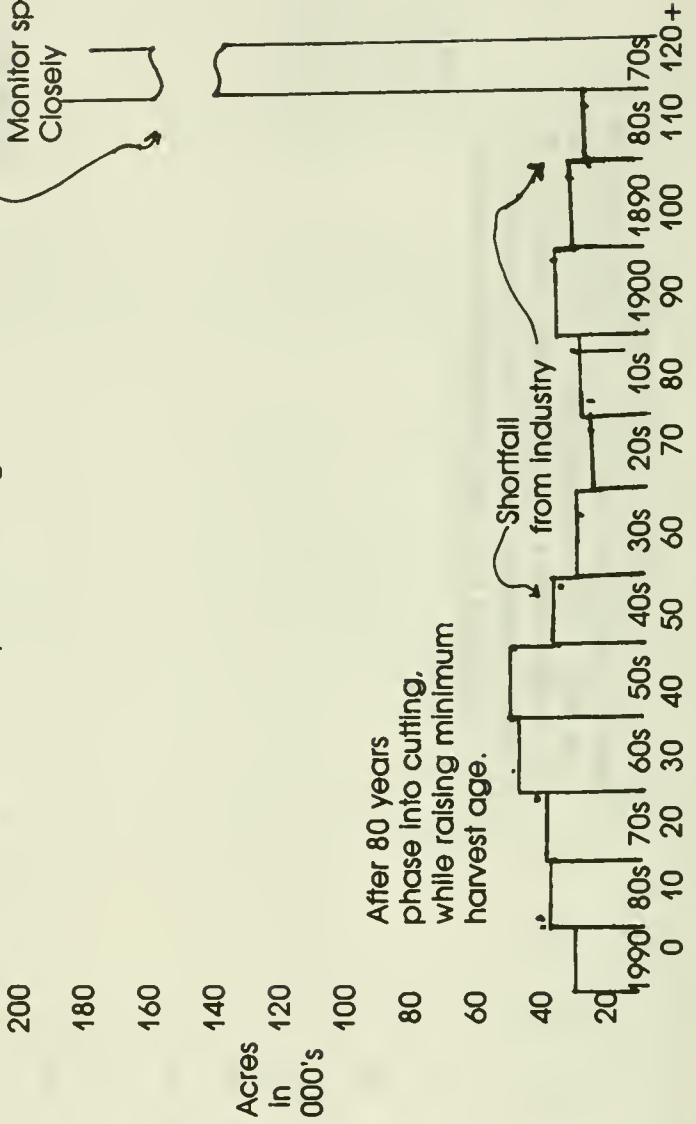
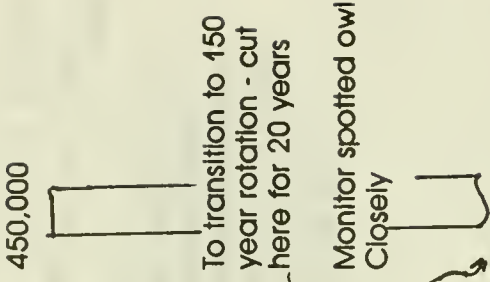


Table 5

This is not an adequate sample. It however, shows the relative range of acreage needed per owl, at the minimum end, as BLM has interspersed ownership with private industry, and small landowners. Even this small sample shows one thing, however, which is that the area with the youngest timber has the most spotted owls. It has the largest blocks, though, of public lands.

Roseburg BLM acres of 100 year plus timber (about half of which would be considered old growth by wildlife biologists)

Area	Total Acres	Total Acres 100 years plus	No. of owls occup.	Ac/owl occup.
Drain	127,500	53,300	101	527
Dillard	91,000	42,000	47	894
North Umpqua	92,500	44,100	54	816
South Umpqua	12,600	56,500	48	1177

In order to run any correlations, it would be necessary to have a sample that included the range, east and west of the owls, north and south, by site index, etc. Then a determination may be made, or the original premise checked again to determine how much old growth is available to transition to an older forest.

The Problem Solving Process

1. Is the spotted owl problem a forest management problem or a wildlife management problem?
2. The spotted owl problem is a wildlife management problem caused by a forest management method. Therefore this is a forest management problem that has to be resolved first to resolve the owl situation.
3. To make a forest management plan, we must develop a range of alternatives. The spotted owl needs so much old growth that there are few alternatives at this time unless the owl areas are used to resolve the issue.
4. Separate the owl recovery from the forest recovery and fund them independently during a transition period. Habitat can be created and expensive alternative methods used during this time, which should be about 40 or 50 years.
5. With one species at risk, instead of the economy and thousands of other species, start raising the rotation age to slowly return the forest to a managed old growth state, leaving some remnants of old growth everywhere so that we are not only destroying habitat, but creating it.
6. Use all forest resources, state, federal and private to return the forest to an old growth state.
7. Planning working circle cuts, instead of land ownership harvests will put the entire forest into the planning cycle and we will get out of the situation we are now in the same way we got in it, by cutting both private and government timber in a pattern to resolve the issue, government timber first, while timber industry grows to an older age, then private timber and dropping the cut on government timber reversing the process where private was cut first and then government.

Robert G. Lathrop

Robert Lathrop was born in SE Washington State, in Walla Walla, in 1942. He was raised in Dayton, Washington some 30 miles NE of Walla Walla and has been in the forests of the northwest before school, travelling to timbered areas with his father, a logging equipment salesman, hunting and camping in the Blue Mountains and the Wallowa Wilderness area before age 12.

A graduate of the University of Idaho in 1965 with a degree in forest management, he was then commissioned a 2nd Lt. in the USMC and spent the next six years as a combat pilot flying jet aircraft and serving as a ground officer in the Vietnam conflict. He flew nearly 300 missions in several types of tactical aircraft and was decorated more than 20 times, as well as receiving three unit citations during the 1968 - 1969 time period.

From 1970 until 1987 he worked as a forester and forest manager in California and Oregon, and computed two allowable cuts, worked on three timber inventories, giving him an in depth knowledge of the structure of timber stands in the coast range of the West Coast.

Injured in a low altitude ejection in 1967, he has spent time in military, civilian and Veteran's Administration hospitals and was retired in 1987 and has been on 100% disability since that time.

He has maintained his contact with forestry since 1987 by writing about the current issues, keeping in contact with those in the forestry profession and writing in support of professional forest management to resolve the issues in more than 30 editorials, and letters as well as contact with several hundred individuals involved in the issue in Congress, industry and the press during the last eight years.

He resides with his wife on a small ranch in Sutherlin, Oregon and has four grown children.

Roseburg News Review Apr 16, 1989

Possible old-growth solution outline

By GENE LATHROP

Many are bemoaning the current impasse caused by the spotted owl lawsuit reducing drastically the timber available in western Oregon, Washington and California. Comments indicating the owl and other species of plants and animals can adjust to second-growth management are not backed up by scientific evidence.

The continual focus of the press on the owl and not the true problem, loss of old-growth habitat, is not helping to clarify the issue. Already lost are the wolverine and timber wolf and tree species such as Western Red Cedar, Incense Cedar and Pacific Yew. Other understory species will also be lost over a large part of their current range.

What we now need is some positive input by forestry professionals, instead of lay persons, and a new idea on how to solve this problem, because it is not one that we should have to live with.

Not all foresters agree with the Bureau of Land Management, State and Forest Service methods of computing their allowable cuts because over time we will lose most of the cedar industry, the genetic variation of the forest and the atmospheric and soil stabilizing effects of the old-growth system.

I will outline one possible solution.

1. Define old growth — 120- to 160-year-old stands, with snags left in them should contain the species variability and

habitat. I say this based on experience on Site III lands.

2. Define what percent of the land base we want in old growth, say 25 percent.

3. Rework the working circle to have enough old growth on government lands for a 120-year rotation. Both BLM and Forest Service land will be required.

4. Put private timber companies in the model used for allowable cut computation and compute a 50-year allowable cut, as history indicates this is the time period they have used to cut over their lands.

5. Change the computer model to board feet. That is what is sold and that would make saleable units on federal and private lands the same. It is now computed in cubic feet and adjusted with a cubic feet/board feet ratio, which can be manipulated to change real units. Use a single standard for selling board feet which cannot be changed.

6. Compute the allowable cut in the working circle using private timberlands and federal timberlands. As the harvesting is done, during the years timber is cut on private land, delete that from the federal allowable cut, keeping the cut constant, and increasing the federal rotation to 160 years. As private timber lands were computed at 50 years and not 40, this would mean only 80 percent of private timber would count against the federal allowable cuts. This would allow private lands to be cut at a variable rate higher than normal

during good market periods. How this depends on mill capacity.

7. Keep non-industry private lands out of the allowable cut to meet market fluctuations.

This rough example has the advantage of keeping the entire land base in production although at a smaller volume per year should provide an even cut over the exact amount being determined by the market in which it is decided to harvest. It is possible to have a 120-year rotation on private lands will depend on site and how much management can be done to keep species variability by enhancement methods.

This plan would have disadvantages for non-timberland-owning mills, but not so than now.

The idea of locking up land and not managing it, will cause problems not foreseen, such as access, bug kill and other problems.

This lawsuit has been coming for many years. It would have been better dealt with it then, before we lost the opportunity of extending rotations on federal lands. There has been too much old-growth timber cut to do it easily now.

Editor's note: Gene Lathrop is a professional forester and a former assistant manager for the BLM. He retired from BLM in 1987 due to military disabilities.

Roseburg News Review June 30, 1992

Owl recovery issue is misrepresented

■ The News-Review

By ROBERT G. LATHROP

I attended the meeting with the Department of Interior wildlife management team on June 22 and again was unimpressed with the nature of the defense offered by this timber-oriented town.

It does no good for one person after another to express their anger toward the economic impacts of this plan as the opposite camp could and has forced this owl situation through by these methods for 20 years or more, backed with enough scientific data to justify their position. It makes no difference whether Allyn Ford or a millworker is angry as the plan has a scientific base, with political backing and the backing of the courts, and will be implemented unless it can be proved that it should not.

It would make more sense for Allyn Ford to give his forestry staff a leave of absence to analyze the plan on a scientific basis, than to let his millworkers express and increase their frustrations, trying to overthrow a scientifically backed plan with emotion.

I see problems with the scientific method they used with planning the owl recovery plan based on the scientific method, logic and the long-term impact on the forest and do not see this as a state-of-the-art plan for these reasons.

1. The owl is a symptom of an underlying forest-management problem. The forest management of past years is the cause and the owl's threatened status is the effect. You normally solve the problem by managing the underlying causal factor, and not vice versa. We have in this case owl managers determining the future of the forest rather than the forest managers managing for a better future of the owl.

2. The U.S. Fish and Wildlife Service has used a poor problem-solving method. They have not had meetings with groups of land-management professionals separately from the general public to give land-management professionals a chance to debate them face to face, using science as a background and not emotion.

3. Their plan has more impact on the economy than is necessary because they have ignored forest-management planning as a solution to the owl problem. Had they not done so they would realize that they are creating much of the problem with their problem-solving process because the situation on the ground is not as bad as the effects of the plan on the economy would indicate.

4. The USFWS and their professionals in

POINT OF VIEW

other places have taken a totally dogmatic approach to this plan by maintaining, during the 22 years that I have dealt with this problem, that the only way to recover the owl populations is to set aside preserves, when allowable cuts have been computed during that time that did not conflict with owl management. You cannot preserve the seral stage of a biological entity. It is a contradiction of terms.

5. The USFWS has ignored totally the idea that the owl recovery plan and the forest recovery plan could be separate entities. The owl recovery plan, if separated from the forest recovery plan, would allow expensive measures to be taken in a transition period to keep up owl numbers while the old growth remaining, or a portion of it, is used to raise the general age of the forest. In the long run this may put the owl at some risk, but not the thousands of species in the forest and the economy.

6. The USFWS has continued with this spotted owl recovery plan as a single species recovery, when it is in fact the intent to maintain the underlying old-growth habitat. This has caused the entire problem to be misrepresented to non-professionals but affect persons who are arguing emotionally, trying to change a situation which is now and always has been, a misrepresentation of intent.

For these reasons I call on the USFWS to justify their actions to me and other forestry professionals who have been ignored entirely in this entire debate. I have always believed the forest should have been managed as an old-growth forest so problems like the spotted owl situation, and other situations that have their basis in other disciplines, could be solved naturally.

This plan is forcing an issue without adequate factual information being considered on the alternatives available, and should be questioned by land-management professionals on that basis, with the idea of getting the same end without the economic chaos that has taken place.

Robert G. Lathrop is a retired forester who makes his home in Sutherlin. Most of his professional career was with the Bureau of Land Management but he also has been with the U.S. Forest Service and private industry.

1995 JUN 19 AM 11:03

Wayne Layfield
272 Choking St.
Myrtle Cr. Or. 97457

Dear Eds. Shimberg,

I am a millworker in Roseburg, Or., I have worked in the timber industry all of my life and I am please myself with anything else.

I feel strongly about several issues the first being the endangered species act. I worked in the wood for several years and seen just as many animal adaptions to logging and timber cuts and there was in old times.

I really feel that all aspects of the situation should be addressed more carefully.

I also feel that private property should be just that "Private Property" just because a stupid bird or mouse moves on your land that is not your fault. I feel that the American freedom should be given back to Americans, don't make this a communist issue let's be free to do what we want.

Sincerely,

Wayne E. Layfield

June 13, 1995

1995 JUN 19 AM 10: 52

Debbie Lee
P.O. Box 123
Drain, Oregon 97435

Mr. Steve Shimberg
Director of Environmental and Public Works
c/o Senator John Chafee
505 Dirksen Office Building
Washington, D.C. 20510

RE: Endangered Species Act

Dear Mr. Shimberg:

I would like to thank you for giving me the opportunity to comment on the important issue of changing the Endangered Species Act.

I work and live in a small community in Douglas County, Oregon. Douglas County is most affected by the current ESA. Currently our employees are hurt by layoffs and shut downs of the mills, loss of homes, etc., etc., etc. The school my children attend is greatly affected by what has been happening. The North Douglas School District has a short fall of \$480,000.00 for the upcoming school year. This is due mostly to loss of timber receipts. The school district was forced to lay off for next year (1995-96) 7+ teachers. This leaves a total of approximately 8 teachers to teach 5 grades at the high school. This is just one of hundreds of communities being hurt by the ESA as it is now written. This is just one example of what has been a down hill slide since the listing of the owl.

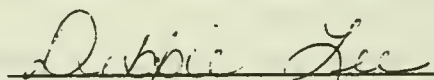
There are many things that need to be changed in the ESA. then it shouldn't be best guesses making the decisions. There has to be room in the ESA to include people. This is the most important change needed. Not all towns will be able to diversify. Take for instance, Burns, Oregon. This town is 130 miles either way from the nearest town in Eastern Oregon. With the mill closing there it is becoming very depressed. What manufacturer will move there when the costs will be so high to truck in raw materials and so much higher to truck out the finished product. People have to be included first and foremost. There has to be local participation in developing the recovery plans. What more qualified people to be involved than the ones most affected by it. We are the ones that know what is happening in our back yards so much so than someone who's never even been to Oregon. There is so much more chance of success for both the land managers and the species if the local managers helped develop the plans we have to

live by. Another issue that needs to be included in the ESA is private property rights. If private property is being used in the recovery plan, then the owners should be compensated for any losses they suffer. Other government agencies have to pay - gas & road easements, utility right of ways, why not the U.S. Fish and Wildlife? Regardless of what the USF&WS biologists feel, private property is not free of the taking.

This issue is so very important for the health of the western states and you have tough decisions to make for the benefit of all (people and species). I hope and pray you will consider the people factor and include them in the new and better Endangered Species Act.

Thank you once again for the chance to comment.

Sincerely,



Debbie Lee

cc: Senator Hatfield
Representative DeFazio

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Senate Hearing on the Endangered Species Act

Senate Committee on the Environment and Public Works

Senator Bob Packwood, Chairman

June 1, 1995

Testimony of Malheur Timber Operators, Inc.



MALHEUR Timber Operators, Inc.

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Mr. Chairman, Honorable Members of the Committee, Malheur Timber Operators, Inc. is a non-profit trade association made up of forest product manufacturers, service providers and suppliers located in Grant County, Oregon.

Our members have been and continue to be adversely affected by administration of the Endangered Species Act and are communicating with you regarding the current direction of administration of the Act.

It is our intent to outline modifications that we respectfully suggest will improve that Act, minimizing conflicts that result from its administration by putting people back into the environmental equation.

With your help and the help of your colleagues in Congress, we feel that the Endangered Species Act can be revised so as to retain the beneficial aspects of species preservation while returning balance and equity to the process for designating endangered species, critical habitat and workable recovery programs that will result in the delisting of species.

To this end we have consulted with our fellow commodity producers in agriculture, livestock production and timber production, and offer these observations:

In concept, we support the Endangered Species Act. In practice, we deplore the rampant abuse of administrative power, lack of consideration for landowners, inflexibility of the Act and the rules, regulations, policies and procedures used to implement the Act which have characterized its administration in recent years.

In our opinion, the Act is a good law, gone bad. Our suggestions for revision of the Act are as follows:

- **Base all listing decisions on verifiable science including biology, economics and sociology, and accept all scientific information subject to rigorous peer review and public debate.** When the Northern Spotted Owl (*strix occidentalis*) was listed, virtually the only published literature on the subject was research done at OSU by Eric Forsman which seemed to establish a strong link between old-growth habitat and spotted owl distribution.



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Prior to the listing, the spotted owl population was considered by "experts" to be barely sufficient to guarantee replacement propagation -- approximately 550 pairs in Oregon and Washington. After the listing, site surveys indicated eight thousand more owls in the Region than had been previously supposed, to which U.S. Department of Fish and Wildlife biologists answer "So what? It isn't the number of owls that determines threatened or endangered status, but the availability of habitat."

Today, more than 3,600 pairs of owls have been verified in Oregon and Washington, and more than 8.2 million acres of forestlands have been declared suitable owl habitat, yet timber harvesting is still all but prohibited in the Region. The cost of the spotted owl listing to Oregonians has never been calculated, although its affects can be seen in closed mills, destroyed local economies, worker dislocations, alcoholism, child and spousal abuse, suicide, divorce and a host of other social ills.

- **Protect private property rights.** Experience with ESA listings in Oregon and Washington for the marbled murrelet, spotted owl and Columbia river salmon indicate that the emphasis for species preservation must be on public lands. More than half of all Oregon lands are public lands administered by federal agencies, leaving a small but crucial privately-owned land base to support all our taxing institutions, including schools, fire prevention districts, hospitals, roads and other service providers. ESA was intended to help protect endangered species, not bankrupt communities.

- **Redefine "take" to reflect actual harm to the individual animal.** The definition of "taking" has been stretched to include such things as thinning Christmas trees, cleaning out ditches, tree planting and the harvest of two or three trees on a 40 acre parcel to pay property taxes. All of these actions have been described as "habitat modification," illegal under the current definition of "take." There can be no equity in the Endangered Species Act so long as the current definition of "take" is allowed to stand.

Scientists have been encouraged to "err on the side of conservation," but destroying the livelihoods of whole communities is not conservation, it is waste.

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- **List only true biological species.** Eliminate "subspecies" from consideration. Provide authority to "decline to list" where the likelihood of recovery is uncertain. If the northern spotted owl, California spotted owl and Mexican spotted owl are genetically identical, then provide a mechanism whereby they can be listed throughout their range rather than by region.

- **Ensure that legitimate, ongoing activities are allowed to continue until the listing process is completed and resulting literature has been reviewed.**

- **Always include locally elected officials in listing plan preparation; prevent agencies from requiring more management activities and associated costs from private property owners than they do from themselves.**

- **Delineate all critical habitat when listing a species, not just that which is conveniently regulated.** Disclose the true cost of species recovery. When the Columbia river salmon was listed, no consideration was given to ocean conditions, predators or a host of other ocean-borne affects, even though the species spends most of its adult life at sea.

- **Eliminate all provisions for citizen lawsuits against private citizens.** Under current law, dozens of private citizens in Lane and Douglas Counties were served with "notices of intent to sue" by the Eugene-based Native Forest Council for "modification of habitat." Under ESA, activities such as pruning, planting seedlings and clearing brush constitute "habitat modification," and are actionable by citizens against other citizens.

- **Use incentives, not "condemnation and taking" to preserve critical habitat.** Negotiate compromises, settlements or otherwise contribute to the value of private property to encourage compliance with the Endangered Species Act. Enfranchise local officials and encourage the electorate to want to protect species through economic rewards and incentives.

- **Eliminate provisions for "emergency listings" now vested in the Secretary of Agriculture and Secretary of the Interior.**

- **Require law enforcement required to enforce ESA to come only from local jurisdictions.**



MALHEUR Timber Operators, Inc.

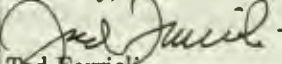
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In Conclusion, we believe that these modifications will help strengthen the Endangered Species Act, yet help to preserve our proud heritage of self-determination and self-sufficiency. We hope that you will agree and that you will urge and support sensible modifications to the Endangered Species Act.

Thank you for the opportunity of offering these remarks,

Sincerely,



Ted Ferrioli
Executive Director

attachments: "The Northern Spotted Owl: The Rest of the Story,"
Ross Mickey, Northwest Forestry Association, 1995
"The Paradox of Too Many Owls" Mark Rutzick,
Northwest Forestry Association, 1995

The Northern Spotted Owl: The Rest of the Story

by Ross Mickey

In 1972, Dr. Eric Forsman, the leading scholar in northern spotted owl biology, located the first 59 pairs of owls in Oregon. At that time, he predicted, "within the next five years about 20 percent of the spotted-owl population will be wiped out and in the next 25 years the majority of the population may be gone."¹ Thus began the crusade to save the owl from extinction.

So, what has happened to the owl population since 1972? Every year for the last 20 years the number of verified sightings has increased. In 1988, the number of owl pairs that had actually been found was about 1,500.² In 1990, the year the northern spotted owl was listed as a threatened species, this number increased to 2,022 pairs³ and in 1992 to 3,461 pairs (see Figure 1).⁴

The estimated total population has also continued to rise. In 1988, it was estimated at 2,260 pairs, and in 1992, it had increased to 4,500 pairs (see Figure 2).⁵

But the spotted owl was not listed as a threatened species because its numbers were declining. The U.S. Fish and Wildlife Service states that the listing decision was based on the assumption that the owls' habitat is in decline.

In 1988, it was estimated that 6,069,720 acres in Washington, Oregon, and California were suitable for northern spotted owls.² In 1990, the estimate had increased to 6,795,400 acres,³ and in 1992 to 8,204,400 acres (see Figure 3);⁴ 2,134,680 acres more than what was estimated when the owl was listed. This increase is due in part to better inventories, but is mainly due to the recognition that northern spotted owls are not limited to living only in old-growth forests.

In its June 1990 decision to list the northern spotted owl as a threatened species, the U.S. Fish and Wildlife Service stated, "...there were no known reproductive pairs in managed second growth."

By 1992, this statement was disproved when 316 pairs had been located on private lands, all of which were in a second-growth managed situation.⁴ The reproductive success of these pairs is equal to or greater than for those located in more traditional habitat.

¹ The Oregonian, March 14, 1973.

² U.S. Forest Service. 1988. Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide.

³ Interagency Scientific Committee. 1990. A Conservation Strategy for the Northern Spotted Owl.

⁴ U.S. Forest Service. 1992. Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests.

However, those in charge of developing "critical habitat" and a "recovery plan" for the northern spotted owl are still relying on outmoded theories, unwilling to break from conventional wisdom. The U.S. Fish and Wildlife Service has designated 6.9 million acres, outside of national parks and wilderness areas, as being "essential to the conservation of the species," or critical habitat. As such, the forests in these areas are not available to provide wood products for our country's needs. The draft recovery plan utilizes the same no-management approach by recommending that 7.5 million acres across all ownerships be set aside as spotted-owl preserves.

The question remains, "Must we preserve millions of acres of forestland so that northern spotted owls can successfully reproduce, or can we maintain a viable population by sustaining habitat through time by managing the forest?" Current research on the Eugene District of the Bureau of Land Management suggests the management option is possible. In this study, researchers are tracking successfully reproducing owls in areas that contain less than 10 percent of older forests. The remaining 90 percent is comprised of stands less than 80 years old.⁷ If this model proves successful, suitable spotted-owl habitat can be created through management in less than 80 years.

Forest scientists have recently presented detailed descriptions of management activities, which can accelerate the development of suitable habitat in young second-growth stands.⁸ In many of these naturally occurring stands, the time necessary for them to become suitable for owls can be drastically reduced through the use of forest-management activities.

Current data indicates that the estimated size of the spotted-owl population is increasing almost on a yearly basis; the estimated amount of suitable habitat keeps getting larger, and the types of habitat known to support breeding owls broader than ever before. Claims that the population is declining have been refuted⁹ and the possibility of creating habitat through management is now being recognized.

All of this is good news for both the northern spotted owl and those that depend on the forests for their livelihoods. With 67 percent of the national forests in the Northwest currently off limits to any form of forest management and 4.2 million acres of old growth already preserved forever, it is time to use what is known about the northern spotted owl to balance its needs with the needs of people. Management plans should be developed for the 33 percent of the national forests where sustained timber harvest is allowed. This will produce suitable spotted-owl habitat and a continual supply of wood products for our country.

⁷ U.S. Fish and Wildlife Service. 1991. Request for public comment on the proposed listing of the Mexican spotted owl.

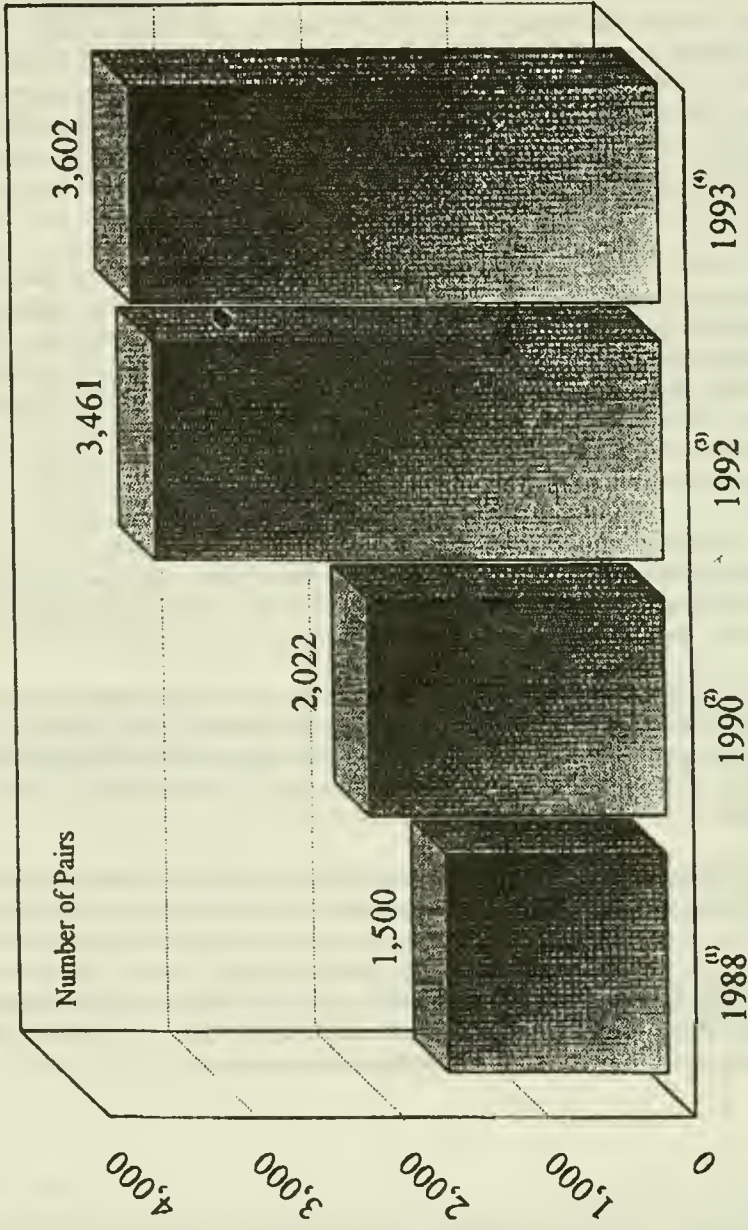
⁸ Forsman, E.D., E.C. Meslow, and M.J. Strub. 1977. Spotted owl abundance in young versus old-growth forests, Oregon. *Wildlife Soc. Bull.* 5:43-47, and Meslow, E.C., and G.S. Miller. 1986. Dispersal of juvenile northern spotted owls in the Pacific Northwest Douglas-fir region. Prog. report. Or. Coop. Wildlife Res. Unit, Dept. Fish and Wildlife, O.S.U. Corvallis, OR.

⁹ Miller, G.P., D.F. Rock, and L.L. Irwin. 1991. Status of the spotted owl on the McKenzie Resource Area, Eugene District Bureau of Land Management — A Progress Report.

⁸ U.S. Fish and Wildlife Service. 1992. Appendix G, Draft Recovery Plan for the Northern Spotted Owl.

⁹ American Forest Resource Alliance et al. 1992. Comments on the Recovery Plan for the northern spotted owl. 61 pp. (unpublished report).

Verified Spotted Owl Sightings Washington, Oregon and California



(1) USF&WS, Revised Findings on NSO Listing Petition

(2) ISC Report

(3) FEMAT

(4) USFS, Final EIS on Management for the NSO

Suitable Northern Spotted Owl Habitat Washington, Oregon and California

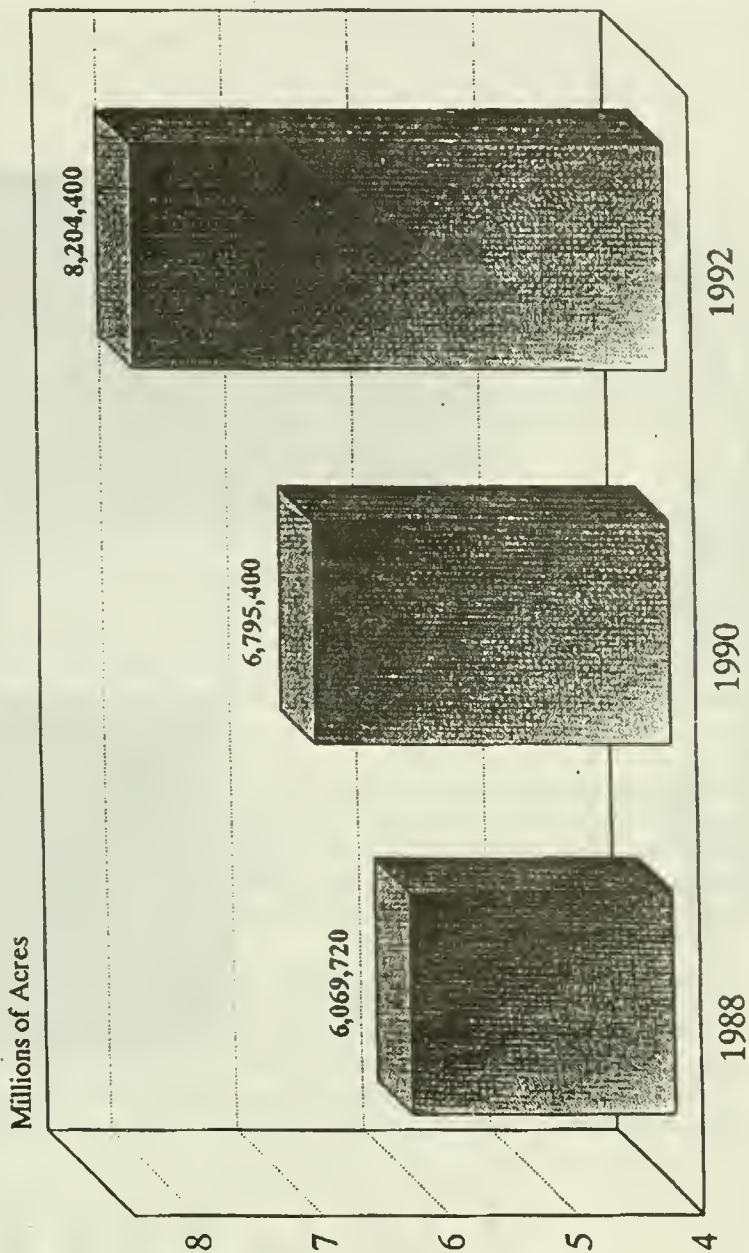


Figure 3

Estimated Population Size Washington, Oregon and California

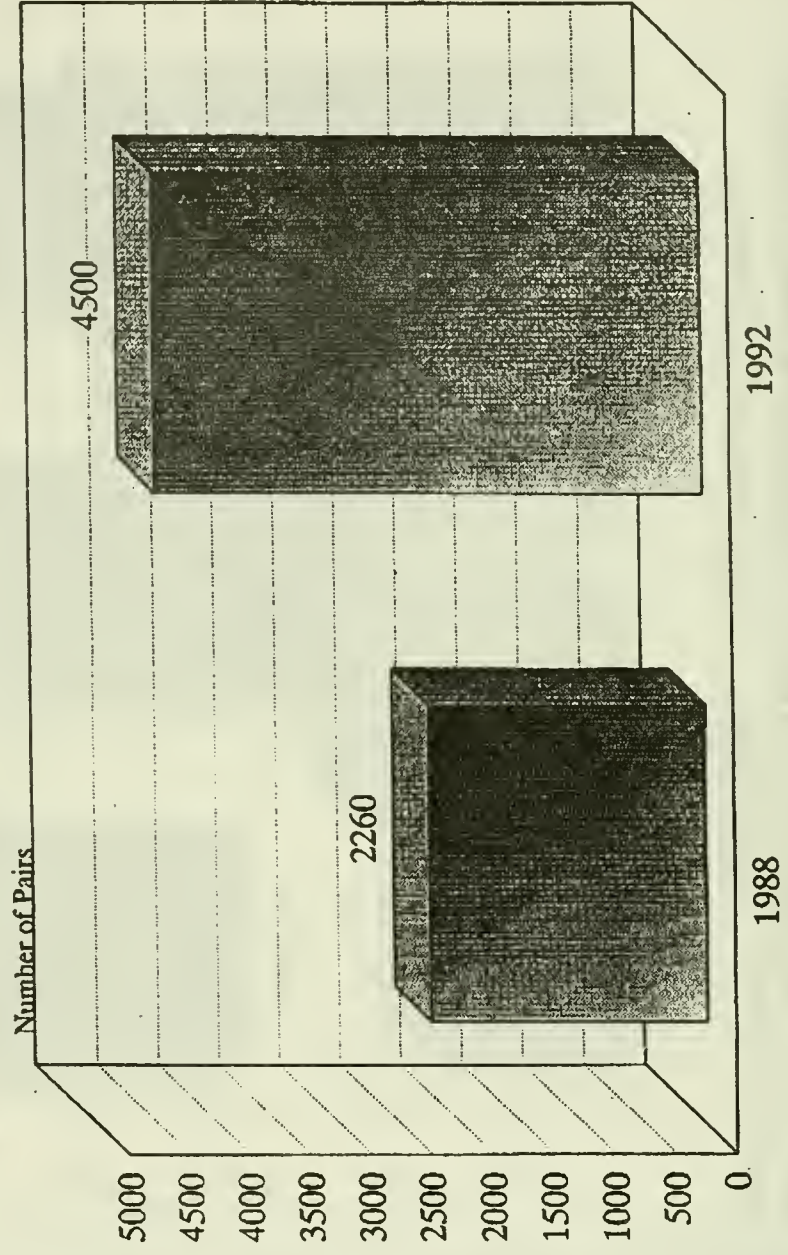


Figure 2

The Paradox of Too Many Owls

by Mark Rutzick

Introduction

In the early 1970s, when biologists first became concerned about the status of the northern spotted owl, only a few dozen of the birds had ever been observed. The bird was viewed as reclusive, and hard to locate. Biologists believed there were no more than 1,500 pairs of owls in the three-state region, located almost exclusively in undisturbed 200-year-old forests on public lands. They believed the population was dropping rapidly.

Yet as interest in the welfare of the owl rose, so did the estimates of its population. Every dire prediction about the declining owl population has been countered by the discovery of more and more owls in increasingly varied habitats.

Today, 20 years after concern was first expressed about the owl's future, over 4,000 pairs of northern spotted owls have been located and are currently known to inhabit the woods of the Northwest, including hundreds in young second-growth forests where timber harvesting has occurred for a century. The known population of this reclusive bird far exceeds the early estimates of the total population, and is almost double the total estimated by expert biologists just four years ago. Every year the totals continue to grow, with no end in sight. With several million acres of wilderness and private timberlands unsurveyed, owl numbers are certain to continue to grow for years to come.

As a result, biologists have been forced to revise their projections time and time again to increase the total estimated population and habitat. There were far more owls 20 years ago than early researchers believed; the population was never as close to the brink of extinction as alarmists feared. The extraordinary measures proposed to save the owl from extinction were based on these enormous underestimates of the bird's numbers and habitat flexibility.

The presence of so many owls in the forests has dramatically contributed to the recent curtailment of federal, state and private timber harvesting in the three-state region. Federal, state and private landowners are required or at least urged to conduct northern spotted owl surveys before planning any timber harvesting in the owl region. These surveys continually turn up owls where harvesting is planned, precluding the harvesting in most cases. Landowners increasingly face the paradox of finding a supposedly rare species wherever they look in the forest.

History of Spotted Owl Population Estimates

Scientific research on the northern spotted owl began in 1972, when Dr. Eric Forsman located 59 pairs of owls in pristine 200-year-old public forests in Oregon. He pessimistically predicted that, due to planned logging in these forests, a majority of the population could be gone in 25 years.¹ Based on his early studies he estimated that the total northern spotted owl population in Oregon was 1,000 to 1,200 pairs.²

¹ *Portland Oregonian*, March 14, 1973.

² Forsman, Eric D., E. Charles Meslow and Howard M. Wight, Distribution and Biology of the Spotted Owl in Oregon, *Wildlife Monograph No. 87* (April 1984).

The Paradox of Too Many Owls

In the mid-70s, Gordon Gould initiated the first northern spotted owl research in California. In 1977, he reported the discovery of 122 pairs of northern spotted owls in the state.² He confidently asserted that "not more than twice the number of pairs reported here can exist,"³ thus projecting 244 pairs as the total population in the state at that time. He also reported that "far fewer spotted owls than average were found on private lands,"⁴ due, he believed, to the lack of preferred old-growth habitat on those lands.

Northern spotted owl research began last in Washington, where Howard Postovit did the first study in 1979.⁵ He found 22 owls on public forests in the Olympic Peninsula and Washington Cascades. Only one was in young second growth; none were on private land.⁷

In 1982, when the U.S. Fish and Wildlife Service first reviewed the status of the northern spotted owl under the Endangered Species Act, it offered the first total population estimate for the three state region: 2,500 pairs.⁸

In 1986, the Forest Service reported the abandonment of the initial population estimates for Oregon and California. Dr. Forsman himself reported owls at 1500 sites in Oregon, acknowledging that his earlier Oregon projection of 1,000 to 1,200 pairs was an "underestimate."⁹ The agency reported owls at 772 sites in California, far exceeding Gould's 244 pair projection of seven years earlier. It reported owls at 300 sites in Washington.

In 1986, a Blue Ribbon Panel convened by the National Audubon Society reviewed the northern spotted owl population and concluded "it is likely that there are between 4,000 and 6,000 individuals in the Pacific states."¹⁰ It stated "there is no reason to expect previously undetected owls to boost the current figure substantially."¹¹ It reported the first statewide total population estimate for the state of Washington: 500 to 600 pairs.¹²

In 1987, the U.S. Fish and Wildlife Service reported a total owl population in Washington of 500 pairs, consisting of 100 pairs on the Olympic Peninsula, 250 to 300 pairs in the western Cascades and 100 to 150 pairs in the eastern Cascades.¹³ It estimated a total of 563 pairs in California.¹⁴ (It offered no Oregon estimate.)

² Gould, Gordon I., *Distribution of the Spotted Owl in California*, *Western Birds*, at 8:131, 141 (1977).

³ *Id.* at 140.

⁴ Gould, Gordon I., *The Status of the Spotted Owl In California* (1974) at 13.

⁵ Postovit, Howard R., *A Study of the Spotted Owl in Northwest Washington* (1979).

⁷ *Id.* at 10-13.

⁸ U.S. Department of Interior ("U.S.D.I."), Fish and Wildlife Service, *The Northern Spotted Owl: A Status Review* (1982).

⁹ U.S.D.A. Forest Service, *Draft Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide* (July 1986) at C-5.

¹⁰ Dawson, William R. et al., *Report of the Advisory Panel on the Spotted Owl*, Audubon Conservation Report No. 7 (1986) at 16.

¹¹ *Id.*

¹² *Id.*

¹³ U.S.D.I., Fish and Wildlife Service, *The Northern Spotted Owl Status Review* (1987) at 24.

¹⁴ *Id.* at 27.

In 1989, the Fish and Wildlife Service reviewed the status of the owl again. It reported 1,500 known pairs of owls in the three state region, and concluded that "a fairly reliable estimate" of the total population was 2,430 pairs.¹⁵ It expressed confidence in the figure since it believed "70 to 80 percent of the spotted owl population has been inventoried in most areas."¹⁶ It discounted the possibility of significant numbers of owls on private, state and tribal lands since "the spotted owl may have been nearly extirpated from much of these lands due to reduction of old-growth habitat."¹⁷

Its population estimate and its private lands assessment were both wrong. One year later the Interagency Scientific Committee (ISC) reported the presence of 2,022 known pairs of owls, including 100 pairs on private land in California found in 1989 in the first partial surveys ever conducted on those lands. For the total population the ISC "suspect[ed] the true number lies somewhere between 3,000 and 4,000 pairs."¹⁸

Within two years that estimate had also been disproved. In early 1992, the Forest Service reported that 3,461 pairs of owls had been located,¹⁹ almost double the figure of two years before, and more than twice as many as were known three years earlier. More than 300 pairs of these owls were found on private land in the three states, and another 140 pairs on state and tribal land, contrary to the earlier view owls were gone from these lands.²⁰ In addition, the agencies finally awakened to the fact that the northern spotted owl populations consists of more than just pairs — it also includes hundreds or thousands of single birds throughout the forests. This realization has increased population estimates further.

Current Northern Spotted Owl Population Numbers

As of March 1993 the spotted owl numbers have grown again, as shown in Table 1:

1. In Washington, the known population is now 739 pairs and 261 single birds, well above the 500 to 600 pair total population estimate of a few years ago.
2. In Oregon, the known population is now 2,070 pairs and 970 single birds, far above the 1,000 to 1,200 pair total population estimated by Dr. Eric Forsman a decade ago.
3. In California, the population most dramatically exceeds earlier estimates. Far from the 244 pair total population estimated by Mr. Gould in 1977, today the known owl population in California is 1,209 pairs and 816 single birds. Most remarkably, in the four years since the Fish and Wildlife Service concluded owls on private lands in California had been eliminated, private landowners have located 653 pairs of northern spotted

¹⁵ U.S.D.I. Fish and Wildlife Service, *The Northern Spotted Owl, A Status Review Supplement* (1989) at 4.13, 4.17.

¹⁶ *Id.* at 4.13.

¹⁷ *Id.* at 4.11.

¹⁸ Interagency Scientific Committee To Address the Conservation of the Northern Spotted Owl, *A Conservation Strategy for the Northern Spotted Owl* (1990) at 64.

¹⁹ U.S.D.A. Forest Service, *Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests* (January 1992) at 364-21.

²⁰ *Id.*

owls and 281 single birds on private land in California. Almost all of them live and reproduce in 30- to 40-year-old second growth managed forest stands — stands that have been harvested for a century. Indeed, Simpson Timber Co. alone has located and banded over 535 owls on its 380,000 acres of timberlands in northern California.

The total known three-state northern spotted owl population today is 4,018 pairs and 2,047 single birds — over 10,000 spotted owls. This number is double the total population projected by the Fish and Wildlife Service just four years ago, and almost three times the initial population estimates offered by early researchers little more than a decade ago. The only certainty is that these numbers will continue to increase for years to come.

With these rapidly growing numbers of owls located in the forests, it is not difficult to see why protecting this not-so-rare bird under the Endangered Species Act has so drastically curtailed federal, state and private timber harvesting in the three state region. Federal, state and private landowners are urged to conduct northern spotted owl surveys before planning any timber harvesting in the owl region, and these surveys continually turn up owls where harvesting was planned. The result in most cases: No harvesting can be done. The paradox of too many northern spotted owls is at the heart of the timber supply crisis in the Northwest.

TABLE 1.

Increases in Known Northern Spotted Owl Populations: 1988-1992						
	1988	1989	1991	1992		
	Pairs ¹	Pairs ²	Pairs ³	Pairs	Singles	Total Birds
FS, Washington		317	475	550 ⁴	154 ⁴	1,254
NPS, Washington		20	20	64 ⁴	43 ⁴	171
FWS, Washington		1			1 ⁴	1
Indian lands, Washington		5	10	32 ⁷	4 ⁴	68
DNR, Washington		13	33	46 ⁴	23 ⁴	115
WDW, Washington		0	0	1 ⁴	0	2
Private, Washington		4	31	46 ⁴	36 ⁴	128
Subtotal, Washington	269-281	360	569	739	261	1,739
FS, Oregon		667	1,330	1,205 ⁵	399 ⁵	2,809
BLM, Oregon		431	597	657 ⁶	536 ⁶	1,850
NPS, Oregon		5	4	8 ⁷	Unknown	16
Indian lands, Oregon		1	18	36 ⁷	Unknown	72
ODF and State Parks, Oregon		4	32	35 ⁸	35 ⁸	105
Counties and Cities, Oregon		1	1	1 ⁷	0	2
Private, Oregon		20	50	128 ⁷	Unknown	256
Subtotal, Oregon	830	1,129	2,032	2,070	970	5,110
FS, California		403	615	471 ⁷	467 ⁹	1,409
BLM, California		16	11	22 ⁷	22 ⁹	66
NPS, California		3	2	2 ⁷	2 ⁹	6
Indian lands, California		N/A	28	37 ⁷	37 ⁹	111
CDP, California		3	4	4 ⁷	1 ⁹	9
State parks, California		8	10	10 ⁷	3 ⁹	23
State Lands Comm., California		N/A	10	10 ¹	3 ⁹	23
NAS, California		1	1	0 ⁹	0	0
Private, California		99	235	653 ⁹	281 ⁹	1,587
Subtotal, California	396	533	916	1,209	816	3,234
TOTALS	1,495-1,507	2,022	3,517	4,018	2,047	10,083

¹ All data from U.S.D.I. Fish and Wildlife Service, The Northern Spotted Owl, A Status Review Supplement (1989) at 4.17.

CLAY NEEDHAM
694 OAKVIEW DR
ROSEBURG, OR 97470

SENATOR JOHN CHAFEE
505 DIRIKSEN OFFICE BUILDING
WASHINGTON, D.C. 20510

RE: ESA - SUGGESTED CHANGES

DEAR SENATOR CHAFEE

I AM AN AVID SALMON FISHERMAN FISHING MOSTLY IN SALT WATER. I HAVE FISHED MANY AREAS FROM NORTHERN CALIFORNIA TO THE NORTH END OF VANCOUVER ISLAND IN BRITISH COLUMBIA.

CHANGES IN THE ENDANGERED SPECIES ACT COULD DO A LOT TO HELP RESTORE SALMON RUNS ON THE WEST COAST. THE PROTECTION OF MARINE MAMMALS (SEALS, ETC) THROUGH THE MARINE MAMMALS AND ENDANGERED SPECIES ACTS ARE ALLOWING SALMON RUNS TO BE DEVASTATED. SEALS AND SEA LIONS HAVE BEEN HUNTED SINCE HUMANS HAVE INHABITED THE WEST COAST AND CERTAINLY 10-15 YEARS AGO AND ALL DAMS WERE IN PLACE ON THE COLUMBIA RIVER.

LET'S MAKE SOME REALISTIC CHANGES IN CONTROLS OF MARINE MAMMALS AND NOT BE SO QUICK TO USE ESA. ESA SHOULD BE AMENDED TO CONSIDER ALL FACTORS BEFORE ACTION IS TAKEN, NOT JUST PRESENTATIONS OF SO CALLED "FACTS" BY SELF APPOINTED ENVIRONMENTAL "EXPERTS".

CC: SENATOR HATFIELD
REPRESENTATIVE DE FAZIO
SENATOR KEMPTHORNE

SINCERELY
Clay Needham

Steve Shimberg, Director of Environmental and Public Works
506 Dirksen Office Building
Washington, D.C. 20510
FAX: 202-224-2322

June 4, 1995

Dear Steve:

Re: Endangered Species Act (ESA) Modification

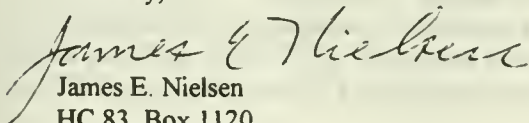
I'm a recently-retired employee of a Federal land management agency where I had twenty five-years experience managing forest resources. My entire professional career was at the District level where I supervised people who conducted on-the-ground activities. I was also responsible for carrying out forest and regional level plans and the requirements of the Endangered Species Act and others. Following is my testimony on the ESA:

The Endangered Species Act should be changed to effectively integrate its effects on people and the local and national economies. From my resource background I feel this can be done while conserving forest and species diversity values at high levels (80%+). Current implementation of the ESA and other laws focus on legalistic interpretations that forces decisions that are legally "safe" (and even that is relative). They do not adequately consider the resilience of the forest resources I am familiar with. The requirements of President's Clinton's Option 9 are a case in point. The large reserve areas and streamside buffers are excessive and do not integrate economic and people concerns. I have walked into streamside buffers retained in the late '70's and they essentially protected riparian habitat even though substantial timber harvest took place. In similar situations today I would agree that current knowledge requires some increased protection. This should be decided on a site specific basis, however, where various disciplines interact on an equal basis without the ESA and other laws forcing a legalistic and region-wide biocentric decision.

Another change needed with the ESA is that whole ecosystems including humans should be considered not just individual species. Forest management in the Pacific Northwest is affected by requirements for the Spotted Owl, Marbled murrelet, various anadromous species and others. This is providing fertile ground for some environmentalists who use legalism to advance their agenda of no timber harvest and a return to "natural" conditions despite the needs of people. Changes are needed to the ESA so that on federal land an ecosystem management approach to species conservation is accomplished. This will avoid the legal quagmire of a species by species approach. People and economic concerns should be fully integrated into such management. Before I retired, many or most of the techniques of such management had been developed but could not be implemented because of ESA and other legal requirements.

Elimination of budget deficits is a key concern for our future and will be brutally painful to our country. Consequently, Congress will need to test all legislation for its budgetary effect. For ESA reauthorization this will require effective integration of people and economic concerns.

Sincerely,



James E. Nielsen
HC 83 Box 1120
Coquille, OR 97423

cc: Senator Hatfield, Senator Packwood, Representative DeFazio, Concord Coalition

June 7, 1995

1995 JUN 12 AM 11:01

Sen. Dirk Kempthorne
Subcommittee on Drinking Water, Fisheries and Wildlife
367 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Kempthorne:

My name is Pete Quast, Woods Manager of Roseburg Forest Products Co.. Roseburg Forest Products Co. employs over 3,000 people in Douglas and Coos County, OR. in harvesting, road construction and the manufacturing of plywood, lumber, particleboard and chips. The operations are at least 75% dependent on federal timber from the Umpqua, Siskiyou, Siuslaw, Willamette, Winema, and Deschutes National Forests and Roseburg, Coos Bay, Medford, and Eugene Districts of the BLM. Our operations normally require over 300 MMBF from these sources. Unfortunately, the operations have been severely impacted by listing of species as threatened under the Endangered Species Act (ESA).

Endangered species were viewed by the drafters of the ESA as limited in number or geographical area to the point where listing would impact only small locations and have minor economic impact. Congress did not originally intend for the ESA to cause such far-reaching social and economic impacts as seen in the case of the Northern Spotted Owl.

Roseburg Forest Products Co. supply of raw material has been severely impacted by the lengthy consultation process for sold USFS and BLM timber sales. Over 100 million board feet of USFS and BLM timber sales purchases by RFPCo. in 1990 have been held up since 1992 for consultation and various injunctions as a result of the listing of the marbled murrelet. The proposed listing of the cutthroat trout has already resulted in illegal delay of planned operations on 12 MMBF by the USFS while they consult with National Marine Fisheries Service (NMFS).

The ESA has turned sound forest management into 'disaster management'. The ESA has strayed so far from it's initial objective of preventing wild plants and animals from going extinct, that it is no longer recognizable in it's present form. The listing process, consultation process, designation of critical habitat, etc., are uncoordinated attempts at an impossible task. Listing decisions have been based more on politics and the abuse of the intent of the Act by the filing of lawsuits by preservationist groups to list any specie they think will further their agenda.

The listing process is determined solely on "best scientific and commercial evidence available." Socio-economics may not or usually never are considered in the process. Since there are no set standards for determining the validity of this evidence, biologists working for the federal government have broad latitude to emphasize some research findings and disregard others. The fate of entire industries lay in the judgment of a handful of biologists. I am a professional forester and logging engineer with over 32 years experience in managing and harvesting private industrial lands under State Forest Practice Acts and harvesting USFS, BLM, and state timber sales. I have been involved in the consultation process with the FWS on many sold USFS and

BLM timber sales for both spotted owls and marbled murrelets. It has become apparent to me and a great many other knowledgeable professionals that the listing of the northern spotted owl as threatened was based on incomplete data, computer models of populations that were not reviewed by professionals outside the group that developed it, and a lot of worst case assumptions. Information developed in the nearly 5 years since the listing now shows that there are over four times more pairs of owls than were known in 1990. We now know that owls live and multiply in a much greater area and variety of habitat, including intensively managed timber less than 80 years old, than was assumed when the listing decision was made. In short, if the listing decision had been delayed until good scientific information was developed or if all the information available in 1990 had been properly analyzed, the northern spotted owl would not be listed as threatened. It now appears that the hundreds of million dollars in economic impacts since 1990 were unnecessary.

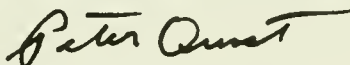
The impacts of the listing of the marbled murrelet have already been significant and will continue to increase with the designation of critical habitat. Unfortunately, there was very little known about the marbled murrelet population and nesting habits when the listing decision was made in 1992. About all that was known was that the total population from Alaska to Northern California was 250,000 to 450,000 and that the plaintiffs in the lawsuit to have the murrelet listed said that the population was declining.

The two examples that I am very familiar with show the need for major changes in the Act:

- 1) Listing decision must be based on sound, verifiable data developed from all sources, public and private. If data is felt to be inadequate, the Act must permit time to develop and study new information.
- 2) Allow citizens to challenge lawsuits to add a species to the list. Currently citizens can only challenge a lawsuit not to add a species to the list.
- 3) Prohibit the future addition of subspecies and populations to the endangered species list unless by specific Congressional decision.

I greatly appreciate you coming to Roseburg, OR. and your commitment to ensure that the Act is amended in a sound, balanced manner.

Sincerely,



Peter Quast,
413 Nob Hill Road
Roseburg, OR 97470



R-Y TIMBER, INC.

83395 Airport Way • P.O. Box 818 • Joseph, Oregon 97846-0818 • Phone (503) 432-2911 • Fax (503) 432-6285

June 7, 1995

Senate Environment and Public Works Committee
SD410
Washington, D.C. 20510

Dear Senators:

Thank you for the opportunity to comment on proposed changes in the Endangered Species Act.

Since the white man has "played" in the forests of the United States for over three hundred years, and tried to exclude nature's way, we can not decide just to turn back the clock and let nature take its course. Exclusion of man from the forest ecosystems will not prevent and or preserve endangered species, clean air, clean water and healthy forest ecosystems. We have to try and emulate nature as much as possible in our management of our forest ecosystems.

In June of 1992 the Wallowa County Court and the Nez Perce Tribe came together and established a committee to develop a site specific salmon habitat recovery plan for Wallowa County, Oregon. This committee represented 440 years of Wallowa County knowledge and experience. The following groups were represented: Agriculture, Grazing, USDI Bureau on Land Management, Business/Community, Environmental Interests, Labor, Large Landowners, Logging Industry, Nez Perce Tribe, Oregon Department of Fish and Wildlife, Small Woodlands, USDA Forest Service, Wallowa County Court. The committee met at least twice a month for over a year in meetings that were open to the public. The committee worked in consensus without remuneration and did not need to vote on any of the provisions in the plan. In August of 1993, after scientific peer review, the Wallowa County - Nez Perce Salmon Recovery Plan was presented through the Wallowa County Planning Commission and the Wallowa County Court for public comments. In September 1993 the Wallowa County Court adopted the Wallowa County - Nez Perce Salmon Recovery Plan as part of the Wallowa County Land Use Plan.

In September of 1993 a delegation representing Wallowa County and the Nez Perce Tribe presented the Plan in Washington, D. C. to the National Marine Fisheries Service (Dr. William Fox), Department of Agriculture (Mark Gaete), Senator Hatfield's Office, Senator Packwood's Office, Representatives Foley, Smith, DeFazio Offices. The Plan has been endorsed by the following agencies/individuals: Northwest Power Planning Council, Oregon Department of Forestry, Oregon Department of Fish and Wildlife, Oregon Department of Land Conservation, Wallowa-Whitman National Forest, Senator Mark Hatfield, Senator Robert Packwood, Representative Robert Smith. The National Marine Fisheries Service is in the process of reviewing the Plan. Official recognition from the White House and Department of Agriculture, requested by various sources, has not been received.

The Salmon Recovery Plan is an adaptive management plan that covers Wallowa County in its entirety regardless of ownership and is intended to be dynamic, designed to change with new conditions and knowledge. The Plan is not limited to instream conditions but considers the entire watershed (from ridgetop to ridgetop). The Plan provides a number of watershed approaches to be used by the land manager in developing projects to maintain and enhance watershed conditions. The watershed approaches discussed in the Plan include: Water Management, Forest Management, Fuels Management, Riparian Management, Livestock Management, Weed Management, Road Management, Recreation Management. The use of this Plan will maintain and enhance habitat conditions and economic infrastructure in wallowa County for all species. At this time, 97 different projects, based on this Plan, have been or are being accomplished.

The process and procedure followed in the development of the Wallowa County - Nez Perce Salmon Recovery Plan should be the model for all plans. The Endangered Species Act should state that site specific adaptive management plans, not species specific are to be developed. The development of these plans should be by broadbased groups that have local on-the-ground knowledge and experience using the best verifiable scientific information available. The plans should maintain and enhance conditions and economic infrastructure for all species (including man). The authority and responsibility for the implementation of the plans should be at the local level. Local historical data and experience should play the largest role in the development and implementation of these plans. These plans should be incentive based while not punitive in nature. We have lived with, have managed, and will bear the consequences of both your decision and the destiny of our lands.

Give the Citizens of the United States the opportunity to shape their own destiny

Sincerely,



Bruce H. Dunn
Forester

ROUGH & READY LUMBER CO.

30365 Redwood Hwy., P.O. Box 519, Cave Junction, OR 97523
Telephone (503) 592-3116
FAX (503) 592-3221

June 1, 1985

Steve Shimberg, Majority Staff Director
Senate Environment and Public Works Committee
Subcommittee on Drinking Water, Fisheries and Wildlife
SD-410
Washington, DC 20510-6175

Re: Endangered Species Act Field Hearing Testimony

Dear Mr. Shimberg:

Please enter these comments as testimony into the Field Hearing Record for the Endangered Species Act (ESA).

My two bothers and I, and our father before us, have operated mills for 70 years in the Illinois Valley of southwestern Oregon. At the center of the valley just north of the Oregon/California border is the town of Cave Junction which has a population of approximately 2000 people. The Illinois Valley is located in the southwest corner of Josephine County which is about 80% federally owned and managed by the U.S. Forest Service and the Bureau of Land Management (BLM).

Before the effects of the spotted owl and marbled murrelet listings under the ESA were felt, we employed 235 people from Cave Junction and the surrounding Illinois Valley. But now, in a continuing effort to extend our diminishing supply of timber under contract, we have had to lay off about 75 workers over the last 5 years. The loss of these jobs is a direct result of the almost complete halt in federal timber supply caused by the Endangered Species Act and the ensuing delays caused by court challenges to federal timber management policies.

Before discussing our specific experiences and comments as to how we think the Act should be modified, I want to first state that we fully support reasonable regulation to protect endangered species. We do disagree, however, with the government's current interpretation of the Act and feel strongly that the ESA must be modified to clarify what constitutes a "take" and to restore the original intent of the Act. We feel sure that the authors of the ESA anticipated protecting individual species and did not intend to tie up potential habitat irrespective of it being occupied by the protected species. As you know, the Supreme Court is scheduled to rule on this issue within the next few months.

Over the years we have purchased private timberland that we expected to augment our federal supply on a sustainable basis. On the Illinois and Galice Ranger Districts of the Siskiyou National Forest there has been virtually no timber offered for sale since 1990. We have a few small federal timber sales still under contract, but they will be harvested by the end of this year. If a reasonable level of federal timber supply is

not restored soon, it will be impossible to continue operating our sawmill. Our private lands cannot provide enough material to run our facility even at its current reduced level. But even more distressing is that with the current broad interpretation of the ESA we cannot even rely on our own forestlands as a source of timber for our mill.

In southwestern Oregon much of the federal land under BLM management is interspersed with private ownership. Access to many tracts of private timberland is regulated by reciprocal road use permits between the BLM and the private land owners. There have been cases where access to privately-owned timberland has been denied under the ESA.

We understand that when a species is proposed for listing that we must err on the side of the allegedly threatened species, but our experience has been that the time taken to make a determination has been incredibly long. Entire communities and regions of the country are left in limbo for years at a time while the ESA listing is just being considered. It is essential that the listing process itself be streamlined and expedited to provide certainty for those humans who's livelihoods hang in the balance.

We are certain that a process that would cultivate cooperation between government agencies implementing the ESA and those people affected by the Act would result in much better protection for the endangered species as well as less disruption for natural resource dependent communities. So often it seems to be "us against them". There should be a mechanism to allow all parties affected by a listing decision full participation in developing and implementing Recovery Plans. There are vast amounts of expertise and knowledge that could be utilized in developing solutions to some of the problems we face today. If some of this practical "on-the-ground" knowledge could be used in formulating plans to mitigate damage or work around sensitive sites, it would go a long way to promote a cooperative attitude among those people who have the most to lose in the trade for species protection. Incentives could also be used to further encourage protecting and recovering species and allow private citizens to be part of the solution.

In addition to the above suggestions, we would also like to see you consider the following changes to the ESA:

Before any species is declared endangered or threatened, the scientific evidence that supports the listing should be subject to peer review to ensure that the scientific community is in agreement with the science used to support the listing.

Consider research findings equally from all affected parties.

Take into account economic impact of a species listing.

Senate Environment and Public Works Committee
June 1, 1995

Page 3

Redefine and distinguish "threatened" from "endangered" species in the ESA, allowing appropriate levels of protection for each classification. As the law is written now, a "threatened" species is given the same protection as an "endangered" species.

Devise some means to evaluate whether it makes sense to list an obscure sub-species or variety when its more common closely-related cousins are thriving.

Clarify Congress' intent of protecting listed species' viability but not necessarily in every geographical region. The marbled murrelet is a perfect example. The bird is common on the coasts of Alaska and British Columbia numbering over 250,000. There is no evidence that the marbled murrelets in Washington, Oregon and California are geographically separated from those in Alaska and British Columbia. Therefore, if no murrelets lived outside of Alaska, the species as a whole would continue to thrive.

Finally, we would like to see streamlining of the Act to allow for de-listing of recovered species as expeditiously as practicable. We are located in the heart of spotted owl country. Every time we plan to start a harvest operation, whether it be on public or private land, we seem to find a single or nesting pair of owls. In our working circle, and it seems in all of southwest Oregon and northern California, spotted owl sightings are so numerous we question whether the owl should ever have been listed as threatened. We are in a "Catch 22" situation: the more owl sightings, the greater the restrictions. If there really were as few spotted owls as claimed there would not be such an extreme impact on our timber supply. It is obvious to us that the spotted owl is thriving in this area, and that the ESA as applied here is producing economic and social disruption, is costing the government billions of dollars, and is accomplishing very little real benefit.

Thank you for your consideration.

Sincerely,



Lewis Krauss
Vice President

SALMON SCHOOLS

OFFICE OF THE SUPERINTENDENT
DISTRICT NO. 291
P. O. BOX 790
SALMON, IDAHO 83467
208-756-4271

CANDIS R. DONICHT, Ed. D.
Superintendent

JUN 20 1995

June 15, 1995

Senator John Chafee
U.S. Senate
Washington, D.C. 20510

Dear Senator Chafee:

I am following up on the written testimony to ask that you change the ESA to include economic takings. Our school district will be losing approximately \$100,000 of forest funds next year due to the impact on logging in Lemhi County. Three of our schools are heated with sawdust fired boilers. We get our sawdust from Salmon Intermountain Sawmill in Salmon, Idaho. I have been told that if this sawmill doesn't get any logs by July of 1995, they will be forced to closed down. This has been a direct result of the Endangered Species Act.

We are currently getting about \$150,000 a year from forest funds. It will cost up to \$500,000 to convert our heating system. Due to loss of \$100,000 in expected revenue, we could be looking at a shortfall of \$600,000 to start the school year for 1996-97. I have enclosed some papers for you to look over. They will show that 1990 timber sold on the Salmon National Forest 22.3 MMBF to 1.5 MMBF in 1995. The bottom line is we need our sawmill. We need our timber sales. One thing to note is that the value of timber has been increasing or forest funds would be less than what they are. I understand that they could get lower yet with Canada selling wood in the United States.

What I am asking is for you to implement a rolling average on forest funds. This would lessen the financial impact. It is my understanding from George Matejko, the Salmon National Forest Supervisor, that this has been done in the Pacific Northwest timber dependent communities.

ON THE "RIVER OF NO RETURN"

Page 2

Salmon is in Lemhi County. Total acres of land in the county is broken down as follows:

Federal Land	2,653,019 acres	90.8%
State Land	37,818 acres	1.3%
Private Land	228,202 acres	7.8%
County Land	1,800 acres	0.1%
<u>Municipal Land</u>	<u>76 acres</u>	<u>0.0%</u>
TOTAL	2,920,915 acres	100.0%

Thank you for your consideration.

Sincerely,



Stan Davis
 Maintenance Supervisor
 Salmon School District #291
 P.O. Box 790
 Salmon, Idaho 83467

SD/ks

NATIONAL FOREST RECEIPTS

The Act of May 23, 1908 (Twenty-Five Percent Fund Act) authorizes the Secretary of the Treasury to pay the states 25% of all moneys received during any fiscal year. This money is intended to compensate the counties for lost tax revenues. These receipts are to be spent in the county where they were earned and are used to benefit schools and roads. Because the Salmon National Forest is primarily in Lemhi County, and National Forest land in Lemhi County is predominantly Salmon National Forest, one quarter of all Salmon National Forest receipts closely approximates the receipts received by Lemhi County under the Twenty-Five Percent Fund Act (see table 3)).

Payment to the States from the Salmon National Forest under the 25% Act has fluctuated significantly during the 1990's: from a low of \$300,000 to a high of \$750,000. Most of this unpredictability is because Salmon National Forest receipts have predominantly been from timber sales during (85% to 95%), and timber receipts have been up and down during this period. Total timber receipts is a function of quantity of timber cut and stumpage prices; a change in either variable will influence timber receipts. Timber harvest and 25% fund receipts have declined on the Salmon National Forest since 1992. Increasing stumpage rates over the same period of time have only moderated this impact on declining timber sale receipts.

Table One

Salmon National Forest Payment to State (25% Fund)
(Dollars)

Year	Timber	Grazing	Recreation Special Use	Other	Total	30% Schools	70% Roads	PILT
1990	269,657	14,791	25,765	4,232	314,445	94,334	220,112	265,300
1991	307,541	16,039	31,580	4,227	359,387	107,816	251,571	265,300
1992	703,953	14,912	27,827	5,294	751,986	225,596	526,390	265,300
1993	652,165	14,504	35,726	5,312	707,707	212,312	495,395	265,300
1994	478,889	15,752	33,571	6,419	534,631	160,389	374,242	265,300
1995*	250,000	15,200	30,900	5,100	301,200	90,360	210,840	265,300
1996L	100,000	15,200	30,900	5,100	151,200	45,360	105,840	265,300
1996M	200,000	15,200	30,900	5,100	251,200	75,360	175,840	265,300
1996H	600,000	15,200	30,900	5,100	651,200	195,360	455,840	265,000

* 1995 is an estimate only. 1996 offers three estimates, a high harvest level (11 MMBF), a medium level (4 mmbf), and a low level (2 mmbf).

Table Two

Timber Volumes Salmon National Forest (MMBF)

Year	Offer	Sold	Harvest
1990	24.1	22.3	18.0
1991	24.8	22.0	14.6
1992	16.4	17.3	22.6
1993	10.6	4.6	17.6

Year	Offer	Sold	Harvest
1994	10.8	9.4	11.8
1995	6.0	1.5	5.1
1996L			2.0
1996M			4.0
1996H			11.0

Payments to the State appear to show a one year lag. Actual 25% receipts from 3 National Forests in Lemhi County for FY 1994 totaled \$535,634. Lemhi County shows this amount in their FY 1995 budget.

Payment in Lieu of Taxes (PILT) area shown in the right hand column in table one. These payments to Lemhi County are based on 2,653,442 acres in Lemhi County under Federal ownership @ \$0.10 per acre. Includes in this total acreage is 1,634,424 acres of Salmon National Forest, 362,305 acres of Challis National Forest, 76,490 acres of Targhee National Forest, and 580,223 acres of Bureau of Land Management.

June 6, 1995

1995 JUN 12 AM 11:46

Senator Dirk Kempthorne
Environmental Public Works Committee
U.S. Senate
Washington, D.C. 20510

SUBJECT: Endangered Species Act (ESA)

Thank you for the Roseburg, Oregon, meeting June 1, 1995. I will make my comments succinct, knowing that you will need to read many pieces of correspondence.

1. Noone wants to gut the ESA. Everyone appears to recognize the necessity of such a protective piece of legislation, primarily because we recognize that man is not always a responsible steward.
2. By the use of appropriate incentives, private landowners should be encouraged to be environmentally conscious, knowing that future generations will hold us responsible for the health of our earthly home.
3. Roseburg's economic health is better now than it has ever been. The diversity that our politicians talked of for many years has been realized. We knew that timber could not continue to be our chief economic base and the spotted owl controversy brought that fact to light perhaps sooner than expected. Don't be fooled by those that tell you of increased child abuse, suicides, and family breakups. We had plenty of those before the spotted owl and we will continue to have those same problems as long as people refuse to change their mind-set. The "red-necked" culture is alive and well in this part of Oregon due to cultural depravation and lack of emphasis on education. Our drop-out rate was over 1/3 primarily due to the high paying jobs available for school drop-outs in lumber mills and forests. These young men and women followed in Dad's footsteps. Do I want to go back to those days? NO, thank you.
4. Job retraining works! There are a number of health care workers in my place of work that were retrained mill workers. Do any of them want to go back to the mill? NO, thank you.
5. We desperately need to save our fisheries. We need to preserve our tourist attractions. Would we be able to maintain the beauty of our state without the ESA. NOT LIKELY.
6. We don't want our public lands to go back to local control. Do I trust our Commissioners and our Representatives in Salem to take care of the environment in a responsible manner? NOT LIKELY. They speak for the monied interests, not for those of us that are concerned about the quality of life in our communities. We don't have the political clout to defeat big money, but we do have the ESA. Please, at least, give us that tool to work with in our desire to save our fragile ecosystem.
7. Give us an Endangered Ecosystem Act that will concentrate our efforts on an entire environmental network instead of just a specie at a time. If not ESA, then please an Endangered Ecosystem Act that would address the same issues.

Thank you once again for giving us the opportunity to comment.

A handwritten signature in cursive script, appearing to read "Anna Slemmer".

Anna Slemmer
1234 NW Troost
Roseburg, OR 97470

Richard H Sommer
240 Vineyard Lane
Roseburg, Oregon 97470
6/8/95 5:36 PM

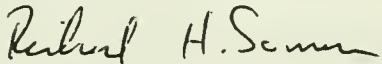
Sen. Dirk Kempthorne
Senate Drinking Water, Fisheries and Wildlife subcommittee
U.S. Senate
Washington, D.C., 20510

Honorable Senator Dirk Kempthorne:
RE: comments on Endangered Species Act

I think the basic premise (protect all species of the plant and animal kingdoms that are threatened or endangered) of the Endangered Species Act should be preserved with the following amendments:

1. Strengthen act to include plants on private lands
2. Keep 'Act' as is with no additional compensation to private landowners for "takings". Give landowners incentive to protect species and their habitat.
3. Overall the 'Act' should be strengthened to protect habitat of all creatures - plant and animal. Habitat diversity with exclusive protection or long-term rotation is essential for threatened and endangered species and other plants and creatures not on the list or other creatures we know nothing about.
4. Federal, state, and private (forest, range, farmlands) lands should be under the umbrella of a strengthened endangered species act so the lands can be managed on an ecosystem basis. It seems to me that ecosystem management of government and private forest lands are coming together although length of rotations can vary.
5. I am sure with all the expert testimony you have received your subcommittee can come up with a revised Endangered Species Act to please everyone or no one!

Sincerely Yours,



Richard H Sommer

Michael H. Skrip
 P.O. Box 424
 1995 JUN 19 AM 10:56
 Astoria, OR 97470

June 13, 1995

Senator Dirk Kempthorne
 456 Dirksen Senate Office Building
 Washington, D.C. 20510

Senator Dirk Kempthorne:

Having worked in the timber industry for over 11 years, I believe that I have a better understanding as to the importance of maintaining a balance between the environment and the forest products industry than most people. I also believe that the people of the Pacific Northwest, who are involved in the industry have a better understanding of this balance than those who living on the East Coast and have been fed misleading information by the liberal media concerning this issue.

Currently, many politicians in Washington D.C. are leaning towards the nonsense that there exists a handful of trees out West and that global warming is just around the corner. There must be sound, verifiable science in order to list a specie and when creating policy. Currently, only the "best available" science is the criterion. This, unfortunately, includes very little science in many cases.

What has to be considered is the economic ramifications if the forests are shut down. Has anyone considered what the 30,000 people who will be unemployed do if the Endangered Species Act does not take into consideration people, families, and the small communities in the Pacific Northwest? Also consider the following in your decision(s):

* The current ESA puts people last. Species are listed without regard to human interests or costs. A better ESA would balance human interests and species protection.

* The far left environmentalists say that the people who are thrown recklessly into the ranks of the unemployed could be retrained for other occupations. Some believe that by protecting the forests, tourism would increase and those that are out of work caused by the forest being shutdown could find work in the tourist industry. Firstly, how much money would be generated by tourism? We are not talking tourism as a whole, but any additional tourism brought on due to not cutting anymore trees. Minimal at best. Secondly, the jobs associated with tourism are minimum wage paying jobs. How is somebody with a family going to survive on a \$5.35 to say \$8.00 an hour job in the tourist industry when they were previously earning \$12-15/hr as a logger or working in the mills.

* It is the American dream to own your own home. What do the environmentalists expect these homes to be made from. Trees are a renewable resource. Unlike many other building products, ie; brick, steel, plastics... these products are produced from items that cannot be replenished. And when these non-renewable products are produced, they cause more pollution than products made from trees. Trees, on the other hand, can be replanted and in

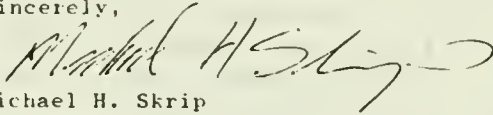
60-80 years and are ready to be harvested.

* Somehow and someone will end-up paying for the unemployed workers. Oregon is not one of the more wealthy states of the country. If the people on the East Coast want to save the forest, then they will have to support those workers who will end-up being unemployed.

* Local participation must be included in the process of developing recovery plans. Also, the protection of personal property rights must be considered. Landowners must be compensated for any losses they suffer when government agencies take property, roads and utility rights away from landowners. The government does not even report the amount of private property it has taken for specie protection. Since there is no direct cost to the government when they take private property, many federal bureaucrats view property as free for the taking.

Please consider what was mentioned above in your decision. The Endanger Species Act needs take into account the people of the Pacific Northwest and America. I would like a written response sent to the above address concerning this issue.

Sincerely,



Michael H. Skrip

Robert J Sprouse
 246 Flabb St.
 Roseburg, OR. 97470
 6-13-95

Mr. Steve Shimberg
 Director of Environmental and Public Works committee
 c/o Senator John Chafee
 505 Dirksen office Building
 Washington, D.C. 20510

DEAR MR. SHIMBERG; I am a mill worker whose whole income and family support relies upon. I love to hunt & fish, spending much of my time along the river. I can see pickling the trees along the river to keep the natural spawn beds there for years to come.

I think that what needs to be changed is the private property amendment. If you have to pay more money when you buy a house if it has large trees on it, then why can't you use those trees to help pay yourself back. You are bettering the land when the add new life a food to the forest floor. Nothing will grow on the forest floor so that means no food for the animals.

If its your land and your having to pay for it, then why in the hell can't you use it the way we want to. The land is not really yours as you have to pay big bucks for the land and then have the government telling you what to do with it. You might as not even own alot of land if you can't do with it as you wish.

Sincerely
 Robert Sprouse

cc: Senator Hatfield
 Representative Defazio
 Senator Kempthorne

Bill Taylor
 2134 S.E. Douglas
 Roseburg, Or. 97470
 6/13/95

Mr. Steve Shimberg
 Director of Environmental and Public Works Committee
 c/o Senator John Chafee
 505 Dirksen Office Building
 Washington, D.C. 20510
 RE: ESA

Dear Mr. Shimberg:

I am a very out doors kind of person. I like to go out in the woods to hunt, fish, or just relax. I also like to ride my motorbike in the woods.

I think that the fish and wild life should have to pay for the private land that they take. It is fair that someone pays good money for some land and the government comes along and takes it. I also think that it is important to save some species from extinction but they don't need the whole forest to do it. If you take and close off a lot of the forests that will affect the timber industries & therefore a lot of jobs will be lost.

In closing I just don't want to see all of the forest closed down so a couple of animals can live while people are struggling to stay alive.

and make it in the world for a lot of
people depend on the timber industry just like
the animals do, but you can't or shouldn't drastically
change ~~it~~ ~~it~~ ~~it~~ someone's life or future
because ~~if~~ an animal gets more room than it really
needs.

Sincerely,

Billings

cc: Senator Fairchild
Representative Poffo
Senator Humphreys

EES JUN 13 11:03

6-15-95

Senator J. Chafee

Sir:

In addressing the E.S.A. I would first like to say I believe in the intent of the act, however, as in most swings in history, it has gone a little far.

I believe the studies involved in placing a biologic, on the ESA, should involve a sound scientific base. Not somebody's "best guess".

In the recovery plans I believe that some local participation should be involved.

The last point I'd like to address is the private property problem. When your property can no longer be used by no fault of your own, for the purpose you purchased it, in essence seized by the Federal Government the owner deserves compensation.

cc. senator Hatfield Sincerely T.G. Walenski
 Representative DeFazio
 Senator Dirk Kempthorne

1995 JUN 10 PM 2:24

Jeffrey D Whitman
 240 Panda Lane
 Roseburg, OR 97470
 June 13, 1995

Mr. Steve Shimberg
 Director of Environmental and Public Works Committee
 C/o Senator John Chafee
 505 Dirksen Office Building
 Washington, D.C. 20510

RE: ESA Suggested Changes

Dear Mr. Shimberg,

My name is Jeff Whitman. I'm 33 years old, married, and the father of 3 young children. I am also employed in the wood products industry, and am concerned about the rewriting of the E.S.A.

In the rewriting of the E.S.A. there must be a sound, verifiable science in order to list a species. It appears that currently the "best available" science is the criterion. This, unfortunately, includes very little science in many cases. The current E.S.A. puts people last. Species are listed without regard to human interests or costs. A better E.S.A. would balance human interests or ~~costs~~ species protection. Local people most affected must be part of the process in developing recovery plans. Top down dictates must be stopped. Listings come from the federal government, regulations come from the federal government, prosecution comes from the federal government. Responsible land managers suffer and the listed species suffer. Recovery plans developed locally have a much higher opportunity for success. If private property must be used in recovery, then landowners must be paid for any losses they suffer. Other government agencies pay for property taken for roads, sewer and gas easements and utility right of way, but the US Fish & Wildlife Service has taken the position that they can take private property for endangered species protection without paying the landowner.

I hope this letter is received and taken into

account. I've had five jobs within this industry in the last five years, they all fell victim to the ESA. I've been lucky enough to land on my Ret and still be able to provide for my family but luck can run out. Please let ~~our~~ our voices be heard. Thank you

Sincerely,

Jeff Whitman

cc: senator Hatfield
Representative DeFazio
senator Dirk Kempthorne

Steve Shimberg
Director of Environment and Public Works
506 Dirksen Office Building
Washington, D.C. 20510

Dear Mr. Shimberg:

Please accept the following recommendations as my attempt to bring sound, balanced advise to the reauthorization of the Endangered Species Act:

- 1) Mandate double-blind peer review studies of all proposed listings, encouraging scientific inquiry and debate without fear of reprisal from academic colleagues. This is a must if we are to attain a sensible solution to this problem.
- 2) Clarify Congress' intent of protecting listed species viability which may not include maintaining the species in every geographic region.
- 3) Set strict guidelines on length of consultation period for government agencies to make listing decisions. As it stands, the agencies are taking way to long in the consultation process causing millions of dollars to be tied up in obscure lawsuits as well as billions of board feet of timber locked up when it should be going to local mills to keep the economy of the region healthy and viable.
- 4) Clearly define criteria for designating and overseeing critical habitat by all government agencies. Each agency has it's own definitions and guidelines of what critical habitat should be, causing confusion among the parties involved.

Please regard the suggestions I have made. I have lived under the auspices of this Act too long to feel it can accomplish what it was intended to do without destroying so many human lives along the way. DO NOT let this monster continue to abide in it's present form, transform it into a balanced, sensible guideline we all can live with.

Thank you.

Sincerely, *David R. Williams*

REGISTERED
 HEREFORD
 & ANGUS
 CATTLE

June 1, 1995

CONTRACT
 SALVAGE
 LOGGING

Environment and Public Works Committee
 Senator John Chafee, Chairman
 Att. Steve Shimberg
 505 Dirksen Office Bldg.
 Washington, DC 20510

RESOURCE
 MANAGEMENT
 CONSULTING

Please enter my testimony into the official record for the Committee on Environment and Public Works and the Subcommittee on Drinking Water, Fisheries and Wildlife.

It is hard to know where to begin the process of helping your committees understand the devastation that the Endangered Species Act (ESA) has had on our families, communities, and industries in the West and for that matter, across the nation.

I work with grass roots organizations at home, Wallowa County, Oregon, and serve as an officer for our state grass roots organization, Oregon Lands Coalition. The Coalition is a communication network uniting 69 natural resource groups and 108,000 families committed to empowering ordinary citizens in the quest for sensible environmental decisions. The Endangered Species Act is the tool that many in Congress and the environmental industry have used to bring whole communities and industries to their knees in the Pacific Northwest.

The rural families, communities, and counties that produce the natural resources for this nation and much of the world are the most affected by the ESA. With the shut down of the timber industry, ranching, mining, and agriculture, we wonder where common sense and reality have gone. We only ask that people and economics are considered.

Human Equation

Enclosed is a map showing mill closures over a 5 state area (attachment #1) Keep in mind each of these primary industry jobs support 2 or more service jobs, these jobs also support 5-7 indirect jobs.

Closer to home, in Wallowa County, the economic structure is primarily timber, ranching, and agriculture with some arts and tourism.

Today Wallowa County has 15.9% unemployment, the highest in the state. We have no saw mills running at this time. The Boise Cascade mill was closed and dismantled a year ago, Rogge Mill is down and not expected to re-open, and the RY facility closed in October 1994 and is expected to re-open with approximately half the employee base. Our county lost 15% of its highest paying jobs in a matter of months. The primary reason is the listing of the Snake River Salmon and litigation from the environmental industry to further halt activity on the national forest.

Ranching is also an intrgal part of this county and most of the permittees on Forest Service land have lived in fear for their livelihoods for nearly 2 years. True to form, the

87696 HWY. 82 ENTERPRISE, OREGON 97828
 PH: (503) 426-3742 - FAX: (503) 426-4336

environmentalists have lawsuits filed on 8 forests in Oregon and Idaho to stop grazing with no thought to the investment and commitment the ranchers have had to the land for generations. Again, the ESA is used as the weapon to halt ranching, logging, and mining.

My husband serves as a commissioner on the Wallowa County Court. The federal forest receipts have dwindled to almost nothing and our county is facing cutbacks and layoffs. . This county of 7,000 has never had large industry or any other way to create revenue other than from timber, agriculture, and other small business. Our largest taxpayers are landholders. Again, timber and agriculture. We have heard the tourism pitch many times and yet in Wallowa County, the art industry which is primarily bronze casting facilities and tourism are struggling with layoffs and reduced visitors to the area. Many of the tourists in an area such as ours are blue collar people and they too are without jobs or job security.

The *absolute crime* in assessing the situation in Wallowa County is that we are sitting in the middle of millions of acres of dead and dying forest that needs proper management and rehabilitation. There is no reason our mills should be closed, our ranchers threatened, or that our county is in trouble economically.

Wallowa County is not waiting for some huge bureaucratic effort to manage the land. We have crafted the Wallowa County/Nez Perce Salmon Habitat Recovery Plan (attachment #2) to address management needs of our county. This effort was built by local citizens, county government, the Nez Perce Tribe, and local, state, and federal agencies. No big stick of government that takes away rights and opportunities, but a plan that protects habitat, species, *people and economics*. Even though the Salmon Plan is highly regarded as a viable, workable solution, do we have it formally recognized as the way we should be doing business on the land....no. Why....because it brings the decision making capacity back to the people who have to live with the results and limits government intervention.

It is apparent that the federal government is a dismal failure when it comes to land management compared to private ownership. It is amazing that Congress and the environmental industry have allowed the lock up of federal land and condone the extraction of resources from countries that have few environmental regulations. What is wrong with a nation that thinks it is inappropriate to harvest forests, graze livestock or mine essential minerals? Please help me understand how it makes sense that we destroy the communities and rural economies of those that produce raw materials that become food, clothing, and shelter for people. Help me understand how there can be so little regard for a whole culture of Americans that are the backbone of this country.. Why are we destroying our resources including endangered species, year after year with catastrophic forest fires and importing beef and lumber from other countries? The ESA must be amended to stop this insanity.

Cost to nation

Enclosed is testimony from Paul Ehinger and Associates, Eugene, Oregon regarding costs associated with the Spotted Owl/Clinton Forest Plan.(Attachment #3) The Spotted Owl/Clinton Plan is now costing this nation *8 billion dollars per year*, in higher consumer cost for wood products. This is one species! What happens to the Pacific Northwest when the Salmon listing is finished?

I am also entering into testimony some of the absurdities of the ESA.(attachment #4) We believe the public would be outraged if they knew the ESA is used in this manner. It also

needs to be noted that no species recovery can actually be attributed to measures taken by the ESA. The public needs to know this.

At the local level, the economic stability is so threatened and reduced that it is affecting the high level of community support that the county has always enjoyed. Our people are generous and always willing to help. The ranchers, farmers, loggers and main street business' are no longer able to give the charitable organizations, community projects, and schools the funding they have always depended on.(attachment #5)

Amending the Endangered Species Act

The following points would be the minimum changes required to make the Endangered Species Act a successful tool.

- Species listing decisions should be based ONLY on verifiable science.
- A thorough analysis to determine the economic impact on each local area must be conducted prior to listing a species.
- Protect private property by incorporating appropriate legislation into the act.
- Rewrite Section 7 so that "take", including "harm", or "alteration of habitat", etc, must be verifiable scientifically and that the burden of proof is on the appropriate agency. Incorporate language that allows legitimate ongoing activities to continue until "harm" can be verified.
- List only true biological species. Delete "sub-species and distinct populations" from the language and delist those so classified that have been already listed. Allow for the option to NOT list a species based on the determination that the species is irretrievable lost.
- Insure that legitimate ongoing activities continue until the listing is completed including the delineation of critical habitat and the recovery plan.
- Include the public in plan preparation and provide that the agencies may not place more stringent conditions on landowners that they do on themselves.
- Delineate ALL CRITICAL habitat when listing species. (In the salmon listing the ocean was omitted even though it is the predominant part of their critical habitat and a prevailing reason for the decline.)
- Eliminate the provisions allowing citizen lawsuits against private landowners.
- Empower local elected officials and local citizens to protect endangered species and their habitat through incentives.
- Eliminate the provisions for "emergency" listings by the Federal Agency Heads. Only in cases where an activity can be reasonable established as an imminent threat to the existence of a species can an emergency be requested and if that species is adequately protected elsewhere, no emergency will be granted. Such cases will be dealt with

locally, will be incentive based rather than punitive.

- Require law enforcement actions to come from the local jurisdictions.

Summary

The ESA has proven to be unrealistic and unworkable. It has proven to be a cruel weapon used by environmentalists with no regard for the adverse impacts to individuals and whole communities or even to the species they purport to protect. It has become a vehicle for attack on private property rights. The ESA ignores the critical need to manage our natural resources and address problems in a reasonable and systematic way. The ESA has ultimately failed in its objective because of its focus on single species, as opposed to dealing with more comprehensive concerns of habitat health for a multitude of species, including humans.

Intelligent management of soil, water and timber is the very best way to conserve resources and ensure best habitat. Just as important, intelligent management will provide products for this nation, jobs and stability for rural America, and a healthier economy. In closing, a quote from Evergreen Magazine.

"We are the richest nation on Earth, and in ever increasing numbers, we have absolutely no idea where our wealth comes from. Worse yet, we do not know the people who bring us these riches in such abundance.

If more of us knew more of them, we would probably view logging, farming, and mining in more favorable lights. There would still be concern for the environment, but it would be tempered by the reality that even the essentials of life come at a price."

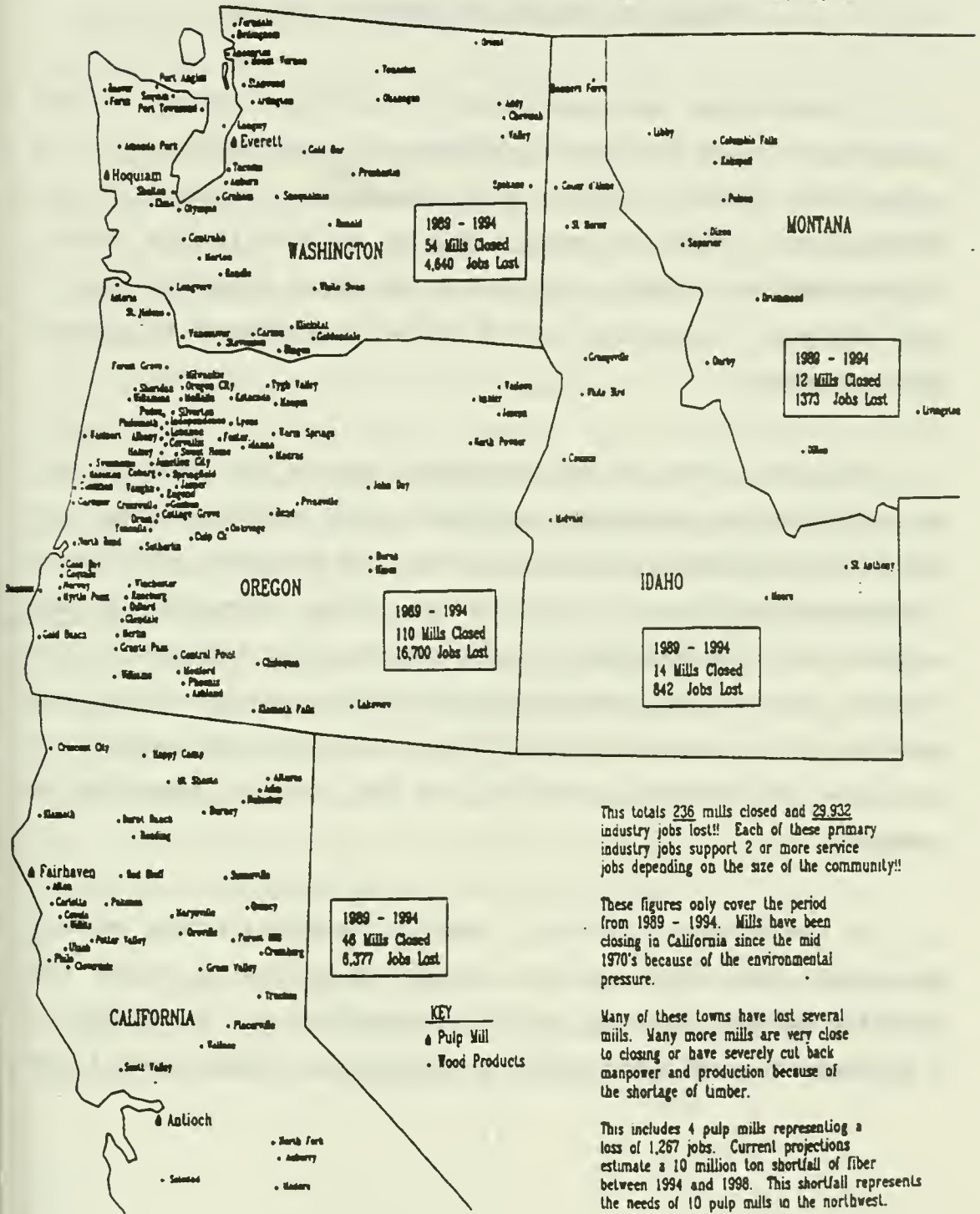
Judy Wortman

Judy Wortman

MILL CLOSURES 1989 - 1994

2-4-95

Source: Paul F. Chappier - Eugene, Or



This totals 236 mills closed and 29,932 industry jobs lost!! Each of these primary industry jobs support 2 or more service jobs depending on the size of the community!!

These figures only cover the period from 1989 - 1994. Mills have been closing in California since the mid 1970's because of the environmental pressure.

Many of these towns have lost several mills. Many more mills are very close to closing or have severely cut back manpower and production because of the shortage of timber.

This includes 4 pulp mills representing a loss of 1,267 jobs. Current projections estimate a 10 million ton shortfall of fiber between 1994 and 1998. This shortfall represents the needs of 10 pulp mills in the northwest.

IDAHO GOVERNOR PHILIP E. BATT
STATEMENT ON
ENDANGERED SPECIES ACT REAUTHORIZATION

I appreciate the opportunity to provide comment on the reauthorization of the federal Endangered Species Act (ESA). I am proud that Idaho's Senator Dirk Kempthorne, Chairman of the Subcommittee on Drinking Water, Fisheries and Wildlife, is holding a field hearing in Idaho, and that he is taking a leading role in this process. I am sorry I could not be in attendance to provide these comments.

The noble intent of the Endangered Species Act (ESA) can not be criticized nor tarnished with fault. The tarnish and fault of the ESA was provided by the broad, vague, and sometimes conflicting interpretations given to the Act by various elements: by the extreme positions taken by some environmental organizations, by the various implementing strategies of the federal agencies, and by the numerous edicts passed down by judicial decisions. To reestablish the glow and original intent of the ESA, the Act needs to be amended.

As the Governor of Idaho, I support the effort of the Western Governors' Association in its attempt to provide a policy and specific amending language for ESA reauthorization. Specifically, I am supportive of their effort to provide more state control and

involvement in the ESA process with federal support dollars being given to the states to implement local efforts. However, I am uncertain as to whether those changes will go far enough towards changing the ESA.

The primary amendment that must be provided is clarification that the water rights of the states remain the sole responsibility of the states. The federal government MUST recognize the traditional role of the states to regulate water use within their boundaries. Water is the lifeblood of the West and of Idaho. For any national legislation to be supported in the West, it must acknowledge this most basic premise and it must protect our sovereignty. The following language should be a component in any ESA authorization language: "Implementation measures under the Act shall be developed within the constraints of the water laws of the affected states." The federal government should not be allowed to release water covered by existing spaceholder contracts, or otherwise "take" water, for purposes of the ESA. Only willing-seller or willing-lessor acquisitions should be authorized. The federal government should be required to comply with state water law, including transfers of water out of state, when acquiring water from willing-sellers or willing-lessors.

The definition of the term "take" needs to be reexamined and clarified in the reauthorization process. The "take" provision should require a direct physical action which actually injures or

kills a species. Such a revision is necessary to avoid wrong interpretations of "taking," which even includes the threat of harm to the habitat of an endangered species. The word "harm" should be stricken from the definition of the term "take." All of the other ten words used to define "take" clearly imply direct action against an individual of the species. Harm has been interpreted to cover nearly any impact on a species or its habitat.

Section 4 of the Act requires that the Secretary of the Interior shall make listing determinations of endangered species on the basis of the "best scientific and commercial data available." This provision, however, provides loopholes for proponents of listing species who may have inadequate science. Rather than requiring the best available science, this provision has been bent and twisted, resulting in the use of clearly "unscientific" statements and opinions. Consequently, letters, memoranda, and reports and studies, which could never pass peer review or scrutiny, are commonly used by proponents and agencies to support a listing. This result or listing-oriented approach should be corrected with published rules, guidelines or standards for the "best scientific and commercial data available." The same standards, rules, and guidelines for listing a species should be used for delisting the species.

In the Act there is confusion over what constitutes a subspecies, a subunit, or a "distinct population segment." Is it

feasible to preserve every distinct population segment in order to perpetuate the species? The ESA is blind both to the feasibility of and the problems of identification of subspecies, subunits and distinct population segments. Prioritization of listing species, subspecies, subunits, and population segments is necessary and should be a part of any amendments to the ESA.

The ESA must be amended so that the societal costs of implementation are considered. Recovery at any cost makes no sense. The human factor must be added to the Act. We must remember that the ESA is, in effect, funded at the local and state levels. And that is precisely where the effects, both good and bad, of the listing process are felt. A balance between the cost of listing and the protection must be struck, as the present listing process threatens economic dislocation in the name of preservation.

Critical habitat should be more clearly defined and should be required at the time of listing. If the critical habitat of a species can not be given boundaries, then the information or data is probably inadequate to list the species. The federal agencies have avoided making a decision on what the critical habitat is for a species, yet they have little hesitation with listing the species even when they don't know where it lives. The ESA defines critical habitat as specific areas within the current geographic area occupied by the species and specific areas outside that geographic

area, when such areas are essential to the conservation of the species. "Specific areas" does not mean the historic range of the species, and the Act must more clearly spell out where recovery efforts are to be directed.

The ESA must be amended to afford more protection for private property rights. Through prohibitions against "takings," the federal agencies have denied owners the reasonable use of their property. The ability of the federal agencies to restrict private property use should be restricted, and explicit provisions for mitigation or compensation should be added to the ESA.

States should be authorized to develop reasonable and prudent alternatives and recovery measures through negotiations and consensus with the federal, state and local authorities, with the assistance of the science and data available for such an effort. Those efforts will more likely have the support of the citizens of the states and therefore more be more effective. The federal approach of allowing no participation is unacceptable to local citizens and causes prolonged fighting in the court system, which does little to help a species.

The time is right for changes to an Act that was passed with the best of intentions but has gone awry. It is not necessary to throw the baby out with the bath water, but neither is it necessary to drown the baby.

I thank you for allowing this opportunity to suggest changes to the ESA that will improve species protection and allow citizens, local government, and states the opportunity to assist without disastrous economic consequences.

Testimony of (Revised Summary 6/2)

Sen. Laird Noh
Chairman, Idaho Senate Resources and Environment Committee
before the Drinking Water, Fisheries and Wildlife Subcommittee
of the Committee on Environment and Public Works.
United States Senate

Lewiston, Idaho, June 3, 1995

My name is Laird Noh, 3442 Addison Ave. East, Kimberly, Idaho 83341. The natural resources committees of the Idaho House and Senate have, along with Idaho's citizens and Executive agencies, been deeply involved in ESA activities. My counterpart in the house, Rep. Golden Linford, and I have served for the past two years on legislatively created, broad based committees which attempt to maximize state and citizen participation in wolf and grizzly bear recovery programs. In January of 1994, the two committees, with the cooperation of our Congressional delegation, held some 13 hours of public hearings on the impacts upon Idaho of the Endangered Species Act and the Federal Clean Water Act and the reauthorization proposals then under discussion in Congress. (I believe Sen. Kempthorn's capable aide, Meg Hunt, attended every session.) We have also attempted to develop authorizing legislation which would maximize citizen and state participation in the development of the many conservation plans being developed for candidate species under the ESA. So, I would like to share with you what we think we have learned that ought to be considered in reauthorization.

1. First, a plea to you and to your constituents: some fundamental changes in the Act are absolutely essential, and soon, yet there is broad public support for protection for endangered species in reasonable ways. We could easily insist of you too much change, encourage a veto, and end up with no change. Now is the time for thoughtful compromise.

2. The Federal Advisory Committee Act (FACA) has been a major impediment to open, cooperative decision making under the ESA. Sen. Kempthorn's limited amendment in the Unfunded Mandates Bill helps, but additional changes are required.

3. The consultation process is a disaster. With species overlapping species and one planning process overlaying another, all conducted under threat of lawsuits and injunctions, responsible resource management on public lands has almost ground to a halt. Professional managers for the Forest Service, BLM and other federal agencies, on the ground, on their own, in cooperation with affected parties and state and local officials, can almost always make adequate decisions involving endangered or threatened species.

4. Wherever possible, strengthen state and local participation in decisions. Encourage cooperation. Open up the decision making processes. Scientists can benefit from the knowledge of laymen and need not conduct all of their meetings behind closed doors.

5. Where several states must be involved, as with salmon, the governors of the states should be encouraged in law to cooperatively develop acceptable plans.

6. Look for guidance at the Experimental-Nonessential sections of the ESA. They can work quite well in applying the concepts listed above, if administrators choose to use them in a constructive fashion.

7. The concept of restoration to historical ranges needs examination. Fear of expansion of a species with full protection on public lands creates great opposition to even the first steps towards recovery. In Idaho, for example, there is general agreement for reintroduction of the Grizzly into the Selway Bitterroot Wilderness, but no easy way to keep them there. Wherever uncollared offspring move out of the wilderness on to public lands (60 per cent of the state) each is fully protected under the Act.

8. There are problems with the takings sections. Recovery may be fully accomplished under Section 7, yet the loss of a single individual become a taking under Section 9.

9. Congress should find some way to moot the settlement of the Defenders of Wildlife suit which is too much driving priorities for USFWS resources.

10. Look carefully at the interface between the ESA and the Clean Water Act, especially as both laws may relate to aquatic species.

11. In ordinary civil and criminal law judicial standards exist for the use of scientific data. Congress should consider incorporating this standard into the ESA.

12. State water rights must be made secure under the ESA. 1994 Interior Department boasts and threats to use the ESA and the CWA to take state water rights, even without compensation, have rightly created great opposition to even limited use of Idaho water for salmon recovery.

Summary of testimony of Laird Noh
(revised 6-2-95)

1. If we ask for too much in the way of change, we may end up with no change.
2. The Federal Advisory Committee Act must be changed.
3. The consultation process is a disaster.
4. Strengthen state and local participation. Encourage cooperation. Open up the processes.
5. For regional plans, governors should have lead roles.
6. Look for guidance to the Experimental-Nonessential sections of the ESA.
7. The concept of restoration to historical ranges needs examination.
8. There are problems with the takings sections of the ESA.
9. The Defenders of Wildlife suit should be mooted by Congress.
10. Look at the interface between the ESA and the CWA.
11. Standards exist in civil law for the use of scientific data.
12. State water rights must be made secure under the ESA.

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BEFORE THE UNITED STATES SENATE
Subcommittee for Drinking Water, Fisheries, and Wildlife
The Honorable Dirk Kempthorne, Chairman

Submitted By

Charles D. Cuddy, State Representative
Idaho Legislative District 7

June 1, 1995

CHARLES D. CUDDY
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COMMITTEES
 REVENUE & TAXATION
 RESOURCES & CONSERVATION
 TRANSPORTATION & DEFENSE

House of Representatives State of Idaho

Mr. Chairman and Committee Members:

It is an honor to appear before you on behalf of the people of Legislative District 7 and we sincerely thank you for this opportunity.

The economy of Legislative District 7 is similar to all of Idaho and the West, with wood products and agriculture forming the base of the economy and recreation and tourism providing some diversity. Without question the Endangered Species Act in its present form has had tremendous impact on the people of this legislative district. The majority of individuals I have conversed with do not desire to loose any species that can co-exist with mankind under reasonable and feasible protective measures, although there is diversity of opinions regarding the interpretation of "Reasonable". Keeping this proviso in mind, I want to briefly discuss the current Salmon recovery program and its impact on our area.

Implementation of PAC fish will reduce harvest capability on the Clearwater and Nezperce National Forests by an additional twenty percent. Whether this reduction is applied to the present combined production of approximately 50 million board feet or the sustainable capability of over 200 million board feet, the impact affects the total economy through shut down of wood products operations and direct loss of local revenue for schools and counties from their twenty-five percent share of timber sale value.

Local impact to agriculture can and will be affected by reduction of productive lands through wetlands and habitat protection withdrawals. This reduces economic production and the value of our advalorem tax base.

To sustain our inland resource based economy, Idaho must continue to provide competitive transportation capability. The topographic nature of this area is not conducive to highway and waterway improvement without considerable additional expense due to conflict with existing water quality or E.S.A regulations. In some cases improvements have been refused or denied on this basis even when adverse effects are minimal or nonexistent.

I believe that contribution to species recovery should be reasonably and equitably applied. To demonstrate my position I will cite two particular instances that I believe clearly portray some of these inequities:

- 1 The existing policy of inadequate fire prevention and or uncontrolled burns adversely affects water quality to a greater degree than violation of current forest practices.
- 2 Idaho's share of the Columbia River Basin Salmon recovery program has predominantly been the responsibility of Dworshak Reservoir situated on the North Fork of the Clearwater River. This tributary has a mean annual flow of less than one quarter of the Snake River at Lewiston, Idaho, but contributes seventy-five percent of Idaho's Salmon recovery drafts. The net result is loss of primary water storage for winter power production and one of our underlying sources of recreation to the area. The Corps of Engineers estimates recreational economic loss to be

Page 2

\$15,000,000 for the local area in 1995. When one considers the fact that the community primarily affected has a total population of approximately 4000 people, the local economic damage is substantial.

The drawdown to Dworshak Reservoir renders useless the contractual agreement for use of slack water for log shipments. This creates an added cost of log transportation which adversely affects federal, private and state resource value directly reducing revenue from timber sales, particularly to the state endowment fund. If responsibility for recovery is distributed equitably local impact would be reduced to a more acceptable level.

Recreation and tourism are a great supplemental source of income to this area. They normally have a light impact on land and resources. Consequently, it is often mentioned as an alternative replacement for resource reduction. A quick review of current federal actions limiting rafting, power boating and proposing limitations on wilderness entry clearly indicates this resource is also nearing its manageable capacity. Increasing state fish and game controls and limitations further verify this is a limited resource.

To conclude, I believe the Clean Water Act and the Endangered Species Act need revision to better reflect compatibility with the needs of those directly affected. This revision first should collectively recognize that western states have quality management practices that are working. An example is Idaho's Forest Management Practices Act. When recently reviewed by the Department of Environmental Quality they were judged to be ninety-nine percent effective in preventing pollutant delivery to streams. The one percent was judged to be inadequate implementation and not a result of the Forest Practices Act. The rapid implementation of a forest health program similar to Senator Craig's proposed legislation will not only protect water shed and habitat it will prevent future devastation to fish and wildlife habitat that occurred last year in Idaho and the West.

For those who are directly affected by the Endangered Species Act and Clean Water Act, particularly through loss of business or loss of use of a resource or real property, an equitable method of compensation must be considered. From a large economic standpoint an equitable replacement of employment must also be considered.

State and local governments should be granted equal standing with federal agencies and their achievements and capabilities recognized and used in decision making and implementation.

State governments are closest to the people and in many instances have water quality standards and forest and agricultural practices that are accomplishing the desired results and affording the desired protection. Where at all feasible the responsibility for administering acts like the ESA should be implemented and adjudicated through the laws and courts closest to the citizens where standing is guaranteed.

I have attached additional information to my testimony to be entered in the hearing record and will further contribute or forward more specific information at your request. Mr. Chairman and Members of the Committee, thank you for the honor and opportunity to appear before you today.

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COMMITTEES
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House of Representatives State of Idaho

May 9, 1995

Mr. Todd Maddock and Mr. Mike Field
Idaho Members Northwest Power Planning Council

Re: Public Hearing, Post Falls, ID

Before the Power Planning Council written comments: Charles D. Cuddy, State
Representative, District 7

I want to thank you for the invitation to appear before you today, but a change of schedule precluded my personal appearance.

I appreciate the special efforts you and Mr. Field are putting forth to hear the concerns and comments of all interests regarding Salmon recovery.

Being a business person residing in a resource and agricultural district my thinking tends to be result oriented. My belief is that Government operations should also include this attitude, particularly in regard to experimentation.

In regards to Salmon recovery: we now have been finshing, augmenting, drawing down, and usurping our own rules for about five years. The end result being a continued loss of returning Salmon.

Included in this scenario is the decline in returning Steelhead, which appears to have increased since the beginning of this Salmon recovery experimentation.

The real issue then becomes the capability of the National Marine Fisheries Service, and the credibility of their proposed recovery plan:

1. When predictions range from 16 - 40 years for recovery at varying estimates of \$300,000 - \$10,000,000 per fish, what can the public actually expect the real recovery period and cost to be ?
2. When Pend Oreille Lake is left alone for Kokanee protection, while ignoring the loss of the same species in Dworshak and Kookanosa (not to mention Spiney Ray populations), what criteria is used to distinguish between these bodies of water when determining what ones can and cannot afford to suffer loss of these species ?
3. With glaring scientific evidence available showing that dissolved gases in excess of 110% (and possibly less) are detrimental to Salmonoid and other species, why does exceedence of 110 % continue to be recommended and implemented ?

Charles D. Cuddy
District 7

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4. Why is there continued disregard to other threatened species of Salmonoid habitat affected by Salmon recovery ?
6. When National Marine Fisheries demand strengthened forest practices in Salmon habitat drainage basins but condone "Let It Burn" policies within the same basins, does this not show a disregard for water quality for endangered and threatened species of Salmonoid ?
7. Why does National Marine Fisheries Services continue to delay timber sales that require action as trivial as hauling fuel to helicopters or arranging the use of existing gravel surface Forest Service roads (not new road construction) ? The latter State of Idaho timber sale mentioned has been delayed for 1 1/2 years causing a large reduction in the amount of revenue the school endowment fund will receive due to decreased stumpage values.

The sum and substance of this scenario gives rise to many questions that I believe are worthy of straightforward resolutions:

1. Could National Marine Fisheries Services or any other agency that selectively enforces standards in one regard and ignore them in a related situation represent scientific direction?
2. When practices that directly result in harm to the very species being protected, are those that perpetrate such action immune to violation of the E.S.A.?
3. Do we actually have a plan that will ultimately achieve recovery and continue to be successful while maintaining the other uses of our water that are essential to the well being of Idaho and the Northwest?

I firmly believe the time is here for the agency or agencies with authority to either tell us what the long term recovery plan is, what the mile posts are we can use for measuring achievement, and what the ultimate cost is.

If this is an impossibility then the remaining scenario is that those agencies should be forthright to insure ensuing necessary political decisions are achievable.

A separate issue is now before us, that being the summer water demand to be placed on Idaho for fall Chinook. Again, the expectation is that Dworshak Reservoir will be called upon to make the sacrifice.

It is my understanding these are primarily main channel spawning fish and therefore the responsibility for these purported needs should appropriately be placed upon those directly benefited. Therefore, the responsibility should fall on the Snake River to supply the water, particularly when the Northfork of the Clearwater already supplied the primary excess for spring flush.

One must remember that of the 1,700,000 acre feet of water to be supplied from Idaho, 76% is designated to come from Dworshak Dam, which has an active storage capacity of 2,000,000 acre feet. This would use 65% or better of active storage. When one reviews the capacity of Oxbow, Brownlee and Hells Canyon dams, they combine for a total active storage of 1,000,000 acre feet.

Charles D. Cuddy
District 7

Page 3

The Snake River has an average annual flow of 34,000 cfs at Asotin, Washington. Comparatively, the Northfork of the Clearwater at Absahka has an annual average flow of 6,800 cfs or some 20% of the annual capacity of the Snake River

The middle Snake River flushing capability appears as follows:

1,000,000 acre feet at 30,000 cfs = 403 hours or 16.8 days to replace.

From Dworshak:

400,000 acre feet at 6,800 cfs = 711 hours or 29.7 days to replace

Although Dworshak would still be called on to supply double the river capability of the Snake River it certainly would provide a more equitable solution.

I understand that purchase of some of this water would be necessary and power replacement provided for, but under the present interpretation of the E.S.A. this appears to be applicable. Certainly this puts some degree of equality back in the proposed plan.

It is my feeling this solution of equity should have already occurred, but since this alternative has not been publicly heard and in most cases publicly dispersed information lists only one of the three mid Snake River Dams it apparently is not intended to be an alternative.

I am hesitant to believe adjudication is required to reinstall reality and equity but appears to be our last remaining alternative.

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House of Representatives State of Idaho

May 15, 1995

Mr. Will Stelle, Northwest Regional Director
National Marine Fisheries Service
7600 Sandpoint Way Northeast
Seattle, WA 88115-6349

RE: NMFS Draft Recovery Plan

Dear Mr. Stelle:

Due to previous travel arrangements I am unable to attend the Public Hearing tonight in Lewiston regarding the National Marine Fisheries Proposed Recovery Plan for Snake River Salmon. In lieu of this, please accept this letter as my written comments for tonight's hearing.

First and foremost I want to make it clear that the people of the upper Clearwater have continually demonstrated through prior contributions of Dworshak water a positive intention to save the spring Chinook and Steelhead fisheries. The primary dissent to this recovery plan that we rightfully have is the totally disproportionate share of the recovery burden placed on the North fork of the Clearwater River, particularly when we are again required to provide the greatest share of the Snake River contribution for summer and fall Chinook. It is beyond my comprehension to believe any one can disagree that a stream that supplies less than one quarter of the water leaving Idaho at Lewiston but is furnishing three quarters of the requested down stream draft is not being disproportionately burdened.

A brief review of Columbia Salmon statistics taken from the 1992 Draft E.I.S. regarding flow analysis is quite revealing. Item 1.5 *Status of Salmon*, presents some interesting figures including a glaring misstatement. The figures in this item indicate that there were up to 16 million Salmon and Steelhead returning to the Columbia River and by 1938 (the completion of the Bonneville Dam) they had been reduced to approximately 5 - 6 million. Making a reasonable assumption that nearly this amount was there at the turn of the century or before development became a primary issue, lets estimate there were 80% of the 16 million still returning, or 12,800,000. If in fact the return in 1938 was a mean of

Charles D. Cuddy
State Representative

Page 2

5.5 million, we were at 43% return from the turn of the century, or a loss of 1.76% per annum. One scenario would show that we should have been out of fish by 1963.

Even if we begin with 100% in 1938 and continued the 1.76% decline we would again reach 0 in 57 years or 1995. Using this pre dam scenario for calculating purposes it gives rise to the possibility there are problems much more serious than those encountered after entrance to fresh water.

The misstatement I mentioned earlier follows. In regards to declining Salmon and Steelhead returns the 1992 Draft E.I.S. states that "By 1938 when Bonneville Dam was completed, this number had fallen to 5 to 6 million, mainly as a result of over fishing and the affects of up stream storage dams (Grand Coulee, Brownlee and Dworshak Dams), which blocked spawning runs." The fact is none of these dams existed in 1938. This tends to undermine the conclusion that up stream storage dams blocked spawning runs since they did not exist at that time.

The subject of blockage by these dams raises the last issue I want to address. With respect to size of river and mean flow, which is comparatively reflective of drainage area and tributaries, the decimation of spawning habitat due to the previously stated three main blockages is revealing in itself. Particularly when the North fork of the Clearwater was not to my recollection acclaimed for a Chinook Salmon spawning river. Per the 1992 E.I.S, the Columbia River at Grand Coulee has 107,700 cfs mean annual flow and a 79,100 square mile drainage area. The Snake River at Brownlee has 16,530 cfs mean annual flow and a 72,500 square mile drainage area. The Clearwater River at Spaulding has 14,110 cfs mean annual flow and a 8,300 square mile drainage area. Dworshak, having a mean annual flow of approximately 6,800 cfs and a drainage area of 4,000 square miles should by ratio only contribute to 2.6% of the habitat loss based on area, or 5.2% based on mean annual water contribution.

In comparison, Dworshak has contributed considerably more than its 4% (5.2+2.6 divided by 2) share to assist with recovery. In the case of a Snake River/North fork comparison, the ratio is approximately 75% contribution with 20% of the available water. I again submit what I believe to be a reasonable contribution for the Clearwater River toward spring Chinook recovery.

Of the 1,700,000 acre feet of water required from Idaho, 1,300,000 is to be supplied by Dworshak Reservoir or 76% of the Snake River draft. One must keep in mind the Snake River also drains a large amount of Eastern Oregon and a portion of Eastern Washington.

Charles D. Cuddy
State Representative

Page 3

It is only equitable that these adjacent states should contribute to the proposed solution when and where it is possible.

When this approach is taken, Brownlee Dam stands out as the most feasible contributor. It is located on the Snake River upstream of Lewiston. It blocks all Salmon runs that used to occur in the Payette, Boise, Owyhee, Powder and other upstream tributaries to the Snake River. Draft from this reservoir could also enhance return to the Imnaha and Grand Rhonde Rivers of Oregon.

The Snake River at Asotin, having an average annual flow of 34,000 cfs compared to the North fork of the Clearwater at 6,800 cfs., should by equality supply 5 times the water contribution. I contend that 1,000,000 acre feet from Brownlee and 400,000 acre feet from Dworshak (although Dworshak is still contributing double its proportionate share) comes much closer to equity than existing proposals.

I fully understand that the Idaho Power Company must be compensated for their contribution to recovery, but believe it to be within the scope of the E.S.A. to equitably reimburse all that are damaged by any recovery program.

Sincerely,

Charles D. Cuddy
Idaho State Representative
District 7

EVALUATING THE EFFECTS OF PUBLIC TIMBER HARVEST POLICY ON IDAHO RESOURCE COMMUNITIES

PRELIMINARY FINDINGS OF A CLEARWATER-CAMAS PRAIRIE ANALYSIS



Dr. Charley McKetta
UI Forest Resources Department

Dr. Hank Robison
UI Center for Business Development Research

Bolse, Idaho 3/1/95



Dear Legislator,

The U.S. Forest Service is replacing sustainable timber management with "ecosystem management." Although this change may bring many intangible benefits, timber harvests have become incidental and are declining. Human communities which evolved to process public timber face an unstable future.

In 1994, HB 956 launched research to assess the impact of various public forest policy issues on Idaho resource-dependent communities.

Our research team is halfway through their first year of study. Dr. McKetta's direct effects analysis starts with a 120 thousand record history of log flows from all forest ownerships to each sawmill. He also surveyed each mill's specific log dependence. Public forests' log flows (64% of total) used to dominate timber availability. Their timber sales have already declined to the point where future harvests with higher log prices and severely reduced volumes may be inevitable.

Increasing log costs can bankrupt mills. As weaker mills close, financially stronger survivors with locational advantages capture remaining logs. Our preliminary log redistribution model identifies threatened mills in the Clearwater timbershed. The mill at Grangeville has already closed. We predict four more mills will close within two years. We also discovered that sawmill closures threaten the supply of residual wood chips essential for local pulpmills.

Our methods do not account for all factors that enable mill survival, so these results should be viewed with caution. Our forecast is of a future that can still be changed, either way, by revised forest policies. In a previous analysis we predicted five mill closures in NE Oregon by 1997. There, actual timber sale reductions proved more extreme than expected: six mills closed within one year. Idaho's timber markets today are much like NE Oregon's were in 1994.

Dr. Robison pioneered community-level economic impact analysis and for this project he has built detailed economic profiles and input-output models of individual communities as small as Elk City and White Bird. When mills close, there are direct and indirect job, income and fiscal effects felt in impacted communities, and among communities who trade with them. When coupled with Dr. McKetta's timber direct effects model, community models provide a powerful tool for anticipating the small-area economic impacts of public policy shifts to ecosystem management. The attached tables and figures refer to northcentral Idaho. The tables translate recent public timber policy changes into forecasts of specific sawmill closures. The

next tables are economic profiles of 14 northcentral Idaho communities, they show the way things are today. The last tables show how community economies will respond to our forecast mill closures. The effects are varied. Some communities experience dramatic economic declines, while others are hardly touched.

We are presenting our methods and first tentative results for the Clearwater timbershed to demonstrate the importance of our analyses to Idaho decision makers.

Sincerely,

The Idaho Timbersheds Impact Analysis Team

Project Co-directors

Hank Robison
Charley McKetta

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BASELINE ECONOMIC PROFILES

ECONOMIC PROFILE OF GRANGEVILLE

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	2934.3	5.1%	272.8	8.7%
Mining/sand and gravel	2184.5	3.8%	52.9	1.7%
Construction	2699.0	4.6%	150.8	4.8%
Food Processing	64.1	0.1%	3.4	0.1%
Misc. Manufacturing	883.9	1.5%	63.7	2.0%
Wood/paper processing	10653.0	18.3%	249.0	7.9%
Publishing/communication	466.0	0.8%	35.8	1.1%
Transportation	4013.8	6.9%	225.3	7.2%
Public utilities	1304.1	2.2%	40.9	1.3%
Trade	7213.9	12.4%	526.5	16.8%
Finance, ins., real estate	896.1	1.5%	132.7	4.2%
Motels/eating & drinking	1090.7	1.9%	123.7	3.9%
Amusement and recreation	447.1	0.8%	51.9	1.7%
Consumer services	1260.5	2.2%	99.3	3.2%
Business services	1051.3	1.8%	56.1	1.8%
Medical/educational/soc	4345.3	7.5%	339.7	10.8%
Local Govt	1642.4	2.8%	85.9	2.7%
State Govt	4885.5	8.4%	255.5	8.1%
Fed Govt	10047.4	17.3%	369.2	11.8%
TOTAL	58082.9	100.0%	3135.1	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	58082.9	63.5%
INSIDE EQUITY INCOME	6166.5	6.7%
OUTSIDE EQUITY INCOME	13190.1	14.4%
TRANSFER PAYMENTS	13983.0	15.3%
RESIDENTS INCOME	91422.5	100.0%

ECONOMIC PROFILE OF ELK CITY

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	1461.7	10.7%	135.9	23.2%
Mining/sand and gravel	22.8	0.2%	1.1	0.2%
Wood/paper processing	6896.3	50.3%	154.5	26.4%
Public utilities	14.4	0.1%	1.0	0.2%
Trade	242.7	1.8%	16.7	2.9%
Finance, ins., real estate	7.9	0.1%	0.7	0.1%
Motels/eating & drinking	702.5	5.1%	76.2	13.0%
Consumer services	28.0	0.2%	1.7	0.3%
Amusement and recreation	120.0	0.9%	10.9	1.9%
Medical/educational/soc	112.1	0.8%	26.0	4.5%
Local Govt	11.7	0.1%	0.6	0.1%
State Govt	580.0	4.2%	30.3	5.2%
Fed Govt	3515.0	25.6%	129.2	22.1%
TOTAL	13715.0	100.0%	585.0	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	13715.0	64.8%
INSIDE EQUITY INCOME	762.9	3.6%
OUTSIDE EQUITY INCOME	1540.7	7.3%
TRANSFER PAYMENTS	5141.0	24.3%
RESIDENTS INCOME	21159.6	100.0%

ECONOMIC PROFILE OF RIGGINS

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	774.1	7.8%	71.8	12.2%
Mining/sand and gravel	1079.0	10.9%	24.9	4.2%
Construction	674.7	6.8%	37.7	6.4%
Wood/paper processing	753.1	7.6%	18.4	3.1%
Transportation	129.3	1.3%	13.1	2.2%
Publishing & communication	200.2	2.0%	4.2	0.7%
Trade	886.3	9.0%	69.2	11.8%
Finance, ins., real estate	10.7	0.1%	10.9	1.9%
Motels/eating & drinking	1209.3	12.2%	127.0	21.6%
Amusement and recreation	480.0	4.9%	43.6	7.4%
Consumer services	107.8	1.1%	11.7	2.0%
Business services	23.7	0.2%	2.8	0.5%
Medical/educational/soc	146.1	1.5%	8.9	1.5%
Local Govt	46.9	0.5%	2.5	0.4%
State Govt	1182.3	12.0%	61.8	10.5%
Fed Govt	2177.5	22.0%	80.0	13.6%
TOTAL	9881.1	100.0%	588.4	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	9881.1	50.0%
INSIDE EQUITY INCOME	1224.3	6.2%
OUTSIDE EQUITY INCOME	3103.9	15.7%
TRANSFER PAYMENTS	5539.0	28.0%
RESIDENTS INCOME	19748.3	100.0%

ECONOMIC PROFILE OF WHITE BIRD

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	838.0	31.5%	79.2	47.1%
Construction	134.9	5.1%	7.5	4.5%
Wood/paper processing	941.3	35.4%	23.0	13.7%
Trade	342.4	12.9%	21.8	13.0%
Motels/eating & drinking	254.9	9.6%	27.1	16.1%
Amusement and recreation	40.0	1.5%	3.6	2.2%
Consumer services	28.0	1.1%	1.7	1.0%
Local Govt	11.7	0.4%	0.6	0.4%
State Govt	66.5	2.5%	3.5	2.1%
TOTAL	2657.8	100.0%	168.0	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	2657.8	31.1%
INSIDE EQUITY INCOME	537.9	6.3%
OUTSIDE EQUITY INCOME	2878.0	33.7%
TRANSFER PAYMENTS	2468.0	28.9%
RESIDENTS INCOME	8541.6	100.0%

ECONOMIC PROFILE OF KOOSKIA

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	3232.3	11.4%	304.5	23.6%
Construction	674.7	2.4%	37.7	2.9%
Misc. Manufacturing	144.6	0.5%	9.5	0.7%
Wood/paper processing	15398.5	54.1%	379.6	29.4%
Transportation	307.2	1.1%	14.3	1.1%
Trade	2000.1	7.0%	147.6	11.4%
Finance, ins., real estate	233.6	0.8%	29.5	2.3%
Motels/eating & drinking	634.3	2.2%	64.3	5.0%
Amusement and recreation	270.0	0.9%	30.6	2.4%
Consumer services	256.6	0.9%	17.2	1.3%
Business services	48.6	0.2%	6.5	0.5%
Medical/educational/soc	168.6	0.6%	13.3	1.0%
Local Govt	117.3	0.4%	6.1	0.5%
State Govt	2967.0	10.4%	155.2	12.0%
Fed Govt	2021.9	7.1%	74.3	5.8%
TOTAL	28475.5	100.0%	1290.4	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	28475.5	60.5%
INSIDE EQUITY INCOME	1982.3	4.2%
OUTSIDE EQUITY INCOME	3809.8	8.1%
TRANSFER PAYMENTS	12773.0	27.2%
RESIDENTS INCOME	47040.5	100.0%

ECONOMIC PROFILE OF COTTONWOOD

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	1606.7	8.8%	151.8	13.8%
Mining/sand and gravel	1101.8	6.0%	26.0	2.4%
Construction	1079.6	5.9%	60.3	5.5%
Food Processing	32.1	0.2%	1.7	0.2%
Misc. Manufacturing	144.6	0.8%	9.5	0.9%
Wood/paper processing	1506.1	8.2%	36.8	3.4%
Publishing/communication	48.3	0.3%	4.1	0.4%
Transportation	988.1	5.4%	47.1	4.3%
Trade	2784.5	15.2%	196.2	17.9%
Finance, ins., real estate	668.8	3.6%	81.1	7.4%
Motels/eating & drinking	453.4	2.5%	55.9	5.1%
Amusement and recreation	102.2	0.6%	11.5	1.0%
Consumer services	298.9	1.6%	22.1	2.0%
Business services	81.5	0.4%	7.1	0.7%
Medical/educational/soc	2400.6	13.1%	135.4	12.3%
Local Govt	516.2	2.8%	27.0	2.5%
State Govt	3613.9	19.7%	189.0	17.2%
Fed Govt	933.2	5.1%	34.3	3.1%
TOTAL	18360.4	100.0%	1097.0	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	18360.4	66.9%
INSIDE EQUITY INCOME	1879.6	6.8%
OUTSIDE EQUITY INCOME	2840.0	10.4%
TRANSFER PAYMENTS	4359.0	15.9%
RESIDENTS INCOME	27439.0	100.0%

ECONOMIC PROFILE OF OROFINO

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	2116.9	3.1%	262.9	7.6%
Mining/sand and gravel	3616.0	5.3%	14.0	0.4%
Construction	1867.5	2.7%	148.3	4.3%
Misc. Manufacturing	579.0	0.8%	42.8	1.2%
Wood/paper processing	16359.3	23.8%	412.2	11.9%
Publishing/communication	523.4	0.8%	33.0	1.0%
Transportation	2183.1	3.2%	113.7	3.3%
Public utilities	444.9	0.6%	15.0	0.4%
Trade	5574.3	8.1%	466.9	13.4%
Finance, ins., real estate	835.6	1.2%	114.9	3.3%
Hotels/eating & drinking	1021.2	1.5%	156.2	4.5%
Amusement and recreation	397.7	0.6%	61.6	1.8%
Consumer services	770.5	1.1%	76.0	2.2%
Business services	744.1	1.1%	55.2	1.6%
Medical/educational/soc	5408.5	7.9%	352.4	10.1%
Local Govt	2184.9	3.2%	105.8	3.0%
State Govt	14592.3	21.2%	706.6	20.3%
Fed Govt	9499.9	13.8%	338.3	9.7%
TOTAL	68719.2	100.0%	3476.0	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	68719.2	66.3%
INSIDE EQUITY INCOME	6221.0	6.0%
OUTSIDE EQUITY INCOME	9892.7	9.6%
TRANSFER PAYMENTS	18748.0	18.1%
RESIDENTS INCOME	103580.9	100.0%

ECONOMIC PROFILE OF PIERCE

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	17.8	0.1%	3.6	0.6%
Construction	149.4	0.8%	11.9	2.1%
Misc. Manufacturing	187.2	1.0%	8.2	1.5%
Wood/paper processing	15193.9	83.2%	360.4	64.0%
Transportation	298.1	1.6%	15.5	2.8%
Trade	510.1	2.8%	41.6	7.4%
Finance, ins., real estate	140.4	0.8%	15.1	2.7%
Motels/eating & drinking	160.1	0.9%	24.8	4.4%
Consumer services	39.3	0.2%	4.2	0.7%
Medical/educational/soc	280.2	1.5%	22.3	4.0%
Local Govt	71.2	0.4%	3.5	0.6%
State Govt	810.7	4.4%	39.3	7.0%
Fed Govt	406.0	2.2%	12.7	2.3%
TOTAL	18264.4	100.0%	562.9	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	18264.4	86.9%
INSIDE EQUITY INCOME	677.8	3.2%
OUTSIDE EQUITY INCOME	50.8	0.2%
TRANSFER PAYMENTS	2022.0	9.6%
RESIDENTS INCOME	21015.0	100.0%

ECONOMIC PROFILE OF WEIPPE

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	186.8	1.8%	37.9	10.3%
Construction	149.4	1.5%	11.9	3.2%
Wood/paper processing	6947.8	68.7%	154.9	41.9%
Trade	448.6	4.4%	36.2	9.8%
Motels/eating & drinking	86.4	0.9%	14.0	3.8%
Consumer services	21.3	0.2%	1.6	0.4%
Medical/educational/hoc	223.8	2.2%	19.4	5.3%
Local Govt	95.0	0.9%	4.6	1.2%
State Govt	1650.3	16.3%	79.9	21.6%
Fed Govt	304.5	3.0%	9.5	2.6%
TOTAL	10114.0	100.0%	369.9	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	10114.0	63.6%
INSIDE EQUITY INCOME	426.8	2.7%
OUTSIDE EQUITY INCOME	3328.0	20.9%
TRANSFER PAYMENTS	2022.0	12.7%
RESIDENTS INCOME	15890.8	100.0%

ECONOMIC PROFILE OF ELK RIVER

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	528.9	34.5%	88.5	65.4%
Construction	383.2	25.0%	9.3	6.8%
Wood/paper processing	74.7	4.9%	5.9	4.4%
Motels/eating & drinking	131.3	8.6%	16.7	12.4%
Local Govt	23.7	1.5%	1.2	0.9%
State Govt	86.3	5.6%	4.2	3.1%
Fed Govt	304.5	19.9%	9.5	7.0%
TOTAL	1532.6	100.0%	135.3	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	1532.6	20.6%
INSIDE EQUITY INCOME	265.7	3.6%
OUTSIDE EQUITY INCOME	712.9	9.6%
TRANSFER PAYMENTS	4945.0	66.3%
RESIDENTS INCOME	7456.3	100.0%

ECONOMIC PROFILE OF KAMIAH

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	1069.4	4.4%	75.9	6.3%
Construction	673.3	2.7%	65.8	5.5%
Wood/paper processing	12237.4	49.8%	266.3	22.2%
Publishing/communication	96.8	0.4%	4.3	0.4%
Transportation	714.5	2.9%	48.4	4.0%
Public utilities	102.0	0.4%	3.9	0.3%
Trade	2764.0	11.3%	227.5	19.0%
Finance, ins., real estate	373.3	1.5%	43.2	3.6%
Motels/eating & drinking	153.7	0.6%	38.5	3.2%
Amusement and recreation	15.1	0.1%	7.2	0.6%
Consumer services	230.5	0.9%	24.5	2.0%
Business services	1708.6	7.0%	123.3	10.3%
Medical/educational/soc	200.5	0.8%	43.3	3.6%
Local Govt	568.8	2.3%	32.9	2.8%
State Govt	2500.9	10.2%	144.9	12.1%
Fed Govt	1139.7	4.6%	47.4	4.0%
TOTAL	24548.5	100.0%	1197.3	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	24548.5	68.6%
INSIDE EQUITY INCOME	1984.8	5.5%
OUTSIDE EQUITY INCOME	1470.6	4.1%
TRANSFER PAYMENTS	7799.1	21.8%
RESIDENTS INCOME	35803.0	100.0%

ECONOMIC PROFILE OF NEZ PERCE

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	14350.7	72.5%	5230.0	60.6%
Wood/paper processing	765.8	3.9%	250.6	2.9%
Publishing/communication	16.6	0.1%	8.3	0.1%
Transportation	558.6	2.8%	446.0	5.2%
Trade	1891.7	9.6%	1382.0	16.0%
Finance, ins., real estate	322.7	1.6%	222.1	2.6%
Motels/eating & drinking	97.8	0.5%	54.9	0.6%
Consumer services	5.8	0.0%	4.9	0.1%
Business services	52.4	0.3%	43.7	0.5%
Medical/educational/soc	93.1	0.5%	53.4	0.6%
Local Govt	56.9	0.3%	33.5	0.4%
State Govt	1345.4	6.8%	791.4	9.2%
Fed Govt	249.2	1.3%	106.1	1.2%
TOTAL	19806.7	100.0%	8626.6	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	19806.7	81.6%
INSIDE EQUITY INCOME	1361.6	5.6%
OUTSIDE EQUITY INCOME	684.1	2.8%
TRANSFER PAYMENTS	2417.9	10.0%
RESIDENTS INCOME	24270.2	100.0%

ECONOMIC PROFILE OF CRAIGMONT

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	4081.1	35.7%	115.4	24.0%
Construction	134.7	1.2%	13.2	2.7%
Misc. Manufacturing	32.7	0.3%	1.8	0.4%
Wood/paper processing	2978.8	26.1%	63.6	13.2%
Transportation	66.8	0.6%	6.2	1.3%
Trade	1673.7	14.6%	106.5	22.2%
Finance, ins., real estate	172.5	1.5%	13.2	2.8%
Motels/eating & drinking	39.8	0.3%	14.8	3.1%
Amusement and recreation	4.1	0.0%	1.5	0.3%
Consumer services	26.5	0.2%	6.2	1.3%
Business services	30.1	0.3%	4.8	1.0%
Medical/educational/soc	77.3	0.7%	15.8	3.3%
Local Govt	66.9	0.6%	3.9	0.8%
State Govt	1614.5	14.1%	93.5	19.5%
Fed Govt	425.3	3.7%	19.6	4.1%
TOTAL	11424.7	100.0%	480.0	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	11424.7	55.7%
INSIDE EQUITY INCOME	1639.8	8.0%
OUTSIDE EQUITY INCOME	3655.1	17.8%
TRANSFER PAYMENTS	3809.0	18.6%
RESIDENTS INCOME	20528.7	100.0%

ECONOMIC PROFILE OF LEWISTON

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	14169.0	2.6%	802.3	3.5%
Mining/sand and gravel	1980.0	0.4%	70.7	0.3%
Construction	35244.0	6.6%	1148.0	5.0%
Food Processing	6630.0	1.2%	240.1	1.1%
Misc. Manufacturing	26126.9	4.9%	977.4	4.3%
Wood/paper processing	123649.4	23.0%	2537.5	11.1%
Publishing/communication	8176.8	1.5%	319.5	1.4%
Transportation	25580.0	4.8%	917.0	4.0%
Public utilities	2904.0	0.5%	75.4	0.3%
Trade	69839.0	13.0%	4455.7	19.6%
Finance, ins., real estate	27518.0	5.1%	1468.0	6.4%
Motels/eating & drinking	15335.6	2.9%	1578.1	6.9%
Amusement and recreation	2945.4	0.5%	333.4	1.5%
Consumer services	15976.6	3.0%	1054.6	4.6%
Business services	31809.2	5.9%	1426.6	6.3%
Medical/educational/soc	60954.4	11.4%	2496.5	11.0%
Local Govt	3415.9	0.6%	149.8	0.7%
State Govt	53515.1	10.0%	2346.2	10.3%
Fed Govt	10814.0	2.0%	385.0	1.7%
TOTAL	536583.0	100.0%	22782.0	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	536583.0	71.2%
INSIDE EQUITY INCOME	43797.2	5.8%
OUTSIDE EQUITY INCOME	58705.8	7.8%
TRANSFER PAYMENTS	114090.0	15.1%
RESIDENTS INCOME	753176.0	100.0%

ECONOMIC PROFILE OF CLARKSTON

INDUSTRY	EARNINGS (\$1000)	%	EMPLOY	%
Agriculture & ag services	3338.0	3.3%	268.0	4.4%
Mining/sand and gravel	173.0	0.2%	7.0	0.1%
Construction	12005.0	11.7%	448.0	7.4%
Food Processing	179.4	0.2%	9.5	0.2%
Misc. Manufacturing	2834.6	2.8%	136.5	2.3%
Wood/paper processing	5481.3	5.3%	171.4	2.8%
Publishing/communication	1235.4	1.2%	43.9	0.7%
Transportation	1601.2	1.6%	79.8	1.3%
Public utilities	264.1	0.3%	6.9	0.1%
Trade	17315.0	16.9%	1116.8	18.5%
Finance, ins., real estate	2755.0	2.7%	362.0	6.0%
Motels/eating & drinking	5240.9	5.1%	593.5	9.9%
Amusement and recreation	2610.2	2.5%	281.8	4.7%
Consumer services	1886.2	1.8%	152.4	2.5%
Business services	2380.4	2.3%	140.6	2.3%
Medical/educational/social	20905.2	20.4%	1189.8	19.8%
Local Govt	1384.5	1.3%	60.4	1.0%
State Govt	18394.5	17.9%	802.6	13.3%
Fed Govt	2704.0	2.6%	153.0	2.5%
TOTAL	102688.0	100.0%	6024.0	100.0%

RESIDENTS' INCOME ANALYSIS

	INCOME (\$1000)	%
EARNINGS	102688.0	42.7%
INSIDE EQUITY INCOME	8224.1	3.4%
OUTSIDE EQUITY INCOME	45013.9	18.7%
TRANSFER PAYMENTS	84450.0	35.1%
RESIDENTS INCOME	240376.0	100.0%

COMMUNITY ECONOMIC IMPACTS

KOOSKIA: IMPACT FROM SELECTED SAWMILL CLOSURE IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$3,232.28	(\$6.64)	-0.21%	304.51	(0.33)
Construction	\$674.74	(\$27.69)	-4.10%	37.89	(1.55)
Misc. Manufacturing	\$144.63	(\$5.02)	-3.47%	9.54	(0.36)
Wood and paper processing	\$15,398.49	(\$1,649.42)	-10.71%	379.60	(38.55)
Transportation	\$307.19	(\$15.89)	-5.17%	14.29	(0.74)
Trade	\$2,000.15	(\$61.81)	-4.09%	147.65	(5.77)
Finance, ins., real estate	\$233.57	(\$11.41)	-4.89%	29.54	(1.40)
Motels/eating & drinking	\$634.33	(\$9.25)	-1.46%	64.33	(1.20)
Amusement and recreation	\$269.95	(\$3.34)	-1.24%	30.61	(0.59)
Consumer services	\$256.63	(\$18.14)	-6.29%	17.23	(1.06)
Business services	\$48.64	(\$1.46)	-3.00%	6.53	(0.20)
Medical/educational/social se	\$168.65	(\$8.24)	-4.89%	13.31	(0.65)
Local Govt	\$117.32	(\$9.65)	-8.22%	6.14	(0.50)
State Govt	\$2,966.99	(\$149.27)	-5.03%	155.18	(7.81)
Fed Govt	\$2,021.92	\$0.00	0.00%	74.30	0.00
TOTAL	\$28,475.46	(\$1,995.21)	-7.01%	1,290.42	(60.71)
RESIDENTS' INCOME ANALYSIS					
EARNINGS	\$28,475.46	(\$1,995.21)	-7.01%		
INSIDE PROFIT INCOME	\$1,982.28	(\$328.74)	-16.58%		
OUTSIDE PROFIT INCOME	\$3,809.78	\$0.00	0.00%		
TRANSFER PAYMENTS	\$12,773.00	\$0.00	0.00%		
RESIDENTS' INCOME	\$47,040.52	(\$2,323.95)	-4.94%		

**CRAIGMONT: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$4,081.12	\$0.00	0.00%	115.35	0.00
Construction	\$134.67	(\$0.46)	-0.35%	13.17	(0.05)
Misc. Manufacturing	\$32.73	(\$0.01)	-0.03%	1.82	(0.00)
Wood and paper processing	\$2,978.76	(\$49.54)	-1.66%	63.55	(1.04)
Transportation	\$66.79	(\$0.27)	-0.41%	6.21	(0.03)
Trade	\$1,673.68	(\$6.80)	-0.41%	106.51	(0.38)
Finance, ins., real estate	\$172.51	(\$0.62)	-0.36%	13.21	(0.05)
Motels/eating & drinking	\$39.77	(\$0.08)	-0.20%	14.84	(0.03)
Amusement and recreation	\$4.10	(\$0.02)	-0.42%	1.55	(0.01)
Consumer services	\$26.53	(\$0.11)	-0.41%	6.21	(0.03)
Business services	\$30.09	(\$0.10)	-0.32%	4.80	(0.01)
Medical/educational/social se	\$77.31	(\$0.68)	-0.90%	15.81	(0.12)
Local Govt	\$66.91	(\$0.44)	-0.66%	3.88	(0.03)
State Govt	\$1,614.52	(\$6.39)	-0.40%	93.52	(0.37)
Fed Govt	\$425.25	\$0.00	0.00%	19.60	0.00
TOTAL	\$11,424.75	(\$65.54)	-0.57%	480.01	(2.13)

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$11,424.75	(\$65.54)	-0.57%	0.00	0.00
INSIDE PROFIT INCOME	\$1,639.83	(\$17.64)	-1.08%	0.00	0.00
OUTSIDE PROFIT INCOME	\$3,655.10	\$0.00	0.00%	0.00	0.00
TRANSFER PAYMENTS	\$3,809.00	-\$9.60	0.00%	0.00	0.00
RESIDENTS INCOME	\$20,528.67	(\$83.18)	-0.41%	0.00	0.00

**NEZ PERCE: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	CHANGE	PERCENT CHANGE
Agriculture & ag services	\$14,350.73	\$0.00	0.00%	5,230.00	0.00	0.00%
Wood and paper processing	\$765.84	\$0.00	0.00%	250.55	0.00	0.00%
Publishing & communications	\$18.63	\$0.00	0.00%	8.31	0.00	0.00%
Transportation	\$558.57	\$0.00	0.00%	446.00	0.00	0.00%
Trade	\$1,891.66	\$0.00	0.00%	1,381.95	0.00	0.00%
Finance, ins., real estate	\$322.68	\$0.00	0.00%	222.10	0.00	0.00%
Hotels/eating & drinking	\$97.77	\$0.00	0.00%	54.87	0.00	0.00%
Consumer services	\$5.82	\$0.00	0.00%	4.85	0.00	0.00%
Business services	\$52.35	\$0.00	0.00%	43.67	0.00	0.00%
Medical/educational/social se	\$93.14	\$0.00	0.00%	53.38	0.00	0.00%
Local Govt	\$56.65	\$0.00	0.00%	33.46	0.00	0.00%
State Govt	\$1,345.41	\$0.00	0.00%	791.43	0.00	0.00%
Fed Govt	\$249.22	\$0.00	0.00%	106.05	0.00	0.00%
TOTAL	\$19,806.66	\$0.00	0.00%	8,626.63	0.00	0.00%

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$19,806.66	\$0.00	0.00%	0.00	0.00	0.00%
INSIDE PROFIT INCOME	\$1,361.59	\$0.00	0.00%	0.00	0.00	0.00%
OUTSIDE PROFIT INCOME	\$684.08	\$0.00	0.00%	0.00	0.00	0.00%
TRANSFER PAYMENTS	\$2,417.89	\$0.00	0.00%	0.00	0.00	0.00%
RESIDENTS' INCOME	\$24,270.22	\$0.00	0.00%	0.00	0.00	0.00%

ELK CITY: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$1,461.66	(\$5.80)	-0.40%	135.92	(0.87)
Mining/sand and gravel	\$22.76	(\$0.30)	-1.34%	1.11	(0.01)
Wood and paper processing	\$6,896.25	(\$5,546.88)	-94.93%	154.54	(146.01)
Public utilities	\$14.41	(\$5.58)	-38.72%	1.05	(0.41)
Trade	\$242.70	(\$78.42)	-32.31%	16.71	(5.11)
Finance, ins., real estate	\$7.87	(\$3.28)	-41.72%	0.71	(0.30)
Hotels/eating & drinking	\$702.45	(\$90.99)	-12.95%	76.21	(11.83)
Consumer services	\$28.03	(\$10.05)	-35.85%	1.71	(0.61)
Amusement and recreation	\$120.01	\$0.00	0.00%	10.89	0.00
Medical/educational/social se	\$112.07	(\$38.62)	-34.46%	26.05	(8.98)
Local Govt	\$11.73	(\$5.90)	-50.30%	0.61	(0.31)
State Govt	\$580.01	(\$192.09)	-33.12%	30.33	(10.05)
Fed Govt	\$3,515.03	\$0.00	0.00%	129.17	0.00
TOTAL	\$13,714.99	(\$6,977.92)	-50.88%	585.01	(184.48)

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$13,714.99	(\$6,977.92)	-50.88%	0.00	0.00%
INSIDE PROFIT INCOME	\$762.94	(\$312.62)	-40.98%	0.00	0.00%
OUTSIDE PROFIT INCOME	\$1,540.67	\$0.00	0.00%	0.00	0.00%
TRANSFER PAYMENTS	\$5,141.00	\$0.00	0.00%	0.00	0.00%
RESIDENTS' INCOME	\$21,159.61	(\$7,290.54)	-34.45%	0.00	0.00%

**WHITEBIRD: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$837.97	\$0.00	0.00%	79.19	0.00%
Construction	\$134.95	(\$7.24)	-5.38%	7.54	(0.40)
Wood and paper processing	\$941.34	(\$219.90)	-23.36%	22.89	(5.37)
Trade	\$342.36	(\$13.24)	-3.87%	21.76	(0.73)
Motel/leating & drinking	\$254.90	(\$1.76)	-0.69%	27.09	(0.23)
Amusement and recreation	\$40.00	\$0.00	0.00%	3.63	0.00
Consumer services	\$28.03	(\$1.99)	-7.09%	1.71	(0.12)
Local Govt	\$11.73	(\$1.21)	-10.30%	0.61	(0.06)
State Govt	\$66.48	(\$5.91)	-8.89%	3.48	(0.31)
TOTAL	\$2,657.76	(\$251.24)	-9.45%	168.00	(7.22)
RESIDENTS' INCOME ANALYSIS					
EARNINGS	\$2,657.76	(\$251.24)	-9.45%		
INSIDE PROFIT INCOME	\$537.93	(\$75.58)	-14.05%		
OUTSIDE PROFIT INCOME	\$2,877.96	\$0.00	0.00%		
TRANSFER PAYMENTS	\$2,468.00	\$0.00	0.00%		
RESIDENTS' INCOME	\$8,541.65	(\$326.83)	-3.83%		

**RIGGINS: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	CHANGE	PERCENT CHANGE
Agriculture & ag services	\$774.10	(\$1.70)	-0.22%	71.78	(0.09)	-0.12%
Mining/sand and gravel	\$1,079.01	(\$0.00)	-0.00%	24.93	(0.00)	-0.00%
Construction	\$674.74	(\$8.76)	-1.30%	37.69	(0.49)	-1.30%
Wood and paper processing	\$753.07	(\$221.65)	-29.43%	18.39	(5.41)	-29.43%
Transportation	\$129.33	(\$0.57)	-0.44%	13.10	(0.06)	-0.44%
Publishing & communications	\$200.21	(\$3.06)	-1.53%	4.19	(0.08)	-1.53%
Trade	\$886.33	(\$8.65)	-0.98%	69.16	(0.62)	-0.89%
Finance, ins., real estate	\$10.68	(\$0.13)	-1.22%	10.90	(0.13)	-1.22%
Hotels/eating & drinking	\$1,209.33	(\$4.18)	-0.35%	127.00	(0.54)	-0.43%
Amusement and recreation	\$480.04	\$0.00	0.00%	43.58	0.00	0.00%
Consumer services	\$107.80	(\$2.46)	-2.29%	11.71	(0.24)	-2.07%
Business services	\$23.66	(\$0.31)	-1.31%	2.78	(0.04)	-1.34%
Medical/educational/social se	\$146.07	(\$2.57)	-1.76%	8.92	(0.16)	-1.76%
Local Govt	\$46.93	(\$1.41)	-3.01%	2.45	(0.07)	-3.01%
State Govt	\$1,182.34	(\$21.89)	-1.85%	61.83	(1.14)	-1.85%
Fed Govt	\$2,177.45	\$0.00	0.00%	80.02	0.00	0.00%
TOTAL	\$9,881.08	(\$277.35)	-2.81%	588.42	(9.06)	-1.54%

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$9,881.08	(\$277.35)	-2.81%
INSIDE PROFIT INCOME	\$1,224.27	(\$77.97)	-6.37%
OUTSIDE PROFIT INCOME	\$3,103.91	\$0.00	0.00%
TRANSFER PAYMENTS	\$5,539.00	\$0.00	0.00%
RESIDENTS INCOME	\$19,748.26	(\$355.32)	-1.80%

**LEWISTON: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$14,169.05	(\$15.24)	-0.11%	802.26	(1.26)
Mining/sand and gravel	\$1,979.96	(\$28.80)	-1.45%	70.74	(1.03)
Construction	\$35,244.00	(\$521.08)	-1.48%	1,148.00	(16.97)
Food Processing	\$6,629.99	(\$55.80)	-0.84%	240.09	(2.31)
Misc. Manufacturing	\$26,126.86	(\$118.56)	-0.45%	977.43	(5.55)
Wood and paper processing	\$123,649.40	(\$3,336.47)	-2.70%	2,537.53	(75.19)
Publishing & communications	\$8,176.82	(\$379.31)	-4.64%	319.49	(14.84)
Transportation	\$25,578.98	(\$818.07)	-3.20%	917.03	(32.40)
Public utilities	\$2,903.98	(\$118.71)	-4.09%	75.43	(3.07)
Trade	\$69,839.00	(\$2,995.89)	-4.29%	4,455.69	(191.60)
Finance, ins., real estate	\$27,518.00	(\$1,277.39)	-4.64%	1,468.00	(68.95)
Motels/eating & drinking	\$15,335.58	(\$269.16)	-1.76%	1,578.14	(29.58)
Amusement and recreation	\$2,945.36	(\$147.95)	-5.02%	333.41	(15.72)
Consumer services	\$15,976.56	(\$585.27)	-3.66%	1,054.63	(38.33)
Business services	\$31,809.15	(\$1,489.42)	-4.68%	1,426.65	(67.12)
Medical/educational/social se	\$60,954.38	(\$2,729.25)	-4.48%	2,496.48	(109.48)
Local Govt	\$3,415.86	(\$81.95)	-2.40%	149.76	(3.59)
State Govt	\$53,515.14	(\$861.56)	-1.61%	2,346.24	(37.77)
Fed Govt	\$10,814.00	\$0.00	0.00%	385.00	0.00
TOTAL	\$536,583.00	(\$15,829.88)	-2.95%	22,782.00	(714.75)

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$536,583.00	(\$15,829.88)	-2.95%
INSIDE PROFIT INCOME	\$43,797.21	(\$1,837.16)	-4.19%
OUTSIDE PROFIT INC JME	\$58,705.79	\$0.00	0.00%
TRANSFER PAYMENTS	\$114,090.00	\$0.00	0.00%
RESIDENTS INCOME	\$753,176.00	(\$17,667.04)	-2.35%

CLARKSTON: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	CHANGE	PERCENT CHANGE
Agriculture & ag services	\$3,338.00	\$0.00	0.00%	288.00	0.00	0.00%
Miningsand and gravel	\$173.00	\$0.00	0.00%	7.00	0.00	0.00%
Construction	\$12,005.00	\$0.00	0.00%	448.00	0.00	0.00%
Food Processing	\$179.39	\$0.00	0.00%	9.52	0.00	0.00%
Misc. Manufacturing	\$2,834.64	\$0.00	0.00%	136.51	0.00	0.00%
Wood and paper processing	\$5,481.34	\$0.00	0.00%	171.44	0.00	0.00%
Publishing & communications	\$1,235.35	\$0.00	0.00%	43.90	0.00	0.00%
Transportation	\$1,601.18	\$0.00	0.00%	79.75	0.00	0.00%
Public utilities	\$264.09	\$0.00	0.00%	6.88	0.00	0.00%
Trade	\$17,315.00	\$0.00	0.00%	1,116.81	0.00	0.00%
Finance, ins., real estate	\$2,755.00	\$0.00	0.00%	362.00	0.00	0.00%
Motels/eating & drinking	\$5,240.91	\$0.00	0.00%	593.51	0.00	0.00%
Amusement and recreation	\$2,610.19	\$0.00	0.00%	281.83	0.00	0.00%
Consumer services	\$1,888.24	\$0.00	0.00%	152.39	0.00	0.00%
Business services	\$2,380.45	\$0.00	0.00%	140.63	0.00	0.00%
Medical/educational/social se	\$20,905.21	\$0.00	0.00%	1,189.83	0.00	0.00%
Local Govt	\$1,384.53	\$0.00	0.00%	60.41	0.00	0.00%
State Govt	\$18,394.47	\$0.00	0.00%	802.59	0.00	0.00%
Fed Govt	\$2,704.00	\$0.00	0.00%	153.00	0.00	0.00%
TOTAL	\$102,688.00	\$0.00	0.00%	6,024.00	0.00	0.00%
RESIDENTS' INCOME ANALYSIS						
EARNINGS	\$102,688.00	\$0.00	0.00%	0.00	0.00	0.00%
INSIDE PROFIT INCOME	\$8,224.08	\$0.00	0.00%	0.00	0.00	0.00%
OUTSIDE PROFIT INCOME	\$45,013.92	\$0.00	0.00%	0.00	0.00	0.00%
TRANSFER PAYMENTS	\$84,450.00	\$0.00	0.00%	0.00	0.00	0.00%
RESIDENTS' INCOME	\$240,376.00	\$0.00	0.00%	0.00	0.00	0.00%

**OROFINO: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$2,116.87	(\$1.78)	-0.08%	262.95	(0.17)
Mining/sand and gravel	\$3,616.00	(\$591.11)	-16.35%	14.00	(2.29)
Construction	\$1,867.50	(\$142.62)	-7.64%	148.33	(11.33)
Misc. Manufacturing	\$579.00	(\$13.46)	-2.32%	42.84	(1.35)
Wood and paper processing	\$18,358.33	(\$2,362.63)	-14.44%	412.21	(63.68)
Publishing & communications	\$523.38	(\$47.48)	-9.07%	33.03	(3.00)
Transportation	\$2,183.11	(\$139.20)	-6.38%	113.66	(7.86)
Public utilities	\$444.93	(\$43.34)	-9.74%	15.01	(1.49)
Trade	\$5,574.29	(\$403.95)	-7.25%	466.85	(33.46)
Finance, ins., real estate	\$635.64	(\$74.37)	-8.90%	114.89	(10.21)
Motels/eating & drinking	\$1,021.24	(\$28.71)	-2.81%	156.21	(4.65)
Amusement and recreation	\$397.74	(\$4.64)	-1.17%	61.56	(1.33)
Consumer services	\$770.51	(\$63.41)	-8.23%	76.04	(6.00)
Business services	\$744.06	(\$63.93)	-8.58%	55.25	(4.66)
Medical/educational/social se	\$5,408.53	(\$481.72)	-8.54%	352.44	(29.70)
Local Govt	\$2,184.85	(\$178.93)	-8.19%	105.80	(8.65)
State Govt	\$14,592.30	(\$305.36)	-2.09%	706.62	(14.79)
Fed Govt	\$9,469.90	\$0.00	0.00%	338.30	0.00
TOTAL	\$68,719.19	(\$4,926.64)	-7.17%	3,476.01	(204.43)

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$68,719.19	(\$4,926.64)	-7.17%
INSIDE PROFIT INCOME	\$6,221.02	(\$635.20)	-10.53%
OUTSIDE PROFIT INCOME	\$9,892.73	\$0.00	0.00%
TRANSFER PAYMENTS	\$18,748.00	\$0.00	0.00%
RESIDENTS' INCOME	\$103,580.94	(\$5,581.84)	-5.39%

**KAMIAH: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	CHANGE	PERCENT CHANGE
Agriculture & ag services	\$1,069.37	(\$4.72)	-0.44%	75.87	(0.35)	-0.46%
Construction	\$673.33	(\$63.88)	-9.49%	65.83	(6.25)	-9.49%
Wood and paper processing	\$12,237.42	(\$2,493.09)	-20.37%	266.27	(52.89)	-19.86%
Publishing & communications	\$96.84	(\$11.19)	-11.55%	4.32	(0.58)	-11.48%
Transportation	\$714.46	(\$102.23)	-14.31%	48.35	(6.88)	-14.23%
Public utilities	\$101.98	(\$17.00)	-16.67%	3.88	(0.65)	-16.67%
Trade	\$2,763.98	(\$275.82)	-9.98%	227.52	(20.99)	-9.22%
Finance, ins., real estate	\$373.28	(\$44.24)	-11.85%	43.25	(4.97)	-11.48%
Motels/eating & drinking	\$153.74	(\$5.74)	-3.73%	38.51	(2.14)	-5.56%
Amusement and recreation	\$15.12	(\$1.23)	-8.15%	7.17	(0.57)	-7.90%
Consumer services	\$230.53	(\$22.29)	-9.67%	24.49	(2.60)	-10.60%
Business services	\$1,708.56	(\$154.88)	-9.06%	123.30	(11.19)	-9.07%
Medical/educational/social se	\$200.51	(\$27.89)	-13.91%	43.33	(5.76)	-13.29%
Local Govt	\$568.75	(\$90.82)	-15.97%	32.95	(5.26)	-15.97%
State Govt	\$2,500.93	(\$300.45)	-12.01%	144.87	(17.40)	-12.01%
Fed Govt	\$1,139.70	\$0.00	0.00%	47.40	0.00	0.00%
TOTAL	\$24,548.50	(\$3,615.46)	-14.73%	1,197.31	(138.38)	-11.56%
RESIDENTS' INCOME ANALYSIS						
EARNINGS	\$24,548.50	(\$3,615.46)	-14.73%	0.00	0.00	0.00%
INSIDE PROFIT INCOME	\$1,984.80	(\$445.01)	-22.42%	0.00	0.00	0.00%
OUTSIDE PROFIT INCOME	\$1,470.61	\$0.00	0.00%	0.00	0.00	0.00%
TRANSFER PAYMENTS	\$7,799.11	\$0.00	0.00%	0.00	0.00	0.00%
RESIDENTS INCOME	\$35,803.02	(\$4,060.47)	-11.34%	0.00	0.00	0.00%

**PIERCE: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$17.80	\$0.00	0.00%	3.61	0.00%
Construction	\$149.40	(\$17.52)	-11.73%	11.87	(1.39)
Misc. Manufacturing	\$187.22	(\$1.08)	-0.58%	8.18	(0.05)
Wood and paper processing	\$15,193.92	(\$3,243.63)	-21.35%	360.43	(77.28)
Transportation	\$298.11	(\$54.97)	-18.44%	15.48	(2.85)
Trade	\$510.11	(\$70.30)	-13.78%	41.59	(5.58)
Finance, ins., real estate	\$140.36	(\$26.67)	-19.00%	15.11	(2.87)
Motels/eating & drinking	\$180.05	(\$16.64)	-9.24%	24.77	(2.69)
Consumer services	\$39.26	(\$8.36)	-21.30%	4.16	(0.85)
Medical/educational/social sc	\$280.22	(\$77.48)	-27.65%	22.30	(5.99)
Local Govt	\$71.25	(\$16.01)	-22.47%	3.45	(0.78)
State Govt	\$810.88	(\$92.76)	-11.44%	39.26	(4.49)
Fed Govt	\$406.04	\$0.00	0.00%	12.68	0.00
TOTAL	\$18,264.42	(\$3,625.43)	-19.85%	562.90	(104.82)

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$18,264.42	(\$3,625.43)	-19.85%
INSIDE PROFIT INCOME	\$677.79	(\$222.68)	-32.85%
OUTSIDE PROFIT INCOME	\$50.79	\$0.00	0.00%
TRANSFER PAYMENTS	\$2,022.00	\$0.00	0.00%
RESIDENTS INCOME	\$21,015.00	(\$3,848.11)	-18.31%

**WEIPPE: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$186.82	\$0.00	0.00%	37.93	0.00
Construction	\$149.40	(\$28.68)	-19.20%	11.87	(2.28)
Wood and paper processing	\$6,947.85	(\$2,752.34)	-39.61%	154.88	(76.08)
Trade	\$448.59	(\$107.57)	-23.98%	36.23	(8.56)
Motels/eating & drinking	\$86.40	(\$20.68)	-23.94%	13.99	(3.35)
Consumer services	\$21.26	(\$6.44)	-30.27%	1.58	(0.48)
Medical/educational/social se	\$223.81	(\$80.78)	-36.09%	19.44	(6.92)
Local Govt	\$94.89	(\$33.96)	-35.78%	4.60	(1.65)
State Govt	\$1,650.32	(\$325.02)	-19.89%	79.92	(15.74)
Fed Govt	\$304.53	\$0.00	0.00%	9.51	0.00
TOTAL	\$10,113.97	(\$3,355.50)	-33.18%	369.94	(115.05)
RESIDENTS' INCOME ANALYSIS					
EARNINGS	\$10,113.97	(\$3,355.50)	-33.18%		
INSIDE PROFIT INCOME	\$426.84	\$0.00	0.00%		
OUTSIDE PROFIT INCOME	\$3,328.00	\$0.00	0.00%		
TRANSFER PAYMENTS	\$2,022.00	\$2,022.00	100.00%		
RESIDENTS' INCOME	\$15,890.81	(\$1,333.50)	-8.39%		

**ELK RIVER: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE
Agriculture & ag services	\$528.89	(\$0.36)	-0.07%	38.51	(0.01)
Construction	\$383.15	(\$0.98)	-0.26%	9.27	(0.02)
Wood and paper processing	\$74.70	(\$34.83)	-46.62%	5.93	(2.77)
Motels/eating & drinking	\$131.33	(\$0.10)	-0.07%	16.74	(0.01)
Local Govt	\$23.75	(\$0.44)	-1.86%	1.15	(0.02)
State Govt	\$86.28	\$0.00	0.00%	4.18	0.00
Fed Govt	\$304.53	\$0.00	0.00%	9.51	0.00
TOTAL	\$1,532.63	(\$36.70)	-2.39%	135.29	(2.83)
RESIDENTS' INCOME ANALYSIS					
EARNINGS	\$1,532.63	(\$36.70)	-2.39%		
INSIDE PROFIT INCOME	\$265.70	(\$3.10)	-1.17%		
OUTSIDE PROFIT INCOME	\$712.92	\$0.00	0.00%		
TRANSFER PAYMENTS	\$4,945.00	\$0.00	0.00%		
RESIDENTS INCOME	\$7,456.25	(\$39.80)	-0.53%		

GRANGEVILLE: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	CHANGE	PERCENT CHANGE
Agriculture & ag services	\$2,934.25	(\$15.82)	-0.54%	272.77	(1.47)	-0.54%
Mining/sand and gravel	\$2,184.46	(\$151.15)	-6.92%	52.92	(3.53)	-6.68%
Construction	\$2,698.97	(\$224.39)	-8.31%	150.77	(12.54)	-8.31%
Food Processing	\$64.14	(\$7.13)	-11.12%	3.41	(0.38)	-11.12%
Misc. Manufacturing	\$883.94	(\$83.77)	-9.48%	63.69	(5.34)	-8.38%
Wood and paper processing	\$10,652.95	(\$7,481.29)	-70.23%	249.03	(169.65)	-68.12%
Publishing & communications	\$465.99	(\$45.81)	-9.83%	35.84	(3.53)	-9.85%
Transportation	\$4,013.80	(\$448.75)	-11.18%	225.28	(25.38)	-11.26%
Public utilities	\$1,304.08	(\$156.45)	-12.00%	40.87	(4.95)	-12.10%
Trade	\$7,213.92	(\$571.99)	-7.93%	526.48	(39.57)	-7.52%
Finance, ins., real estate	\$896.13	(\$97.69)	-10.90%	132.74	(14.38)	-10.83%
Hotels/eating & drinking	\$1,090.67	(\$39.62)	-3.63%	123.67	(5.15)	-4.17%
Amusement and recreation	\$447.11	(\$13.55)	-3.03%	51.93	(2.44)	-4.70%
Consumer services	\$1,260.51	(\$142.61)	-11.31%	99.27	(11.42)	-11.50%
Business services	\$1,051.26	(\$110.85)	-10.54%	56.15	(5.92)	-10.55%
Medical/educational/social se	\$4,345.34	(\$490.90)	-11.30%	339.71	(40.20)	-11.83%
Local Govt	\$1,642.41	(\$294.03)	-17.90%	85.89	(15.38)	-17.90%
State Govt	\$4,885.50	(\$444.50)	-9.10%	255.49	(23.25)	-9.10%
Fed Govt	\$10,047.40	\$0.00	0.00%	369.22	0.00	0.00%
TOTAL	\$58,082.85	(\$10,820.29)	-18.63%	3,135.13	(384.47)	-12.26%

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$58,082.85	(\$10,820.29)	-18.63%
INSIDE PROFIT INCOME	\$6,166.54	(\$1,053.91)	-17.09%
OUTSIDE PROFIT INCOME	\$13,190.15	\$0.00	0.00%
TRANSFER PAYMENTS	\$13,983.00	\$0.00	0.00%
RESIDENTS' INCOME	\$91,422.54	(\$11,874.20)	-12.99%

**COTTONWOOD: IMPACT FROM SELECTED SAWMILL CLOSURE
IN CLEARWATER DRAINAGE AND CAMAS PRAIRIE**

	EARNINGS BASE	CHANGE	PERCENT CHANGE	EMPLOYMENT BASE	PERCENT CHANGE	PERCENT CHANGE
Agriculture & ag services	\$1,606.75	\$0.00	0.00%	151.84	0.00	0.00%
Mining/sand and gravel	\$1,101.77	(\$10.39)	-0.94%	26.04	(0.21)	-0.81%
Construction	\$1,079.59	(\$16.10)	-1.49%	60.31	(0.90)	-1.49%
Food Processing	\$32.07	\$0.00	0.00%	1.70	0.00	0.00%
Misc. Manufacturing	\$144.63	(\$1.74)	-1.21%	9.54	(0.13)	-1.36%
Wood and paper processing	\$1,506.14	(\$221.40)	-14.70%	36.78	(5.41)	-14.70%
Publishing & communications	\$48.27	(\$1.01)	-2.09%	4.09	(0.09)	-2.09%
Transportation	\$988.07	(\$20.30)	-2.05%	47.07	(0.97)	-2.06%
Trade	\$2,784.54	(\$56.67)	-2.04%	196.22	(3.93)	-2.00%
Finance, ins., real estate	\$668.76	(\$13.90)	-2.08%	81.10	(1.68)	-2.07%
Motels/eating & drinking	\$453.41	(\$7.56)	-1.67%	55.94	(0.98)	-1.76%
Amusement and recreation	\$102.19	(\$0.47)	-0.46%	11.45	(0.09)	-0.78%
Consumer services	\$298.85	(\$6.79)	-2.27%	22.15	(0.50)	-2.24%
Business services	\$81.50	(\$1.54)	-1.89%	7.14	(0.14)	-1.90%
Medical/educational/social se	\$2,400.57	(\$50.44)	-2.10%	135.36	(2.83)	-2.09%
Local Govt	\$516.19	(\$15.63)	-3.03%	26.89	(0.82)	-3.03%
State Govt	\$3,613.93	(\$53.19)	-1.47%	188.99	(2.78)	-1.47%
Fed Govt	\$933.19	\$0.00	0.00%	34.29	0.00	0.00%
TOTAL	\$18,360.41	(\$477.13)	-2.60%	1,097.00	(21.45)	-1.96%

RESIDENTS' INCOME ANALYSIS

EARNINGS	\$18,360.41	(\$477.13)	-2.60%
INSIDE PROFIT INCOME	\$1,879.57	(\$92.22)	-4.91%
OUTSIDE PROFIT INCOME	\$2,840.00	\$0.00	0.00%
TRANSFER PAYMENTS	\$4,359.00	\$0.00	0.00%
RESIDENTS INCOME	\$27,438.98	(\$569.35)	-2.07%

CLEARWATER-CAMUS PRAIRIE ECONOMIC MODELING PROJECT (CCEMP)
SUMMARY ECONOMIC IMPACTS

	Base Earns	Change Earns	Percent Change	Base Emplmnt	Change Emplmnt	Percent Change	BASE RI	CHANGE RI	PERCENT CHANGE
	-\$1,000)	-\$1,000)							
Grangerille	58,082.85	(10,820.29)	-18.63%	3,135.13	(384.47)	-12.28%	\$91,422.5	(11,874.20)	-12.99%
Cottonwood	18,360.41	(477.13)	-2.60%	1,097.00	(21.45)	-1.96%	27,438.98	(569.35)	-2.07%
Kootakia	28,475.46	(1,985.21)	-7.01%	1,290.42	(80.71)	-4.70%	47,040.52	(2,323.95)	-4.94%
Craigmont	11,424.75	(65.54)	-0.57%	480.01	(2.13)	-0.44%	20,528.67	(83.18)	-0.41%
Nez Perce	6,201.73	0.00	0.00%	270.68	0.00	0.00%	10,665.28	0.00	0.00%
Elk City	13,714.99	(6,977.92)	-50.88%	585.01	(184.48)	-31.53%	21,159.61	(7,290.54)	-34.45%
White Bird	2,657.76	(251.24)	-9.45%	168.00	(7.22)	-4.30%	8541.647	(326.83)	-3.83%
Riggins	9,881.08	(277.35)	-2.81%	588.42	(9.06)	-1.54%	19,748.26	(355.32)	-1.80%
Lewiston	536,583.00	(15,829.88)	-2.95%	22,782.00	(714.75)	-3.14%	753176	(17,667.04)	-2.35%
Clarkston	102,688.00	0.00	0.00%	6,024.00	0.00	0.00%	240376	0.00	0.00%
Orofino	68,719.19	(4,826.64)	-7.17%	3,476.01	(204.43)	-5.88%	103,680.9	(5,581.84)	-5.39%
Kamiah	24,548.50	(3,615.46)	-14.73%	1,197.31	(138.38)	-11.56%	35,803.02	(4,060.47)	-11.34%
Pierce	18,264.42	(3,625.43)	-19.85%	562.90	(104.82)	-18.62%	21015	(3,848.11)	-18.31%
Weippe	10,113.97	(3,355.50)	-33.18%	369.94	(115.05)	-31.10%	14,983.01	(3,817.77)	-25.48%
Elk River	1,532.63	(36.70)	-2.39%	135.29	(2.83)	-2.09%	7456.254	(39.80)	-0.53%
TOTAL	794,905.26	(38,896.12)	-4.89%	36,159.54	(1,481.03)	-4.10%	1,236,505	(42,987.72)	-3.48%

Honorable Dirk Kempthorne, Chairman
Honorable Harry Reid, Ranking Minority Member
Honorable John Chafee
Other Sub-committee Members and
Full Committee Members

Thank you for granting me the privilege of submitting this report and recommendations.

My name is Darrell Kerby. I live in Boundary County, Idaho, and, like many of our residents, I have lived there all of my life, as have my mother, brothers and wife. My grandfather came to Boundary County, Idaho, when he was a young man. Currently I serve as President of the Bonners Ferry City Council. The City of Bonners Ferry has a population of just over 2,000 people, and the County has a population of over 8,500.

I am a graduate of the University of Idaho, a land grant institution. My career started as a teacher. After several years in that profession, I acquired an insurance agency and a real estate business.

Incidentally, Senator Chafee may be interested in the piece of trivia that Boundary County is geographically just a little larger than the State of Rhode Island. I believe that the State of Rhode Island has a population of around one million people and, as I stated, we have about 8,500. Rhode Island has almost its entire territory available for development; whereas Boundary County has about eighty percent of its territory in either federal or state land with around sixty-two percent of it being federal land.

While not nearly as old as Rhode Island, Boundary County was visited by David Thompson in the early 1800s, received its first ferry franchise in 1864 (the Civil War period), and before the turn of the century over 1200 people lived in Bonners Ferry. From the beginning our economy has been at least seventy-five percent dependent on the timber resource. The remaining activity has been about twenty percent farming and five percent tourism.

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With that cursory background, please let me present the viewpoint of the vast majority of the people of our county. We will attempt to explain our position by first presenting our recommendations, and follow that with an explanation of our position by examining first, the impact the Endangered Species Act is having on the economics of our County, and, second, the errors being made in implementing the act in our County.

RECOMMENDATIONS

In January, 1995, the Greater Bonners Ferry Chamber of Commerce wrote to Senators Craig and Kempthorne and Representative Chenoweth and outlined these recommendations (Exhibit A). In that letter, these recommendations were:

1. RETROACTIVE: We believe that any revision should be retroactive to existing listings. Thus, the prior listing of any species would be reviewed to determine whether it should remain listed under the new criteria. This is especially important to Boundary County, for we are already suffering under the listing of the grizzly bear, the caribou and the sturgeon.

2. LIMIT LISTING: Listing should be limited as to the type of species eligible.

3. ECONOMIC ANALYSIS: Listing should be limited to:

a) areas where there is no adverse economic impact or to areas where such impact is totally offset by economic input from the federal government that will allow residents to remain on the land of their choice.

b) areas where there will be no adverse impact on local and state taxation or federal in lieu payments; or alternatively, where it is guaranteed that such impact will be wholly offset by federal payments during the life of the listing.

4. DEFINE ENDANGERED SPECIES: Currently, endangered species does not mean what it says.

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a) The present act only applies to the lower 48 states. Thus, a species like the caribou can be classified as endangered (because it no longer existed in the lower 48 states) while the critter is in abundance in Canada and Alaska.

b) Definite criteria should be established as to when sub-species are a part of the specie and when they are considered a separate species.

5. ESTABLISH COST: Prior to listing a specie, the agency should prepare and publicize the estimated cost of rehabilitating the specie and have that cost specifically approved by Congress. Congress should have a watch-dog committee reviewing the actual expenses, with power to recommend curtailment if it deems those expenses are not justifiable when applied to the original estimate.

6. LOCAL CONTROL: Hopefully, some local input in the implementation and operation of the Act can be developed. This would mean consideration of local government on the one hand; and, on the other hand, are requirement that federal supervision be originated in the affected area and not some far off place such as Boise or Portland.

We believe that implementation of these recommendations will allow the various species native to the area to exist, while allowing the people that want to live in this most beautiful spot to continue to live here. As an aside to Senator Chafee, we hope that you will find the means of allowing us to successfully live here, as your principal constituents are allowed to live in Rhode Island.

To Senator Kempthorne and the members of this sub-committee, we would like to comment that we have had an opportunity to view, albeit not fully study as yet, S. 768, Senator Gorton's bill. We commend this bill to your serious consideration.

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We are especially impressed with two general provisions. First, as we understand it, the bill has the concept of dropping the recovery plan, and replaces it with a conservation objective. We believe this will permit a wide approach to a given specie problem by allowing a determination, based on reasonable fact finding, ranging from leaving the situation as it is to requiring full recovery.

Second, we believe S.768 will require a review of all existing plans to adjust them, if necessary, to the criteria set forth in the Act. An example of the need for this is set forth in our later discussion of existing listings in Boundary County.

We are also impressed with the provisions increasing states rights on the one hand, and protecting private property rights on the other hand.

ECONOMIC IMPACT

The present operation of the Endangered Species Act is about to have a devastating adverse impact on Boundary County. While it is true that other factors (e.g., NAFTA and water and soil restrictions) are accelerating this regressive process, we believe that the existing ESA, as interpreted by the U.S. Fish & Wildlife Service and the judiciary, is the prime reason for our difficulties.

In the past, sales of 45 MM to 50 MM board feet per year were allowed in the Bonners Ferry District of the U.S. Forest Service (coincidentally, the District's boundaries generally follow the County boundaries) while forest regenerated at the rate of 75 MM board feet per year. However, since 1990, sales have plummeted:

1990	-	39,876 MM
1991	-	27,190 MM
1992	-	25,584 MM
1993	-	21,004 MM
1994	-	15,656 MM
1995	-	18,519 MM (anticipated target - may not be met due to appeals)

(Exhibit B)

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One result of this has been the virtual shutdown of one of the two major mills in Boundary County. It would be completely shut down except the company is letting the men work one day a week so that the employer can maintain their insurance.

The impact this downturn is having and will increasingly have is obvious. Not only does this place many people on the unemployment rolls, but it drastically affects the overall county income. In 1992 the average wage of our employees was \$17,929. The average wage of the 466 Lumber & Woods Products employees was \$25,112. Over 15.5 percent of our 2,770 work force is making that wage. If they are gone, this clearly will reduce the wage average to well below \$16,000. The impact on all business in the County will be disastrous. (See Exhibit C)

The present act does nothing to protect either these employees or the businesses. These people deserve better. While 8,500 people certainly are not many compared to a million, each one is an individual. We plead with you to have compassion and care for them. Their right to live here should be protected as much as the right of other people to live where they want. We reject the concept that such is simply a fact of life. We accept the risk of economic upturns and downturns just as everyone else does. But it is not fair nor just to add to that risk the callous act of the federal government.

PROBLEMS WITH THE PRESENT ENFORCEMENT OF THE ACT

Whether it is the terms of the Act, or the interpretation of those terms by the bureaucracies and the judiciary, the Act is not succeeding in its mission. This conclusion is based on the living examples in Boundary County. We have three specie being protected here --- the caribou, the sturgeon, and the grizzly bear (ursus horribilus). Let me present our experience with each.

CARIBOU

Caribou are of various sub-species. One issue here is that, in the Selkirks, there is a herd of Mountain Caribou. They are all in Canada. They are not thriving. The U.S. Fish & Wildlife is transplanting woodland caribou to augment the herd. The U.S. Fish & Wildlife Service either distinguishes the woodland caribou and mountain caribou as separate sub-species, or claims they are one and the same species -- whatever suits its purpose at the time.

However, I get ahead of myself here. Let's go to the beginning.

Caribou are a migrant critter. Over the years, in the Selkirks, their travels have been vast and their numbers have ebbed and flowed. Usually they are found in Canada. In the mid-fifties, logging was commenced in the northwest portion of Boundary County near the Canadian border. The caribou learn of all the lichen lying on the ground from fallen tree tops and moved down from Canada to enjoy this gourmet feast. While here, they also discovered something in grease that added to their diet, so they would come into the logging camp to lick the grease from the grease fittings. When the logging ended, they returned to Canada. Thirty years later the U.S. Fish & Wildlife Service discovered this event, and now they had a great plan. Starting with \$300,000 (and now programmed for 16 more million) they decided to save this herd. They were not going to save it by adding more caribou to the herd in Canada. They were going to do it by bringing 60+ head to the United States. They did.

The record is not only disgusting, but is appalling.

As of December, 1993, 37 are dead, and they had only generated 22 calves. This, of course, will work to zero rather fast. It is actually worse than that. The Idaho Fish & Game 1994 census shows the total in both herds -- the one in Idaho and the one in Canada. The Idaho herd is reduced to 12 - from 60.

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Without man's interference, the Canadian herd has grown from 17 to 28. In 1994, only one calf was born in Idaho! (See Exhibit D)

In "protecting" the specie, man is being kept away from the area under the guise that he is harming them and causing their endangered status. Exhibit D totally belies this contention. At the most, only one was confirmed a hunter kill, while two others "probable" hunter kill. Eleven were bear, cougar or probable cougar kill!

Historically, the caribou have fared better with man's presence. Yet man is kept away. This harms man and the caribou.

We attempted a delisting, and expanded upon the above comments (see Exhibit E). Without hearing, and based upon a one-man staff response from the Boise office of the U.S. Fish & Wildlife Service, the Service voluminously and imprecisely rejected the petition.

The people see this stupidity, and wonder why their government would do this to them.

STURGEON

Someone has determined that the Kootenai River Sturgeon has developed into a distinct sub-species because it has been separated from all other sturgeon for 10,000 years.

The U.S. Fish & Wildlife Service has determined that the sturgeon are not hatching, and have not for some twenty years. Various possible causes have been suggested. One is that the operation of Libby Dam creates the problem. Without adequate thought, a heavy spill (a \$15 million dollar expense) is now being made to test the theory. The damage caused by this test is already starting to show. A huge portion of the dike protecting Bonners Ferry has collapsed.

This has happened needlessly. The Kootenai Indian Tribe has a hatchery. It can hatch all the Kootenai River sturgeon one would want. The only objections to this are:

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1. We like to watch them reproduce naturally; and,
2. Some hatchery fish are weaker and more prone to disease.

First, because someone likes to watch the fish reproduce naturally is no excuse to endanger our townspeople and the 40,000 acres of farm land adjoining the Kootenai River.

Second, the \$15 million dollars being spent each year spilling water over the dam could better serve all citizens by diverting it to solve any disease problems in hatchery fish.

GRIZZLY

Ursus Horribilus should not be placed near people. We are told, "But this is habitat." Historically, habitat included southern California. If this is a viable excuse, plant some on Mt. Wilson (or, perhaps, in McArthur Park!)

One of the bad features of the ESA is that it deceptively restricts its operation to the lower 48 states. There are plenty of grizzlies in Canada and Alaska. It is more than unfair to put the people of Boundary County at risk by promoting grizzly in the area. Any one harmed by a grizzly here suffers that harm by the premeditated act of each person that participates in the determination that there should be grizzly habitat here.

Because of the establishment of grizzly habitat, the federal government is forcing families to be unemployed, and welfare expenses to increase.

CONCLUSION

The ESA needs a major overhaul. The proposal of Senator Gorton deserves serious consideration. The federal government should stop punishing the people of Boundary County for simply trying to make a living in a beautiful, healthy location.

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Included with my submission are written statements from Louisiana-Pacific Corporation Resource Manager Robert J. Blandford, Boundary County Commission Chairman Bob Graham, and Boundary County School District #101, submitted by Superintendent John Schwartz.

Respectfully submitted this 3rd day of June, 1995.

Darrell Kerby, President
Bonners Ferry City Council

EXHIBIT A

Peter B. Wilson

ATTORNEY AT LAW

January 20, 1995

Honorable Larry Craig
302 Hart Senate Building
Washington, D.C. 20510

Honorable Dirk Kempthorne
United States Senate
Washington, D.C. 20510

Ms. Helen Chenoweth
U.S. House of Representatives
Washington, D.C. 20515

RE: Endangered Species Act

Dear Senator Craig, Senator Kempthorne
and Representative Chenoweth:

This letter is written to you because of the vital importance to Boundary County in revising the Endangered Species Act.

We understand that there is comment that this is not considered a matter of immediacy by those in the beltway or the loop or whatever the Washington, D.C. world is called! However, we believe one of the major reasons for the vote direction in the last election was because the people are tired of, opposed to and disgusted with the ever excessive encroaching actions of the federal bureaucracy. The manner of implementation of the Endangered Species Act by the U.S. Fish and Wildlife Service, and the subservience to that action by the United States Forest Service and other federal agencies is one of those "excessive encroachments" in the view of Idahoans. It is not in the interest of the people of this state that there be a delay in revising the Endangered Species Act.

We urge you to push forward proposals to modify the Endangered Species Act. We request that such action seriously consider the following matters:

Endangered Species Act
Page 2
January 18, 1995

1. RETROACTIVE: We believe that any revision should be retroactive to existing listings. Thus, the prior listing of any species would be reviewed to determine whether it should remain listed under the new criteria. This is especially important to Boundary County, for we are already suffering under the listing of the grizzly bear, the caribou and the sturgeon.

2. LIMIT LISTING: Listing should be limited as to the type of species eligible.

3. ECONOMIC ANALYSIS: Listing should be limited to:

a) areas where there is no adverse economic impact or to areas where such impact is totally offset by economic input from the federal government that will allow residents to remain on the land of their choice.

b) areas where there will be no adverse impact on local and state taxation or federal in lieu payments; or alternatively where it is guaranteed that such impact will be wholly offset by federal payments during the life of the listing.

4. DEFINE ENDANGERED SPECIES: Currently, endangered species does not mean what it says.

a) The present act only applies to the lower 48 states. Thus, a species like the caribou can be classified as endangered (because it no longer existed in the lower 48 states) while the critter is in abundance in Canada and Alaska.

b) Definite criteria should be established as to when sub-species are a part of the specie and when they are considered a separate species.

5. ESTABLISH COST: Prior to listing a specie, the agency should prepare and publicize the estimated cost of rehabilitating the specie and have that cost specifically approved by Congress. Congress should have a watch-dog committee reviewing the actual expenses, with power to recommend curtailment if it deems those expenses are not justifiable when applied to the original estimate.

Endangered Species Act
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6. LOCAL CONTROL: Hopefully, some local input in the implementation and operation of the Act can be developed. This would mean consideration of local government on the one hand; and, on the other hand, a requirement that federal supervision be originated in the affected area and not some far off place such as Boise or Portland.

Thank you for your consideration of the above. We would also appreciate it if you could advise us the names of your resource staff. Would they be able to come out to have an in depth discussion with us?

Very truly yours,

Environmental Balance
Committee of the Greater
Bonners Ferry Chamber of
Commerce

by _____
Chairman

EBC:aj
cc: EBC Committee

BONNERS FERRY RANGER DISTRICT
SUMMARY OF TIMBER SALES
Fiscal Years 1990-1995

Number of Timber Sales Green and Salvage	Volume of Sales (MBF)
<u>1990</u>	
13 sales	37,047
Additional volume sold from existing contracts	1,710
Greenslips	<u>1,119</u> 39,876
<u>1991</u>	
10 sales	23,548
Additional volume sold from existing contracts	2,161
Greenslips	<u>1,481</u> 27,190
<u>1992</u>	
19 sales	21,156
Additional volume sold from existing contracts	2,854
Greenslips	<u>1,574</u> 25,584

1993

15 sales	19,899
Additional volume sold from existing contracts	201
Greenslips	<u>904</u> 21,004

1994

7 sales	14,809
Additional volume sold from existing contracts	430
Greenslips	<u>417</u> 15,656

1995

6 sales	2,263
1 sale offered to sell 6/5	7,457
Greenslips	65
4 sales planned to be offered	<u>8,734</u> 18,519

BONNERS FERRY JOB SERVICE

ECONOMIC PROFILE

Serving
the
North Idaho
County of
Boundary

Idaho Department of Employment

April 1994

GEOGRAPHIC OVERVIEW

As its name suggests, Boundary County is on the Canadian border. On the east, the 821,800-acre county is bordered by Montana, and on the west, by Washington. Over 90 percent of the county is forested. The Kootenai, Pack, Priest, and Moyle Rivers flow through this mountainous county. Approximately 70,100 acres (8.5 percent of the county) are used for agricultural purposes. Almost all the county's farms lie in the Kootenai River Valley. Their major crops are barley, wheat, oats, and hops. Livestock raising and tree nurseries are other primary agricultural activities. The residents of Boundary County are served by the Job Service office in Bonners Ferry, the largest city and county seat.

The federal government owns 60.9 percent of the land in the county; the state government owns 13.4 percent, and the county government owns 0.2 percent.

The average temperature varies from a low of 25 degrees in January to a high of 67 degrees in July. Precipitation averages 25 inches a year.

ECONOMIC OVERVIEW

In the late 1980s, the Boundary County economy grew by leaps and bounds. By 1988, the county's unemployment rate fell to 5.4 percent, its lowest rate in more than 20 years. Then, a weak lumber market pushed the unemployment rate to 8.4 percent in 1990. Since then, its unemployment rate has hovered around nine percent. In 1993, Boundary County's unemployment rate of 8.9 percent was considerably higher than the US rate of 6.8 percent and the Idaho rate of 6.1 percent. Because Boundary County's unemployment rate is considerably higher than the US unemployment rate, it is considered a labor surplus area.

LABOR FORCE

*Civilian Labor Force,
Employment, and
Unemployment*

BOUNDARY COUNTY	1980	1991	1992	1993
Civilian Labor Force	3,469	3,472	3,719	3,905
Employment	3,179	3,151	3,389	3,559
Unemployment	290	321	330	346
Boundary County Unemployment Rate	8.4%	9.2%	8.9%	8.9%
Idaho Unemployment Rate	5.8%	6.1%	6.5%	6.1%
US Unemployment Rate	5.5%	6.7%	7.4%	6.8%

POPULATION

When economic conditions permit, people move into the county to enjoy its natural attractions and quality of life. The county population increased by 32.9 percent between 1970 and 1990. Economic downturns in the early 1980s stemmed the tide, and some people moved out of the county to find work elsewhere. After the mid-1980s the county's population began to grow again, and its growth has

accelerated during the last few years. As a net result, the county's population increased by 14.3 percent between 1980 and 1990. Between 1985 and 1990, the county's labor force increased by nearly 1,000 people to 3,469. Since the 1990 census, the county's population has continued to grow; roughly 250 people a year have moved into the county. Between 1990 and 1993, the Boundary County labor force grew 12.5 percent to 3,905.

POPULATION OF COUNTY AND INCORPORATED CITIES

	1970	1980	1990	1992
Boundary County	5,484	7,289	8,332	8,639
Bonners Ferry	1,909	1,906	2,193	2,244
Moyle Springs	203	386	415	435

EMPLOYMENT SITUATION AND OUTLOOK

A primary reason for Boundary County's rapid economic growth in the late 1980s was the establishment of a large hops farm, Elk Mountains Farm, by Anheuser-Busch. Many of the farm's seasonal workers are migrant workers. Elk Mountain provides good housing facilities for its workers. The hops farm continues to expand. At this year's harvest, it employed roughly 250 workers.

The county's tree nurseries have been flourishing in recent years. They usually hire many additional workers in early March through late May. The nurseries experience occasional labor shortages during their busiest seasons. The scarcity of rental housing in the county prevents migrant workers from working in the county for the season. Nurseries are working on a plan to provide housing and otherwise alleviate the labor shortage which constrains their ability to expand.

Almost all Boundary County manufacturing jobs are in the lumber and wood products industry. The two largest lumber mills are the Louisiana-Pacific (L-P) plant in Moyie Springs and the Crown Pacific (formerly, W-D) mill in Bonners Ferry. Together, they employ over 250 people. When the L-P mill added another planer in the spring of 1990, it hired a dozen additional workers. Between 1986 and 1990, the county's forest products industry made a good recovery; average annual industry employment rose from 356 to 463. Very low levels of demand for lumber during the 1990-1992 national recession curtailed employment in mills and logging camps.

Now that demand for lumber is high, concerns about timber availability are escalating. The US Forest Service plans to reduce timber harvests on its land, which is the largest source for timber in North Idaho. Local loggers and mills have faced heated competition for available timber from loggers and mills in the spotted owl habitat of Oregon and Washington. Further reductions in timber supply may lead to layoffs of loggers and millworkers in Boundary County in the next few years.

The rapid growth of the county's economic base and the increase in tourist traffic have spurred the growth of the trade and service sectors. In 1986, average annual employment in the two sectors numbered 671 people; by 1993, it was approaching 1,000. Their growth resulted from population growth, increased tourist activity, and the opening of Rocky Mountain Academy, a boarding school in Bonners Ferry. Tourism is currently not a very large industry, but it is increasingly important as North Idaho becomes a tourist mecca. Boundary County generally is not a destination for tourists, but a stop on the road between Canada and US destinations.

The value of the dollar has a big impact on border traffic. When the value of the dollar falls, many Canadians come through the county on their way to shop or vacation in Sandpoint, Coeur d'Alene, and Spokane. During the last few years, many Canadians have been shopping across the border, partly to escape the high value-added tax on Canadian goods. Some Canadians who live just over the border regularly shop at the stores next to the two ports of entries. But in 1993, the exchange rate changed, making American goods slightly more expensive in Canadian dollars and decreasing the number of Canadian visitors somewhat.

The Kootenai Tribe has undertaken several economic development efforts. The flagship of its economic development efforts is the Kootenai River Inn in Bonners Ferry, managed for the tribe by Hagadone Hospitality, owner of the Coeur d'Alene Resort. This summer, a major expansion was completed there, boosting the Inn's staff from 60 to nearly 100. In 1993, the tribe also began operating high-stakes bingo there, which is drawing good crowds. The tribe is considering building a grocery store in Bonners Ferry, and it operates a surgeon hatchery there.

Boundary County is working hard to improve its economy and maintain its quality of life. It has earned the designation "Gem Community" by completing the comprehensive economic development assessment and planning required by the Idaho Department of Commerce, so it now is eligible for special economic development assistance as a Gem Community.

As most of the jobs in Boundary County are in forest-related activities, agriculture, and tourism, employment tends to peak in late summer. The lowest point of economic activity is at spring break-up, when muddy roads prevent loggers from working in the woods, which usually lasts for six to eight weeks in March and April. In 1993, for example, Boundary County experienced its highest rate of unemployment (17.6 percent) in April and its lowest rate of unemployment (5.3 percent) in August.

BONNERS FERRY ECONOMIC PROFILE

TAXES The state sales and use tax rate is 5.0 percent. It applies to tangible personal property purchased, rented, or consumed within Idaho. It also applies to admissions, fees for recreation, and hotel/motel accommodations. There is an additional 2 percent sales tax for hotels, motels, and campgrounds, which is used to promote tourism. The Idaho corporate income tax rate is 8.0 percent.

Idaho personal income tax rates are graduated. For married couples and heads of household, the rate is 2.0 percent for taxable income between \$0 and \$2,000; 4.0 percent between \$2,000 and \$4,000; 4.5 percent between \$4,000 and \$6,000; 5.5 percent between \$6,000 and \$8,000; 6.5 percent between \$8,000 and \$10,000; 6.8 percent between \$10,000 and \$15,000; 7.8 percent between \$15 and \$40,000; and 8.3 percent for taxable income exceeding \$40,000. These rates apply to incomes of single taxpayers at income levels of one-half those of married couples filing jointly. The Idaho tax code is very similar to the federal tax code.

In 1993, the average urban property tax rate in Boundary County was 1.8205 percent of market value, and the average rural property tax was 1.4199 percent. Property is assessed at 100 percent of market value. The same tax rate applies to all property types—residential, commercial, or industrial. There is a homeowners exemption, so rates are applied to only half of the value of the first \$100,000 of improvements on owner-occupied homesites but are applied to 100 percent of the land value.

INCOME Personal income is the sum of all income going to individuals; it includes wages, salaries, proprietor's income, rents, dividends, interest, and welfare payments. Per capita income is total personal income divided by the population. In 1991, the county's per capita income was \$12,281, approximately 79.9 percent of Idaho per capita income and 64.4 percent of U.S. per capita income.

According to the 1990 census, 14.0 of the people in Boundary County had incomes below the official poverty level, while 13.3 percent of the people in Idaho did and 13.1 percent of the people in the United States did.

BONNERS FERRY JOB SERVICE

The Job Service office in Bonners Ferry matches Boundary County residents looking for work with local employers looking for workers through its placement and referral services. Between July 1992 and June 1993, it served 2,164 job applicants. It also provides vocational counseling, training, and referral to social services to eligible veterans, dislocated workers, and economically disadvantaged individuals.

The Idaho Department of Employment through its Job Service offices also administers Idaho's unemployment insurance program. In 1993, it paid roughly \$1.4 million in unemployment insurance benefits in Boundary County, and 515 county residents received regular unemployment insurance benefits.

Current information about job openings in the Panhandle area can be obtained from any of these North Idaho Job Service offices:

Office	Address	City	Zip	Phone
Bonners Ferry	1501 S Main	Bonners Ferry	83805	(208) 267-5541
Coeur d'Alene	1221 W Ironwood Drive	CDA	83814	(208) 769-1558
Kellogg	120 W Cameron	Kellogg	83837	(208) 783-1202
St. Maries	105 N 8th	St. Maries	83861	(208) 245-2516
Sandpoint	2101 W Pine St	Sandpoint	83864	(208) 263-7544

Job Openings Listed with Bonners Ferry Job Service July 1992-June 1993

Total	1,159
Professional, technical, managerial	36
Clerical	96
Sales	33
Domestic	51
Services	171
Farm & forestry	503
Processing	98
Machine trades	38
Bench work	7
Structural	46
Transportation	33
Material handling	30
Other	11

The Bonners Ferry Economic Profile is compiled by Kathryn Tacke, Labor Market Analyst for the Panhandle area (208-769-1858), and published by the Research & Analysis Bureau of the Idaho Department of Employment.

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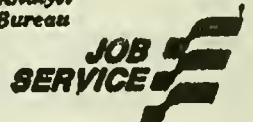


EXHIBIT D

Appendix A. Status as of December 1993 of all caribou released into the Selkirk Mountains since March 1987.

Animal ID	Sex	Trans. Code*	Status	Cause of Death	Comments
B 2	F	R1	Unknown		Radio collar quit
BA1	F	A1	Dead	Predation	Cougar kill
BA2	F	A1	Unknown		Radio collar quit
BA3	F	A1	Unknown		Radio collar quit
O 1	M	A2	Dead	Man	Poaching/hunter kill
O 2	F	A2	Dead	Predation	Cougar kill
O 3	M	R2	Unknown		Shed radio collar
O 4	F	R2	Dead	Natural	
O 5	F	R2	Dead	Predation	Cougar kill
O 6	M	R2	Dead	Natural	
O 7	M	A2	Dead	Unknown	
O 8	F	A2	Dead	Unknown	Probable cougar kill
O 9	M	A2	Unknown		Shed radio collar
O10	F	A2	Dead	Unknown	Collar not retrieved
O11	F	R2	Dead	Unknown	
O12	M	A2	Unknown		Radio collar quit
O13	F	R2	Dead	Predation	Bear kill
O14	M	R2	Dead	Other	Accidental (Ice-ball)
O15	F	R2	Dead	Unknown	
O16	F	R2	Alive		
O17	F	A2	Dead	Unknown	
O18	F	A2	Dead	Predation	Cougar kill
O19	M	R2	Unknown		Shed radio collar
O20	F	A2	Dead	Predation	Cougar kill
O21	F	A2	Dead	Predation	Bear kill
O22	F	A2	Dead	Predation	Cougar kill
O23	F	A2	Alive		
O25	F	A2	Dead	Natural	
Y26	F	R1	Alive		Purcell Mountains
Y27	M	R1	Unknown		Purcell Mountains
Y28	F	A1	Dead	Unknown	
Y30	M	A1	Dead	Natural	
Y31	F	R1	Unknown		Purcell Mountains
Y32	F	A1	Dead	Natural	
Y36	F	R1	Dead	Unknown	Purcell Mountains
Y37	F	A1	Dead	Unknown	Probable predation
Y38	F	A1	Dead	Unknown	
Y39	F	R1	Unknown		Shed radio collar
Y40	F	A1	Dead	Natural	
Y41	F	R1	Dead	Predation	Cougar kill
Y42	F	A1	Dead	Unknown	
Y43	F	R1	Dead	Predation	Purcell Mountains

--continued--

Table 1. Results of woodland caribou winter censuses, Selkirk Ecosystem, 1991-1994.

<u>Year</u>	<u>Location</u>	<u>Adults</u>	<u>Calves</u>	<u>Total</u>	<u>Grand Total</u>
1991	Idaho	23	3	26	47
	B.C.	17	4	21	
1992	Idaho	23	1	24	47
	B.C.	21	2	23	
1993	Idaho	20	3	23	51
	B.C.	24	4	28	
1994	Idaho	12	1	13 ¹	45 ¹
	B.C.	28	4	32	

23
16

56

¹ known incomplete count. Tracks of a small group (2-4) were detected but animals not observed during the helicopter flight.

37 dead
22 calves } a large proportion
8 Adults known to be alive
15 w/unknown info

EXHIBIT E

PETER B. WILSON
ATTORNEY AT LAW
P.O. BOX 749
BONNERS FERRY, IDAHO
83406-0749
TELEPHONE: 207-3127

TO: UNITED STATES FISH & WILDLIFE SERVICE
AND THE SECRETARY OF THE INTERIOR

PETITION TO DELIST THE WOODLAND CARIBOU
AS AN ENDANGERED SPECIES

COMES NOW the Greater Bonners Ferry Chamber of Commerce and respectfully moves the government of the United States of America to remove the woodland caribou from the endangered species list (pursuant to 16 USCS 1533(c)(2)(B)(1)) on the grounds, facts and reasons outlined below.

FACTS

1. Biologically, there is no distinction between the mountain and woodland caribou. (First Revision Plan, p. 1)
2. The caribou found in the Canadian Selkirks is the woodland caribou. (First Revision Plan, p. 1)
3. No resident population of caribou prior to the transplants, woodland or mountain, has ever been located in the continental United States, other than by guesstimates unsupported by evidence. (First Revision Plan, p. 13)
4. The range of the mountain caribou tends to overlap the range of the woodland caribou.

....

5. The woodland caribou and not the mountain caribou have been transplanted to the Selkirk mountains for the purposes of increasing the existing herd and creating new herds from these distinctly different locations in Canada -- Revelstoke and Williams Lake area, and Anaheim Lake area.

6. The premature determination to list the caribou as an endangered species was not based upon biological reasons.

7. There has not been any transplant of mountain caribou.

8. Of the sixty animals transplanted as of June 27, 1991, 27 have died. Of these, many died as a result of and in the course of the transplant.

9. Until recently, only one had been killed by poaching. Possibly two more have suffered that fate recently.

10. That ratio of deaths to herd number far exceeds the normal death rate.

11. The herds in Canada from which the animals for transplant were selected are suffering a decline in population.

12. It is a normal trend for the population of caribou herds to ebb and flow over time.

13. Caribou are great wanderers, and there is no evidence to determine whether those located in Idaho in the 1950s are indigenous or merely wanderers. (January 18, 1956, Guiget letter)

14. At the time the caribou was listed, there was no herd established in Idaho, and therefore, as far as it concerns Idaho, the animal was extinct.

15. Within the five year period prior to listing, at most one old bull was found south of the U.S./Canadian border, and, obviously, this was a wanderer.

16. No Environmental Impact Statement was researched and made.

POINTS

1. Biology: a) So far as is known, no biological reason or need for the listing has been established by research and conclusion.

b) If such a reason should find the mountain caribou is adequately distinct for listing, then the transplant of woodland caribou will ultimately taint, and thereby destroy, the "distinct" herd of mountain caribou that is indigenous to the Canadian Selkirks. This result would be contrary to the purposes of the Endangered Species Act.

c) If the caribou found in the Canadian Selkirks is not adequately distinct for listing, then listing is inappropriate because there are thousands of woodland caribou existing in Canada.

2. Range: It is inconsistent to find (in the Revision Plan at p. 13), that, "In the 1800s, caribou were plentiful in the mountains of northeastern Washington, northern Idaho, north-western Montana, and adjacent parts of southwestern British Columbia" (emphasis supplied), and then find that, ". . . we do not have information to show that there was ever a resident population in Montana." (letter of U.S. Fish & Wildlife letter to Jim Rathbun dated November 17, 1992).

3. Environmental Impact Statement: So far as can be determined, no environmental impact statement was prepared for the listing.

4. No Provision for Determination of Whether the Resident Herd Was Extinct in the United States Before the Attempted Transplant; or Even if There Ever Was a Resident Herd: The evidence of whether there ever was a resident herd is based solely upon conjecture. While the U.S. Fish & Wildlife reports that prior to 1900 caribou "occurred" in the United States of America, there does not appear to be evidence that resident herds occurred prior to 1900, let alone thereafter (Recovery Plan, First Revision, pp. 3-4). Also note the same report (pp. 13-14), which show only 26 survived in the Selkirks as of 1983. These had to be in Canada and not in the United States of America. Thus, they could not be "critically endangered" in the United States of America - - - if there ever existed a herd in the United States of America, they were, by then, extinct.

5. Old Growth Not Established as a Requirement: While the First Revision of the Recovery Plan (pp. 5-6) contended that mature old growth is a necessary ingredient for caribou habitat, one of the Idaho Fish & Game photo-slides shows a caribou happily munching on material on a sixty year old tree. In fact, the First Revision (p. 7) plainly states that, at least in the spring, the caribou prefer logged and burned areas. The Fish and Game biologists studying the caribou will tell you from their observations, the caribou do not show preference for either young or old trees, as long as they contain the lichen moss.

6. Crediting Reduced Poaching to the Endangered Species Act is Erroneous: On page 21 of the First Revision, it is contended that the ESA "may have" contributed to the reduction of poaching. Yet, the report itself states that most of the poaching occurred in Canada - - - which is not subject to our ESA.

7. The Determination to List and Maintain the Caribou on the ESA is Based Solely on Conjecture: In this regard, the following guesses were and are used to list the animal (citations are from the First Revision):

a) Page 4: "Very little is known about interchange between sub-populations of woodland caribou." Without such knowledge, why the attempt? The decimation of the transplants shows that no success can come from the transplants.

- b) Page 8: Transition from summer to fall habitat "may occur" from frost.
- c) Page 8: Snag abundance "may" be the result of caribou conduct.
- d) Page 9: ". . . Selkirk caribou pregnancy rates are unknown"
- e) Page 9: Calving sites are selected "possibly" as an anti-predator strategy. And, if this guess is accurate, the United States of America caribou habitat has been selected in a grizzly habitat. (See page 14 as to predation).
- f) Page 10: "Neonatal mortality rates . . . have not been determined"
- g) Page 10: The Selkirk population is "either stable or slightly declining." This statement is in the face of a 27 population loss of a 60 animal transplant, a 45 percent mortality rate.
- h) Page 10: Selkirk animal life is "unknown."
- i) Page 10: "Possibly" factors limiting woodland caribou populations are habitat modification and fragmentation, over-harvest, disease, and predation. Yet, it is known that the transplant itself causes the death of these animals.
- j) Page 14: Hunters "may" accidentally shoot caribou.

k) Page 14: The Selkirk herd "probably" contained 30 animals at the time of the transplant. Not only is this a guess, but also there is no acknowledgment that this herd was entirely in British Columbia.

l) Page 15: Logging "may" have caused the downward population trend. This statement is made in the face of all evidence that the largest group of caribou found in the United States of America occurred while logging existed in the area in which they were found. The caribou were located in past years, before the days of radio transmission collars, by visiting the winter logging operations.

m) Page 15: "Potentially" timber harvest can affect caribou by eliminating escape cover, lichen production, and migration corridors.

n) Page 21: "Illegal mortality may have declined after caribou were protected by the Endangered Species Act."

o) Page 22: "The success of the augmentation program has not been determined" This in the face of a listing that occurred in 1983, and a loss of about 50 percent of the transplanted animals.

CONCLUSION AND RESERVATION

Based upon the foregoing, it is evident that the caribou should be delisted because:

1. There is no evidence (or at best, insufficient evidence) to show that the caribou should be listed; and,
2. Such evidence that does exist is based upon conjecture and inadequate research.

Thus, it cannot be found that the caribou is entitled to be listed under the ESA under any of the required factors listed in 16 USCS 1533 which read:

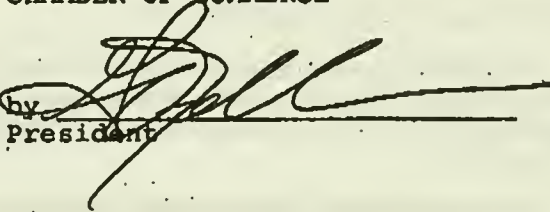
- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) over-utilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms;
or
- (E) other natural or manmade factors affecting its continued existence.

Furthermore, the habitat was established without taking into consideration the economic impact such a designation would have (16 USCS 1533(b)(2)).

Petitioner reserves the right to supplement this petition as further evidence and information justifying delisting is determined and/or developed.

Respectfully submitted this 9th day of December, 1992.

GREATER BONNERS FERRY
CHAMBER OF COMMERCE

by 

President

NOTE: All responses should be directed to Box 749, Bonners Ferry, Idaho 83805.

Boundary County Commissioners

Bob Graham, Chairman
 Merle Dinning, Commissioner
 Orrin Everhart, Commissioner



P.O. Box 419
 Bonners Ferry, Idaho 83805
 (208) 267-7723

Senate Committee on Environment & Public Works
 Subcommittee on Drinking Water Fisheries & Wildlife

How the Endangered Species Act May Be Improved

The vast majority of the American public supports the theory of saving endangered species. However, the vast majority would not support saving each and every species of fish, wildlife, and plant if that public knew in advance the ultimate expenditure and effect on man of saving each and every fish, wildlife, or plant.

When Congress passed the original act in 1973, the legislation stated "the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species ...". (underlining is mine)

Not all species are destined to survive. Scientists have stated that over the geological history of the earth, and prior to mans arrival on the earth, many more species have become extinct than presently exist on the earth. That's Nature's way!

In the priority of life, the U.S. taxpayer simply cannot afford the luxury of attempting to save every threatened species. In a county such as Boundary County, Idaho, the taxpayers need more money to finance better schools, better roads, an approved solid waste program, extended juvenile care, more law enforcement, access to public facilities for the handicapped, minimum level fire protection, and on and on.

Again in the priority of life, the Nation can ill afford to save some species. We cannot afford to save every species, nor did Nature intend for every species to forever exist.

Thank you for the opportunity to present this brief thought.

Sincerely,

Bob Graham, Chairman
 Board of Boundary County Commissioners
 Forester

BG/ms



P.O. Box 108
 Moye Springs, Idaho 83845
 208/287-3168

June 1, 1995

Honorable Dirk Kempthorne
 Hart Senate Office Building
 Washington, D.C. 20510-1204

REF.: RE AUTHORIZATION OF ENDANGERED SPECIES ACT

Dear Senator Kempthorne and Committee Members

I support an endangered species act but would like changes made to the act. The act is being misused to unnecessarily stop many activities and disrupt the local, regional and national economy.

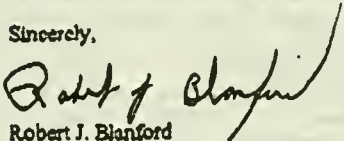
We need to require verifiable and sufficient data before you treat a species as endangered. We need independent peer review so decisions aren't based on politics. We need common sense in the process so livelihoods aren't needlessly impacted based on some biologist latest study or whim which may or may not actually impact the species to be recovered. The local communities need more of a voice in the recovery efforts.

There should be different guidelines used when a species is endangered globally versus a part of its range. There needs to be more latitude than we currently have when the species is plentiful in some areas but not in others. An example is the grizzly bear.

We need to omit the subjective units of subspecies.

Harm should be redefined to limit the acts application. Economic compensation should be provided for those who lose use of their property under the endangered species act.

Sincerely,



Robert J. Blanford
 Resource Manager



Boundary County School District 190, 202
 P.O. Box 899 • Bonners Ferry, Idaho 83805
 Phone 208/267-3146

*Leonard Kucera, Jr., Chairman
 Barbara Paulson, Vice-Chairman
 Harold Morter, Trustee
 Tom Foust, Trustee
 Kaye Gravelle, Trustee
 Sharon Smith, Clerk-treasurer*

**BOUNDARY COUNTY SCHOOL DISTRICT #101
 FEDERAL FOREST RESERVE FUNDS**

Boundary County School District #101 is a medium sized Idaho School District. Our current General Fund Budget is \$6.5 million. Since we are in the people business, nearly 84% of \$6.5 million is expended for salaries and benefits for the operation of the public school system. The other 16% is eaten up by utility costs, insurance and operational supplies. We are allowed by Idaho Code to maintain a 5% contingency reserve in the General Fund, we have never been so fortunate. Our resources are very limited.

For several years Boundary County School District #101 has relied upon the receipt of Federal Forest Fund dollars to maintain our buildings, construct additional classrooms, purchase educational equipment, purchase buses in an effort to maintain our aging transportation fleet and provide for one-time large purchases be they regular or emergency. Our buildings and heating plants are aging and our maintenance costs continue to spiral. Paper prices have increased from \$1.53/ream to \$3.11/ream and textbook prices continue to escalate.

Receipt of Federal Forest Funds is essential to the operation of the Boundary County School District #101 system. The loss of funds would deal a severe blow to the school age population in Boundary County.

Boundary County has basically an agriculture and timber based economy. The loss of jobs in the timber industry in our county between mill cut-backs and logging curtailments has an effect on the ability of our citizens to pay taxes and provide local support to schools. According to our records, Boundary County has 83% of land identified as National Forest Lands and 27% identified as private property. This current land division serves only to continue a reduced tax base for school funding. We need to look at land use and work towards good management of lands to benefit the youth of Idaho. They too are a commodity that needs to be nurtured and not shut down because of funding reductions that are unnecessary.

	<u>FOREST FUND PAYMENT SCHEDULE</u>	
FFPAYSCH		
1979-80	1st Payment.....	\$141,406.50 (66.5%)
	2nd Payment.....	\$ 71,379.85 (33.5%)
		\$ 212,786.35 TOTAL
1980-81	1st Payment.....	\$122,815.39 (92.0%)
	2nd Payment.....	\$ 10,624.74 (8.0%)
		\$123,440.13 TOTAL
1981-82	1st Payment.....	\$ 92,360.47 (62.3%)
	2nd Payment.....	\$ 55,818.56 (37.7%)
		\$148,179.03 TOTAL
1982-83	1st Payment.....	\$ 52,972.12 (86.4%)
	2nd Payment.....	\$ 8,313.04 (13.6%)
		\$ 61,285.16 TOTAL
1983-84	1st Payment.....	\$ 70,486.23 (56.6%)
	2nd Payment.....	\$ 54,111.96 (43.4%)
		\$124,598.19 TOTAL
1984-85	1st Payment.....	\$101,005.68 (50.3%)
	2nd Payment.....	\$ 99,858.36 (49.7%)
		\$200,864.04 TOTAL
1985-86	1st Payment.....	\$110,832.22 (65.5%)
	2nd Payment.....	\$ 58,331.05 (34.5%)
		\$169,163.27 TOTAL
1986-87	1st Payment.....	\$ 71,844.94 (48.1%)
	2nd Payment.....	\$ 77,451.98 (51.9%)
		\$149,296.92 TOTAL
1987-88	1st Payment.....	\$124,286.77 (62.7%)
	2nd Payment.....	\$ 73,896.77 (37.3%)
		\$198,183.54 TOTAL
1988-89		\$273,952.91
1989-90	1st Payment.....	\$166,943.54 (74.85%)
	2nd Payment.....	\$ 56,100.81 (25.15%)
		=====
		\$223,044.35 TOTAL
1990-91	1st Payment.....	\$201,070.96 (67.05%)
	2nd Payment.....	\$ 98,818.18 (32.95%)
		=====
		\$299,889.14
1991-92	1st Payment.....	\$162,736.33 (58.75%)
	2nd Payment.....	\$114,250.57 (41.25%)
		=====
		\$276,986.90
1992-93	1st Payment.....	\$291,982.97 (71.40%)
	2nd Payment.....	\$116,935.43 (28.60%)
		=====
		\$408,918.40
1993-94	1st Payment.....	\$179,536.30 (64.6%)
	2nd Payment.....	\$ 98,356.95 (35.4%)
		=====
		\$277,893.25
1994-95	1st Payment.....	\$217,096.13 (69.54%)
	2nd Payment.....	\$ 95,091.66 (30.46%)
		=====
		\$312,187.79

STATEMENT AND FACT SHEET
BY RON GILLETT OUTFITTER OF TRIANGLE C RANCH
WHITE WATER FLOAT EXPEDITIONS
STANLEY, IDAHO

To the Committee of the Senate Drinking Water, Fisheries, and
Wildlife Sub-Committee - Senator Kempthorne, Chairman

Re: The effects of the Endangered Species Act on the Four Upper
Main Salmon River Outfitters and the Community of Stanley,
Idaho

My name is Ron Gillett and I am a full-time River Outfitter
offering 3 and 6 day float trips on the Middle Fork of the Salmon
through the Frank Church River of No Return Wilderness. Also 1/2
day and 1 day float trips on the Upper Main Salmon just out of
Stanley. I am a property owner and have cabin rentals in
Stanley.

The Problem:

Last August, at the peak of our summer season, all floatboating
on the Upper Main Salmon River was in limbo of being shut down by
the Endangered Species Act. The outfitters two years previous
had asked to meet with the Forest Service to outline steps that
could be taken on the return of the late summer run Chinook.

In 1992 the Chinook salmon on the Upper Main Salmon were listed
as "Threatened" under the Endangered Species Act and in 1994 they
were listed as "Endangered".

The reason for this listing is that these fish are on the verge
of extinction on the Upper Main Salmon. There were only a total
of 3 to 5 redds on the stretch of River that we float. The main
reason for this catastrophic decline in the number of summer
Chinook returning to spawn is there are eight major hydroelectric
power dams on the lower Snake and Columbia Rivers which impose at
least a 95% mortality rate on the young migrating Salmon. In
fact, at least 80% may be killed in the first dam on their way to
the Pacific Ocean.

The National Marine Fisheries (NMFS) Service because of the
threatened or endangered status of ocean going fish became the
managing agency mandated by the Endangered Species Act.

After the listing of the summer Chinook salmon what had been the jurisdiction by the local Forest Service Administration now would be controlled by NMFS, a Federal Agency which has limited experience in administering the Endangered Species Act on inland waterways. NMFS certainly is insensitive to outfitter proposals and local Forest Service management strategies. They are too far removed to understand a workable solution and seem to prefer to let the Forest Service make the necessary decisions. They would rather not be involved.

The 4 Upper Main Salmon Outfitters had requested a meeting with Mr. William Stelle, the Regional Director of NMFS to establish a floatboating plan for late summer, 1995. We felt this meeting must take place by June 1, 1995. After this date commercial outfitters are in season and business plans implemented.

The Forest Service recently told the 4 outfitters that the area director for NMFS, Mr. Ed Murrell would meet with the Upper Main Salmon Outfitters either June 4 or 5, 1995. About 10 days ago the Forest Service told the outfitters Mr. Murrell did not want to meet with them at this time as he had higher priorities. Also NMFS would not make a decision on whether to shut the river down in August until August. Outfitters have groups booked and deposits paid. They cannot run their business on these kinds of lazy decisions.

SUGGESTION FOR A SOLUTION:

Keep the jurisdiction of the Chinook Salmon on the Upper Main Salmon River with local Forest Service managers who have a "hands on" knowledge of what is going on and a working personal relationship with the outfitters.

If we have a management agreement that is working, we can't have other entities come along and upset the process.

FACT SHEETS
UPPER MAIN SALMON COMMERCIAL OUTFITTERS
SALMON CRISIS

1. This case on the Upper Main Salmon is likely to set the precedent for all recreation uses on federal and public lands.
2. We have hoped that our efforts might become a model for industry, demonstrating that we can live and work around the endangered species and the act, even if we do sacrifice financially. However, what we are learning is that, despite our best efforts, we can't. The ESA may be too strict and too complex to allow even the most caring, informed users and managers to implement it.
3. The Sawtooth National Recreation Area was approved August 22, 1972. One of its major goals is to provide for the enhancement of recreational values.
4. Outfitters were told to stop running their daily float trips when there were no Salmon in the River.
5. Outfitters have implemented procedures to minimize problems with the Salmon once they return to spawning areas and to allow floatboating to continue on the River.
6. FACE REALITY - the Salmon under existing conditions are doomed. Last summer on the 10 mile stretch from Sunbeam Dam to Torrey's Hole there were 3 to 5 Redds. This year there may be NONE!
7. This August the outfitters could be out of business and bankrupt with a ruined local Stanley economy and still NO Salmon.
8. We are small family businesses that depend on River tourism which is limited by seasonal use.
9. We cannot survive under the whims of a Federal Agency who is far removed from the reality of the local problems and makes insensitive decisions.
10. Float trips are a fine family adventure - without them, our community will suffer drastic economic losses.
11. Tourism now ranks as Idaho's second leading industry. Float trips are a major part of this market.

12. There has been 100% support for the commercial outfitters by the public. Not a single local, state or national environmental group has opposed the commercial outfitters. There is nowhere else in the country where environmentalists have taken such a constrained position on an issue involving the Endangered Species Act.

13. Outfitters were granted "applicant status" by both the USFS and NMFS. Up to this time the outfitters have had limited input regarding a workable solution.

14. Outfitters and local businesses should not be put in jeopardy because Forest Service and NMFS do not have a budget to monitor the river when the salmon return.

15. August and all of September are critical for the outfitters to maintain their businesses. Pre-booked bus tours and other groups cannot be relocated to early season by marketing tactics as suggested in the EA.

16. The Forest Service biologists have stated the importance of each Redd and the saving of each egg. However, they allowed two healthy female Salmon to go through the spawning cycle without males; thus several thousand eggs were lost and nothing was done to save them.

17. The most recent Environmental Assessment of the USFS uses the 1994 season as the baseline for user days. This is totally unacceptable to us as '94 was a season of the second lowest water in 75 years, smoke from forest fires and bad publicity. Even the Stanley Ranger station told people that the river was closed. The end result was that the outfitting businesses were off by approximately 45% of normal revenue.

18. Offer the Sub-committee a float trip this August 15, 1995.

April 20, 1995

Senator Dirk Kempthorne
505 Hart Senate Building
Washington, DC 20510

Dear Senator Kempthorne:

WE NEED YOUR HELP. We are commercial river outfitters on the upper Salmon River near Stanley, Idaho. Our businesses and related companies are at serious risk due to action that may be implemented by the National Marine Fisheries Service (NMFS). Last summer they put such severe restrictions on our businesses that we all lost money. Hundreds of jobs and hundreds of thousands of dollars will be affected by the 1995 plan enacted by the NMFS and US Forest Service.

This year has the potential to be even worse than 1994 and possibly put us out of business. Last year we had to restrict our float trips even though no fish were in the immediate area. One option now being considered by the Forest Service is to ban all commercial floating on August 16, 1995 whether any fish have returned or not. This whole issue is a perfect example of the Endangered Species Act gone awry.

The Forest Service say they have no money or budget for monitoring once the fish return. Last year over \$33,000 was spent monitoring the river and the few fish that returned. We have a plan that can do it for a very small portion of last year's budget if given the opportunity to present it. The days of unlimited budgets are over!

Enclosed you will find copies of letters sent to NMFS and the Forest Service at the SNRA, requesting that the process be returned to the Forest Service to resolve the issue. We would like to have this issue resolved as soon as possible rather than have the process stretched out to the maximum time and have an unacceptable "solution" thrust upon us. We appreciate the attention you have given to this matter in the past and look forward to your continued help in the future to resolve this issue.

We appreciate very much the time and attention James Tate gave the outfitters on this issue. Olivia James will participate in the hearing before the Subcommittee on Forests and Public Land Management of the Senate Committee on Energy and Natural Resources, April 26, 1995. She will be available on April 27 and 28 for further consultation. Thank you again for your support.

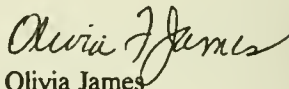
Sincerely,



Ron Gillett
Triangle C

Randy Hess
White Otter

Michael Murphy
Two M



Olivia James
The River Co.

April 20, 1995

Paul Ries, Area Ranger
Sawtooth National Recreation Area
Star Route
Ketchum, ID 83340

Dear Paul:

We feel that a whole different approach to the floatboating situation needs to be taken. We feel that the decision about the floatboating, once the salmon return, should be made by the Forest Service and not by NMFS. We believe that the SNRA should have ended the informal consultation process by concluding "no effect" instead of "may affect" under the ESA definition of the terms.

On September 25, 1992 the NMFS in Section 7 consultation stated that floatboating was "not likely to jeopardize" the continued existence of endangered or threatened Snake River salmon. This "no jeopardy" decision was reaffirmed on August 19, 1994 by NMFS in an amendment to the original biological opinion.

We believe that there is nothing in the Biological Assessment submitted on March 3, 1995 to NMFS that would change the above conclusions. The biologists doing that report have no data of significance to warrant a change in the "no jeopardy" decision. If decisions are to be made on the best scientific opinions, then "where's the science" that justifies any change of status? The B.A. contains assumptions, possibilities and opinions that cannot be proved. The report is fraught with can, may, there is potential, it is expected and other vague terms that do not belong in a scientific report and are not a basis for scientific opinion.

We believe that you erred in giving the B.A. a "may affect" judgment. A "no effect" decision is more appropriate and allows for the decision to stay on an "informal" basis. We ask that you re-evaluate your previous decision and properly conclude that you can work out a solution on an informal and local level. To further support this position please note that when the ESA was reauthorized and rewritten in 1982, authority was given to agencies such as the Forest Service to choose the "no effect" decision if the effect is minimal.

We request that the plans implemented in '92 and '93 be used as the basis for the '95 plan, once the salmon have returned. The low water conditions that caused the panic in '94 are no longer relevant. We are looking forward to working with you to find a solution that protects the fish and allows floatboating to continue. We urge you to issue '95 permits for the entire season at once and to direct further evaluations, such as the present EA towards five year permits in '96.

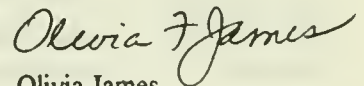
Sincerely,



Ron Gillett
Triangle C

Randy Hess
White Otter

Michael Murphy
Two M



Olivia James
The River Company

TO: William Stelle, Regional Director **NMFS**
 7600 Sand Point Way NE - Bin C 14700 Building I
 Seattle, WA 98155-0700

FROM: UPPER MAIN SALMON FLOATBOAT OUTFITTERS

Dear Mr. Stelle:


We, the floatboat outfitters of the upper main Salmon River in Stanley, Idaho, believe that the USFS (Sawtooth National Recreation Area) has mistakenly concluded "may affect" in their biological assessment when it should have been "no effect", according to the definitions under the Endangered Species Act. With a "no effect" decision regarding the impact of commercial outfitted floatboating on endangered Chinook Salmon, NMFS would not have to be involved in formal consultation.

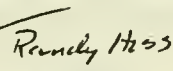
The impact of restricting floatboating on the upper Salmon River involves hundreds of people and hundreds of thousands of dollars. There is no new information in the most recent biological assessment of the Forest Service that requires additional study of the situation. A decision of "no effect" can be made on the facts available. **THIS IS NOT A NEW ISSUE.** After 14 years of scientific study, there exists no evidence that floatboating has an adverse effect on spawning salmon. We do not "take" fish by the definition in the Endangered Species Act. The mitigation measures implemented in 1992 and 1993 have been more than adequate to completely minimize any potential impact. It should also be noted that in 1995 we will have the highest water levels since the early 80's, whereas in 1994 we had the second lowest water levels in 75 years.

In the Section 7 biological opinion prepared by NMFS, September 25, 1992, floatboat activity on the upper main Salmon River was deemed "not likely to jeopardize the continued existence of endangered or threatened Snake River salmon species." On August 19, 1994 an amendment to the 1992 Floatboat Biological Opinion issued to the Sawtooth National Forest states: "As stated in the original Biological Opinion, NMFS has determined that the proposed activity is not likely to jeopardize the continued existence of endangered and threatened Snake River salmon species."

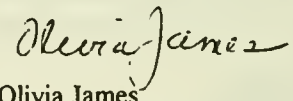
We would appreciate a prompt reply, confirming that the SNRA biological assessment makes an incorrect decision at the informal consultation level.

Sincerely,


 Ron Gillett
 Triangle C


 Randy Hess
 White Otter

Michael Murphy
 Two-M


 Olivia James
 The River Company

cc: Senator Dirk Kempthorne
 Paul Ries, Area Ranger, SNRA

August 16, 1994

Mr. Dale Bosworth
Regional Forester
U.S.D.A., Region Four
Ogden, Utah

Dear Dale,

We are contacting you with urgency requesting that you carefully consider your pending decision about float boating on the Salmon River. While we concur with your forest biologist's position on the genetic importance of these fish, we don't think that conditions warrant closing the river to float boating.

It is our understanding that the National Marine Fisheries Service, Idaho Dept. of Fish and Game, the SNRA, and the outfitters all reached a workable solution last week. We ask you to honor that decision.

The river outfitters have developed an effective operating plan with enough workable options to allow continued operations. They have designed a program which is sensitive to river ecology and the plight of the river's anadromous stocks, and effectively educates their guests. The program demonstrates that endangered species management can be achieved through cooperation between agencies, commercial interests and the public.

The non-commercial float boaters do need additional guidance and education about their impacts upon salmon. Additional forest staff on site at the river can accomplish this as a management responsibility of your agency.

A restriction on the river will draw criticism upon you from the Idaho congressional delegation, the state of Idaho, national and regional conservation groups, and also other special interest groups devoted to weakening existing environmental law. We do not believe this to be in the interest of the fish.

Thank you for your careful consideration on this matter.

Sincerely,

(signatures confirmed by phone)

Cathy Baer
Sawtooth Wildlife Council

Pat Ford
Boulder-White Clouds Council

Liz Paul
Idaho Rivers United

John McCarthy
Idaho Conservation League

SENATORS

My name is RAY BRADY. I am a byproduct of misguided, politically motivated environmental movement that has gotten out of hand. Because of the political bickering and maneuvering that has gone on since the 60's, I find myself in the position of being the victim of one of these squabbles and a rather bitter one at that.

I find myself at age 50 having to make a choice of either moving to a new location or being retrained. I do not want to move since I have lived here all my life. As a result I am now driving 150 miles a day to get the necessary training to start my own business. During this training period that lasts for two years I am at the mercy of the unknown because I do not have an income other than the little unemployment benefits and T.A.A. money that is available. In addition to this is the prospect of not having any insurance for the next two years.

I don't pretend to know all the answers. I do know that I am not anti-environmental. I recognize the need for regulation. I also realize that my livelihood depended upon a healthy environment. This decision making that goes on without regard for the welfare of the local people needs to be done differently. With this in mind I also feel that it is self defeating to hamstring the FORESTRY SERVICE by allowing the appeals process to continue as it is now.

When the SPOTTED OWL came along most of us figured that

once the issue had been resolved we could get on with our lives. I see now that unless you, as SENATORS, get your collective heads together and resolve this problem we, the people of the NORTHWEST, are going to lose a way of life that has taken most of us all our lives to build.

You want statements that pertain to impact. I am afraid that if you wait for that then you will have waited too long. The SALMON issue is here now, is affecting our lives now. I am here today to tell you that there are many people that I know personally, people that I have worked beside, that are being adversely affected by the decisions that have been made in the past. They are being forced to move or take jobs that pay considerably less than what they were making before. We hear about jobs that are available but no one mentions the quality of the jobs. Family life has deteriorated because of having to separate from the family unit to work elsewhere.

The people in this country are tired of having their decisions made for them as if they do not exist. I feel it is time to stop the finger pointing and compromise. We cannot afford to have this area shut down economically. There are too many people whose livelihoods depend upon a faster resolution to this problem. Saving the environment is a must but at the present cost it makes me wonder about the methods being used.

THANK YOU

CORDIALLY YOURS

Raymond Brady

Comments before Senator Kempthorne's Senate Sub-Committee on Drinking Water, Fisheries, and Wildlife by James N. Hawkins, Custer County Extension Agent, June 3, 1995 in Lewiston, Idaho.

Senator Chafee, Senator Kempthorne, Honored Panel, Ladies and Gentlemen;

Thank you for the opportunity to address you this afternoon. My task here today is to relay to you the impact on local economies as the result of the Endangered Species Act. I will try to do two things in the allotted time. First, I'll give you data about the impact on Custer County of recent activities related to the Endangered Species Act and, second, provide you with an example of why the local economies must be considered in the re-issuance of the Endangered Species Act.

Custer County's economy, as many of the counties in Idaho and the West, is dependent upon natural resources for its income. Whether our income is derived from grazing, timber, mining, or tourism, we are at the mercy of the whims of federal government. Public lands account for 96 % (93.6 % Federal -- 1.7 % State) of the 3.15 million acres of land within Custer County. Anything we do to make a living must, in some way, come from these lands.

Currently, our economic base is made up of mining (48.1%), agriculture (21.9%), timber (1.4%), visitors or recreation/tourism (9.1%) and government and all other (19.5%). Our employment base is dependent upon mining for 35.6% of the jobs, agriculture (23.1%), timber (1%), visitors (17.8%), and government and all other (22.5 %)

Recent court activities point out very clearly what the effect of the Endangered Species Act can be on communities (counties) that are resource dependent. Had the injunction filed by Pacific Rivers Council been allowed to stand, the impact would have been devastating to Custer County's economy and employment base. The shutdown of activities on National Forest Lands would have amounted to a 37.9% decrease in earnings and a 32.5% loss of jobs in Custer County. There were five other National Forests and numerous other communities involved in the Pacific River suit that would have suffered a similar scenario.

One point that keeps surfacing in every discussion since the first Environmental Impact Statement was written on the Challis Unit of the Bureau of Land Management is that Custer County can survive by turning our attention to the recreation/tourism industry. Using a computer model developed for Custer and Lemhi County, I calculated what it would take to offset a 10 percent loss in income from the county's largest employer, the mining sector. A ten percent cut equates to a loss of \$1.78 M (\$1,779,070.00) in earnings and a loss of 51 (51.43) jobs. If tourism was to take up the slack, it would take a 375 percent increase in tourism dollars to offset the loss in earnings. Total employment would surge by approximately 280 jobs measured in Full Time Equivalents, but at what cost?

Tourism is, at best, seasonal, especially in Custer County. Typically the season lasts from mid June through Labor Day with a small spurt during the hunting season. If we call this a

5.5 month season, this would equate to a part-time work force of 610 people. Custer County has already seen the effects of seasonal minimum wage-type jobs that can be generally associated with the tourism sector. This type of employee generally does not own a home. Nor do they pay property taxes. Generally they do not have medical benefits. If they buy goods and services, they buy very little. They also tend to draw unemployment compensation in the off season and add to the cost of the indigent role for the county if they need medical care. And what of the additional cost to the County for such things as emergency medical services, police, fire protection, garbage removal, etc., whose support comes directly from property tax revenue?

Even if there were ways to cope with problems created with this type of employment, where are we going to put the people that will pay the bills -- the tourist? There has not been a new campground built since 1972 and the only reason it was built was that it was funded prior to the creation of the Sawtooth National Recreation Area (SNRA). A few campgrounds have been upgraded and a few more have been closed, but no new ones have been built. SNRA figures indicate that we are currently turning more than 200 campers per day away!

Build on private ground, you say! Where does the capital come from? Would you be willing to invest in such a business? A "build it and they will come" attitude does not fly with the bankers I know. The tourist industry will continue to grow as has other industry in the county at a slow steady pace. But to think even a 10 percent decrease in lost revenue from another sector can be offset overnight is foolhardy.

Even if we could find the capital to build facilities, we are destroying the very thing we are trying to protect. The private ground in Custer County and other arid areas of the West is along the rivers and streams in the valley bottoms. In Custer County, the vast majority of the spawning beds for the endangered salmon are on private ground.

I hope that I have shown you the impacts of actions under the current Endangered Species Act on small communities that are dependent upon natural resources. If we are to maintain the social fabric and viable economies in the rural areas of Idaho and the West, we must keep the natural resource based industries healthy and functioning. To cripple them is to destroy the history, custom, and culture of the rural communities in the West. With their demise, so go the county forms of government. And much like the poem about the loss of a nail the horse was lost, the loss of the horse the rider was lost and eventually the war was lost. No one in this room wants to lose a specie, but at what cost?

Thank you for your time. You have a large undertaking before you that is fraught with emotion, I wish you well and hope you will keep my comments in mind.

Reference: The Custer-Lemhi Economic Model (CLEModel), M. Henry Robison, Aaron J. Harp, Michael L. Lahr and Jon R. Freitag, 1993.

ENDANGERED SPECIES ACT HEARING

Lewiston, Idaho - June 3, 1995

by Phil Church, President
United Paperworkers International Union, Local 712

Good afternoon Senators. Welcome to Idaho and thank you for holding this field hearing in Lewiston, with a special thanks to you, Senator Kempthorne.

My name is Phil Church and I am a life-long native of Lewiston. I have worked for Potlatch Corporation for over 17 years and hope to one day retire from Potlatch with your help. I am married and have three very active boys of which I am very proud.

I am President of the United Paperworkers International Union, Local 712, representing about 500 members. There are over 1,600 union members employed by Potlatch in Lewiston, represented by three international unions.

Many of our members are involved in the activities of various grassroots organizations working on resource issues, including the reauthorization of the Endangered Species Act. Two of the most active groups are the Pulp & Paperworkers Resource Council (PPRC) and the Resource Organization on Timber Supply (ROOTS), both of which are actively led by union leadership. These groups, along with many others, hope to encourage you to make changes to the Endangered Species Act so our children and grandchildren will be able to work and play in Idaho, enjoying all of Idaho's natural beauty.

I believe there is a consensus among our members that ESA as currently written and implemented represents a needless threat to our way of life and livelihood. The Act needs changing to make it more flexible and "user-friendly" for those of us most affected by it.

I would like to point out that we reach this conclusion after a long and frustrating effort to work within the current ESA. From the beginning, our union leadership has continually encouraged our members and the surrounding

communities to strive toward middle-of-the-road, common-sense solutions that strike a balance for the communities and the species involved. I might add that our members have been actively involved in a number of issues, but I would like to emphasize our experience with the reintroduction of the Grizzly because it illustrates our frustration with the current system.

When reintroduction of the grizzly bear first came up, the ROOTS organization, which our unions have participated in directly, decided to not take a wait-and-see approach. Instead, we decided to get actively involved. Our initial position was no grizzly bear reintroduction. Very quickly we realized this was an extreme position and was not warranted by the facts. So, we changed our position to support reintroduction of grizzly bears as a non-essential, experimental population in the Selway-Bitterroot Wilderness.

Interestingly, wildlife conservation groups and citizen groups quickly contacted us. By working with those groups we reached agreement on several key issues. We eventually achieved a solution that was biologically sound and supported by a wide range of wildlife groups as well as local community interests. Surprisingly, this broad-based solution had only one strong opponent -- those in charge of implementing the reintroduction of the grizzly bear.

Those of us in the union movement are proud of the successes we have achieved and we are determined to seek common-sense, middle-of-the-road solutions surrounding the Endangered Species Act. But, we need your help.

I think we have proven that some of our greatest successes can be achieved by giving communities impacted by the ESA the opportunity to determine how their concerns will be addressed. We all recognize the need for balanced approaches that address the needs of listed species and those affected by actions taken to protect and recover the species. But we become rightfully annoyed when communities are invited to provide input, but realize early on that the final outcome has been pre-determined by an inflexible Act

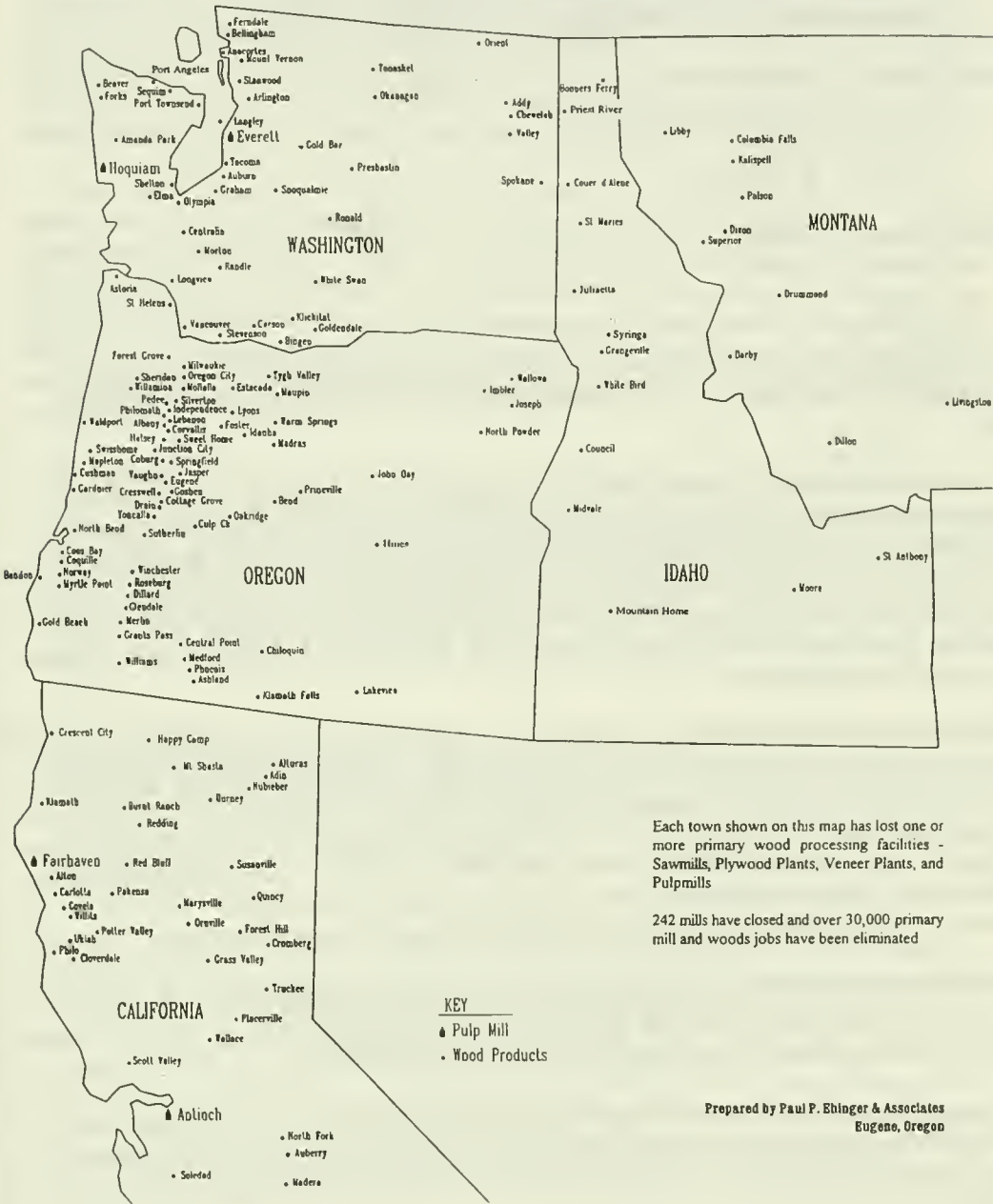
that excludes the interests and concerns of citizens. There must be provisions in the act for meaningful participation of those stakeholders directly affected by actions undertaken through the ESA.

There are many ways to improve the Endangered Species Act. Recognizing the families, jobs and communities involved and ensuring their voice, is a part of the final resolution and is one very important way it can be improved, clearing the way for true balance to be achieved.

I thank you for allowing me make this statement and I would be happy to answer any questions.

Phil Church, President
United Paperworkers Union, Local 712
Lewiston, Idaho

MILL CLOSURES 1989 - PRESENT



Each town shown on this map has lost one or more primary wood processing facilities - Sawmills, Plywood Plants, Veneer Plants, and Pulpmills

242 mills have closed and over 30,000 primary mill and woods jobs have been eliminated

KEY
 ▲ Pulp Mill
 ● Wood Products

Prepared by Paul P. Ehinger & Associates
 Eugene, Oregon

To: United States Senate
Committee on Environment and Public Works
Subcommittee on Drinking Water, Fisheries and Wildlife

From: Sherry L. Colyer
Bruneau Valley Coalition, Inc.
HC 85 Box 881
Bruneau, ID 83604

Where: Lewiston, Idaho
June 3, 1995

Mr. Chairman and members of the Subcommittee thank you for allowing me to address your committee as you examine the impact of the Endangered Species Act.

I come to you today on behalf of the Bruneau Valley Coalition. This Coalition represents the following five groups: Idaho Cattle Association, Owyhee County Cattlemen's Association, Idaho Farm Bureau, Owyhee County Farm Bureau, and the Owyhee County Commissioners. This Coalition was formed to defend the communities of Bruneau and Grand View, Idaho from the listing of the 615th species that would be protected under the Endangered Species Act: The Bruneau Hot Springsnail.

Allow me to tell you the story of the Bruneau Hot Springsnail. This listing has threatened the livelihood of approximately 60 family farms and ranches, many of which have been in the same family for over 100 years. Bruneau is a small town by any standards. Agriculture is the sole economic base to support our school district. Part of my responsibility as a school board member includes budgeting. Without this stable economic base our school district would cease to exist. A century of productive, hard working, tax paying citizens would also parish.

The Bruneau Hot Springsnail is equivalent to the size of a poppy seed. It can be found in concentrations of a few to more than 20,000 snails per square meter. These snails mature and reproduce quickly in large numbers.

In January 1993, the US Fish & Wildlife Service (USF&WS), over the objections of the Idaho Department of Water Resources, listed the snail as endangered. This came after two conservation groups filed suit against USF&WS to force the listing.

Because Bruneau is a high desert area, irrigation water is a necessary commodity to farm or ranch. Annual rainfall is only 7.9". Without irrigation water the farms and ranches have no value. The current Endangered Species Act,

gives the USF&WS the authority, under consultation provisions, to control the activity of any federal agency that might impact an endangered species. This includes but is not limited to the Farmers Home Administration, Bureau of Land Management, and Agricultural Stabilization and Conservation Service. They are able to take the back door approach to eat away at operators a little at a time until there is nothing left. The **ONLY** option the people had was to file a law suit against the USF&WS. In essence our own government.

In May 1993, the coalition filed suit against the USF&WS on grounds of numerous procedural errors under the Administrative Procedures Act and the Endangered Species Act. A lack of sufficient scientific evidence to justify the listing also existed. Tremendous disagreement among qualified hydrologists as to the inter-relationship between agricultural-pumping and spring flows exist. Yet they will bet our livelihood they are correct and everyone else is wrong. NO hydrologist can predict with any certainty that stopping irrigation will increase snail habitat.

In December 1993, U.S. District Judge Harold Ryan ruled the listing was "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law." This was the first listing that was set aside through court action. However, the decision was appealed by the two conservation groups, who had become intervenors, to the 9th Circuit Court of Appeals. That trial was held in October 1994, in Seattle, Washington and seven months later we are still waiting for a decision.

We have spent \$163,000 in legal fees and research through the time the appeal was filed and another \$50,000 since the appeal. The people of these small communities had to raise the money necessary to support the legal expenses and research. There were no large corporations or "Sugar Daddy's" bankrolling this effort. The money was raised through individuals assessing themselves and grass roots efforts.

Through the Idaho Water Research Institute, we continue to seek a deeper understanding of the aquifer. This is not going to be an inexpensive undertaking and we may not be able to raise the necessary funds. There certainly doesn't appear to be any interest on the part of USF&WS in helping fund this research. As recently as March 2, in a meeting with the USF&WS in Boise about this proposal, we were reminded once again that we could go easy or hard. In reality, the Boise office staff person that we were told to work with is a former member and paid staffer of one of the conservation groups that was an intervenor in our case. Why does the burden of proof lie on the property owners and not the petitioners?

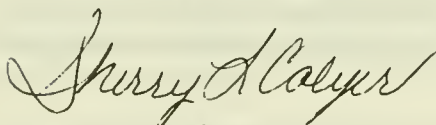
The Bruneau Valley Coalition recommends a system with a balance of power. State and local governments need to be part of the process in determining

listings, critical habitat and recovery plans. Adequate science with independent peer review in consultation with local elected officials is essential with any action. Agencies should be required to use more than the "best commercial or scientific information available". Methods of perpetuating a species in other than the critical habitat area must be allowed and encouraged. (If we can bring wolves from Canada to Idaho, why isn't it acceptable to translocate Bruneau Hot Springsnails. Property owners need to be compensated if their business is effected by the ESA. Currently a tremendous imbalance of power exists. The USF&WS needs **ADULT SUPERVISION** and brought under control.

In the children's book "*The Little Engine That Could,*" the little train keeps going up the hill saying "I think I can, I think I can." That is what these small communities have been saying for the past 11 years. Now we ask for your help in re-writing the Endangered Species Act to provide greater protection to landowners. Thus far we have stood our ground against the government in taking away a precious way of life. Not only is this our way of life but it is also our homes.

Again thank you for your time and consideration.

Respectfully submitted,



Sherry L. Colyer
Bruneau Valley Coalition

208-845-2313

TESTIMONY BEFORE THE SENATE COMMITTEE
ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON DRINKING WATER, FISHERIES,
AND WILDLIFE
ON THE ENDANGERED SPECIES ACT

June 3, 1995

Good afternoon. My name is Dave Wilson. I am a home builder from Ketchum, Idaho. I am pleased to testify on the reauthorization of the Endangered Species Act on behalf of the 185,000 members of the National Association of Home Builders.

I am not here to testify against the Endangered Species Act. NAHB supports legislation designed to protect endangered species. *We merely want it to be effective, equitable, and efficient.* Recently, a group of builders, including myself, read and really scrutinized the

entire Act and its regulations. We wanted to fully understand the law and the legislative history before recommending any reforms to the Act to our Board of Directors. We want to be viewed as part of the solution, not the problem. Today, I would like to focus my statement on the three most important reforms. While no single reform is a panacea, reform in these areas can solve many of the problems home builders face with the ESA.

First, we want a listing process based on good science. Second, we want the government to follow its own rules for the designation of critical habitat. Third, we want a permit process for private applicants that is as fair and

reasonable as the permit process available to federal agencies.

The Listing Process -- Section 4

The keystone of the Endangered Species Act is the listing process. The listing of a species as threatened or endangered triggers significant land use restraints and requires Fish and Wildlife approval of land development activities.

The listing process should be based on sound and thorough science. *It is not.* The listing process should be open to the public at all stages. *It is not.*

The listing process should include the identification of

critical habitat. It routinely does not.

The Idaho Bruneau Hot Springsnail Example

The Idaho Bruneau Hot Springs snail exemplifies the faulty listing process. The Bruneau Hot Springs snail was first proposed to be listed as endangered in August 1985. In 1986, Fish and Wildlife determined that substantial disagreement existed over the snail's status. The listing laid idle until 1992, when Idaho State University conducted a study and found 126 new populations of snails. After a brief, 10 day public comment period, Fish and Wildlife reactivated the proposal, listing the springsnail, 7 1/2 years after the original proposed listing.

The Act requires a proposed listing to be finalized

within one year, or within 18 months after a six month extension. Here, Fish and Wildlife stalled for over 7 years between the proposed rule and the final rule. The initial proposal was based on **two** springsnail colonies. The final rule, however, was based on **128** colonies, and covered a much larger area. The Act requires Fish and Wildlife to provide notice to the county commission. Fish and Wildlife failed to provide commission with notice of the listing. The Act requires Fish and Wildlife to provide the public with a sufficient and meaningful comment period. Fish and Wildlife refused public access to the scientific studies on which the listing was based. Further, Fish and Wildlife provided a public comment period of only ten days, all during the Christmas holidays. Most importantly,

Fish and Wildlife failed to consider and respond to public comments. In fact, Fish and Wildlife transmitted the final rule to the *Federal Register* nine days before the public comment period opened.

The Bruneau Hot Springs snail listing represents the full range of defects in the listing process. Defects all too often mar the listing process and stop legitimate development. Fortunately, in the case of the Bruneau Hot Springs snail, the Idaho District Court invalidated the listing. The court found that the decision to list the springs snail had no rational basis in scientific fact. The judge's decision confirmed that the listing proposal had "a traumatic and potentially devastating impact on citizens in affected areas." We can accept economic impacts for

legitimate efforts to preserve species. We should not if the listings are arbitrary and unfounded. Moreover, unless Fish and Wildlife makes timely decisions, the agency condemns the affected community to years of uncertainty and apprehension caused by the proposal.

We are not so fortunate to have judicial oversight in other listings. Under the current law, judicial review is not even permitted until the final rule.

Congress should reform the ESA to ensure a listing process that produces solid, reliable decisions.

Congress should define "*best available science*" to include:

- the minimum viable population of the species,
- the minimum habitat necessary for the species

- survival,
- the species geographic distribution, population, and percentage decline, and
 - the actual threats to the species.

Further, Congress should require Fish and Wildlife to:

- obtain field surveys to verify the data submitted;
- require independent peer review of the methodologies used;
- increase public participation in the listing process by requiring that notice be sent to the Governor of the affected state and any affected local governments. All data, petitions, research grants, or other information

Critical Habitat Designation

The second issue of importance is critical habitat and Fish and Wildlife's disregard for the mandate to designate it in a timely fashion, if at all. Just like us, wildlife species are dependent upon their home, or habitat, to survive. Congress understood this concept when it directed Fish and Wildlife to designate critical habitat for all listed species. Critical habitat designation plays an important role in the Act's goals for recovery. When critical habitat is not designated, Fish and Wildlife wields a de facto veto over all land use and all potential habitat - an act clearly beyond the scope of their authority.

Unfortunately, Fish and Wildlife has designated critical habitat for less than 22% of the species listed.

should be available for public review.

Congress should mandate the designation of critical habitat at the time a species is listed. *There should be no exceptions.* Listings should not be permitted without critical habitat designation.

Habitat Conservation Plans -- Section 10

The permit process also requires reform. Fish and Wildlife currently grants federal agencies preferential treatment in the permit process, and holds private applicants to a higher standard. The section 10(a) permit, known as the habitat conservation plan, is the sole remedy to the Act's land use prohibitions for most land owners. Unfortunately, since 1982, only 40 permits have been approved.

In contrast, the section 7 permit process available to federal agencies includes firm deadlines for making decisions. There are no deadlines for section 10 decisions.

The federal permit process also allows federal agencies to consult with Fish and Wildlife prior to submitting a permit application. The section 10 process does not. Private landowners want the same treatment as federal agencies. Congress should impose mandatory deadlines comparable to those applied to federal agencies. Applicants under section 10 should be permitted to request pre-application consultation.

Conclusion

Our written testimony includes a comprehensive list of the reforms we would like to see. Today I focused on the three most important reforms reauthorization can accomplish. First, builders want to be sure that the species listed by the Fish and Wildlife Service are truly threatened or endangered. A listing process based on good science can provide that certainty. Second, builders need to know whether their activities are regulated. The designation of critical habitat will delineate what land is unconstrained from federal land use regulation. Third, builders want the section 10 permit process to be as predictable and functional as the section 7 permit process that federal agencies use. Section 10 reform can provide

this.

I want to thank and commend Chairman Kempthorne and the Subcommittee for their efforts on ESA reform. I will be glad to answer any questions at this time.



IDAHO CONSERVATION LEAGUE

Testimony of Rick Johnson, Executive Director

on the reauthorization of the
Endangered Species Act

before the
Subcommittee on Drinking Water, Fisheries and Wildlife
Committee on Environment and Public Works
United States Senate

in
Lewiston, Idaho
June 3, 1995

Thank you Chairmen Chafee and Kempthorne, members of the subcommittee, and other senators for providing the opportunity to comment on reauthorization of the Endangered Species Act (ESA), which is now being considered by Congress. These comments are a supplement to my oral remarks before the subcommittee, June 3, 1995, in Lewiston, Idaho.

We are not here today to just consider the plight of our nation's endangered species. If we were, I think Idahoans would be able to find enough common ground to carry on a pretty good discussion, one in which we might be able to make progress despite our differences.

Unfortunately we're here today because of volatile politics created by real or imagined impacts from legislation, words on a page passed by the US Congress over 20 years ago. And really, we're not here because of the ESA either. We're here because a segment of America has made the ESA into a symbol, a tangible target of their fear and frustration with the federal government, and anger over federal agencies that appear clueless in the face of collapsing watersheds, ecosystems, and economies long dependent on public lands now in a period of transition.

Congress is in the wholly uncomfortable role of needing to reauthorize legislation some believe responsible for everything from high electricity costs to domestic violence, from collapsing economies to failing test scores of our children.

Never has one piece of legislation been blamed for so much, when it's done so little to get the blame. Consider the irony that the ESA provides a focus for hatred of the federal government, yet it was the ESA that helped bring our national symbol back from the brink of extinction.

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Senator Kempthorne, I've seen a bald eagle in Boise, Idaho, flying across Capitol Boulevard with the Statehouse in the background, in great part because of the ESA. You've personally helped preserve habitat along the Boise River and at the Snake River Birds of Prey Conservation Area for our nation's symbol. It is my hope you go back out to Birds of Prey, and take some time in the empty silence above the Snake River as you consider your momentous task. It may be the only way you get away from all the wild rhetoric the ESA has been collecting like a magnet. Fantasy is no basis for writing legislation, and like it or not, you are now part of history, forever linked to the future of at-risk wildlife in our nation. Spend that quiet time at Birds of Prey, Senator, for more than anything, I urge you to get beyond the rhetoric.

I could spend an afternoon and many pages refuting some of the stories you've been told about the ESA by both people legitimately fearful and by those who know better and are openly deceiving you. That is not how I want to spend this time.

Idahoans are looking for a fair deal. There are three major points where fairness must be addressed in the ESA and species protection generally.

The first is science.

The listing process under the ESA has to be based on science. There are many forums to involve politics and economics, but the determination of whether a species should be considered threatened or endangered has to be unbiased science.

Quieting the rhetoric for a while, we must consider the scientific context of the ESA. In 1992, Congress requested the National Academy of Sciences (NAS) review the ESA and the conclusions of this body were recently released. The report's main conclusion is that the ESA "is based on scientific principles." They said that subspecies, such as Idaho's individual runs of salmon, need to be protected because of the genetic diversity they provide.

Furthermore, the report endorsed the scientific view that human activities have recently brought on a "major episode of biological extinction," comparable to the great extinction 65 million years ago that wiped out dinosaurs and other species. "To sustain a viable future for our descendants we must find ways to preserve both species and ecosystems. The Endangered Species Act is a critically important part of our efforts."

The NAS panel made clear, however, that the ESA can't do the job on its own, and encouraged other measures such as tax incentives for private conservation. "Any coherent, successful program to prevent species extinctions and to protect the nation's biological diversity is going to require more enlightened commitments on the part of all major parties to achieve success."

The next major point is the need to follow the laws we've got.

In most all of the celebrated conflicts over species protection under the ESA, if other conservation laws were followed, there would not have been the need to use stricter measures

of the ESA. The reasons other laws are not enforced are simple: they lack the teeth to require compliance, they are subject to political interference, and generally don't punish the slow and ineffective plodding the federal government has raised to an art form.

For instance, had the Northwest Power Planning and Conservation Act been followed, we still might have viable salmon populations in Idaho. If the National Forest Management Act been followed in the Pacific Northwest, you probably never would have heard of a spotted owl.

In the vocal minority of the public targeting the ESA, the greatest source of frustration results from anger with the federal government far more than the ESA. Broken promises, poorly informed staff, sloppy enforcement, and conflicting mandates have all contributed to a not totally undeserved frustration in the public.

The ESA has become the symbol for all this frustration. Since the ESA actually forces compliance, the buck stops there. Because a twisted path leads you into a wall, you don't blame the wall, you straighten out the path.

Another law which should be used as it was intended is the Land and Water Conservation Fund. Revenues from offshore oil leasing are supposed to be used for habitat and open space acquisition. The billion dollars generated annually instead is being used to cover the federal deficit, which these days is like pitching pennies. That same funding going to where it is supposed to go would do wonders for acquiring habitat for wildlife, something strongly supported by the public.

The last, and most important point, is economic fairness.

Some say it is too expensive to protect species threatened with extinction. The Idaho Conservation League contends it is far more expensive to not protect species if we look past our self interest and consider the needs of our country, our planet, and generations to come.

It is vital that we as a society understand that certain values we cherish cannot be addressed in simple market economics. Clean air, clean water, Idaho's wild rivers and wild places; they are values we as Idahoans care for just as we care for our safe streets and decent schools. How do we put a value on these? It is perhaps impossible, and more likely irrelevant. These are the benefits of being Americans and more to the point, Idahoans. The chance to see an eagle in flight or hear a wolf howl in the early evening in Idaho's backcountry well into the 21st century are also intangible values no less significant, and this is what the ESA is about.

There are also very tangible values the ESA protects, most of which we've yet to discover in the natural world. We are all familiar with Taxol, first developed from the Pacific yew tree. What other cures and benefits to society remain in the natural world that could either be directly or inadvertently saved by the ESA?

There are, however, very real issues of economic justice to consider with protecting species. But before addressing economic inequities of the ESA, we hope the committee fully considers

that actual costs of the ESA versus the costs being attributed to it in hot rhetoric generated by frustration with other issues.

- The ESA has not had a harmful effect on state economies. A March 1995 study by MIT "strongly contradict(s) the assertion that the Endangered Species Act has had harmful effects on state economies." The economic effects are "so highly localized, of such small scale, and short duration" that they do not impact overall state economic performance.
- The ESA is not blind to people and economics. The MIT study continues: "political, economic, and social considerations permeate the listings process. In fact, for every tale about a project, business, or property owner allegedly harmed . . . there are over one-thousand stories of virtual 'non-interference.'"
- The ESA will not have adverse impacts on Idaho relative to Idaho's salmon. Other witnesses will be addressing this at length.
- The ESA did not shut down the Northwest timber industry. Hugely unsustainable harvests had to come to an end in the Northwest. The major environmental lawsuits were not ESA based. More mills closed in the region before the spotted owl was even listed because of log exports, automation, competition from other regions, and poor markets.
- The ESA is not having a significant economic impact on Idaho's timber industry. Despite claims of lost revenue and board feet due to ESA consultations, Idaho's timber industry employs more people today than it did a year ago, and public land timber sales being offered this week have gone by without bidders from industry.

Conversely, the ESA has had, and will continue to have very positive impacts on Idaho's economy.

- Recovered peregrine and eagle populations continue to make the Snake River Birds of Prey Conservation Area a major feature in Boise's vibrant economy.
- Recovered steelhead and salmon will have huge impacts in river towns throughout Idaho's anadromous habitat.
- Reintroduced wolves in Yellowstone and central Idaho are already increasing visitation to the park and surrounding areas.
- Even the Bruneau snail, perhaps the least "sexy" of listed species, will have a positive impact by stabilizing the mining of the aquifer, and ensuring there is water for all, including small farmers, residential wells, agribusiness, recreationists, and wildlife.

The ESA already includes ample opportunity for consideration of economic issues. As noted above, the decision to list a species is now, and must always remain, based on science alone. However, the law requires that economic considerations be made in designating critical habitat, and in extreme cases the "God Squad" can exempt any project from ESA compliance.

Special exemptions can be granted to private landowners and taking permits can be granted now.

There have been some short-term costs from the ESA that have fallen disproportionately on small segments of society while the benefits in the long term have been for all of society. As I clearly saw in my ancient forest work in the Pacific Northwest, and has been noted in the testimony earlier this week in Roseburg, Oregon, some of these short term impacts have fallen on single industry dependent and sometime undereducated workers in rural areas. Repeating what you heard in Roseburg directly:

"Such people are already disadvantaged by the modern economy well before endangered species issues became an additional concern. While it (the economy) may be growing overall, this economy is leaving some Americans behind. That is wrong. In their hurt and anger, these Americans are lashing out at what they can see: public policy to conserve and restore species. They are not lashing out at what they cannot see, but which affects them far more: the unseen hand manipulating markets, first described by economist Adam Smith in 1776."

Referring back to the MIT study, it describes, and as those of us who live here understand, that listings may have "demonstrable negative economic impacts at the local level. . . Economic assistance, job training grants and other localized programs can make a difference in such cases at modest cost."

Another important point raised by the MIT study is the issue of economic context. "Hundreds of state and federal policies have far more injurious impacts on local economies than wildlife protection. For example, the recent series of military base closings have had economic effects hundreds of times greater than all the listings during the 20-year life of the Endangered Species Act."

We ask the committee to not right these wrongs by writing law which helps species less. We ask the committee to help the people impacted by the law more. Suggestions of how to do this follow: .

First and foremost, we need to make protection of species something that is a good thing for landowners. That will come from several avenues:

- Encourage Habitat Conservation Plans (HCPs) to eliminate the need for landowners to apply for development permits for land containing endangered species habitat.
- Set up a revolving loan fund to help communities prepare regional HCPs that address both the habitat needs of species and human development needs.
- Set up an conservation easement program for small landowners with endangered species on their land.

- Provide financial incentives to private landowners to help conserve listed species in cases where the land owners actions are not already required by law. Provide support to cooperative programs.

Incentives for conservation also comes from relationships with agencies. One of the single biggest flaws with the ESA has not been the law but rather the implementation. The agencies must be partners in conservation, not adversaries. Ways to address that include:

- Require the US Fish and Wildlife Service to provide reliable and timely information on upcoming listings, critical habitat designations and recovery plans.
- Guarantee that Habitat Conservation Plans (HCPs) will not be revised once they have been approved without land owner consent. Allow HCPs to include unlisted species, thus avoiding future conflicts.
- Provide immediate technical assistance to landowners seeking advice in these or other ESA programs.

Finally, on the subject of economics, we are hearing a huge amount about getting the federal government off our backs. We should get the feds out of a whole range of western issues. The federal government should no longer be in the business of subsidizing logging, mining, grazing and farming, particularly when many of the beneficiaries want nothing to do with the federal government, and when those subsidies harm habitat of wildlife species which are or could be threatened. Where society supports subsidies, let them be directed to habitat conservation in partnership with responsible development.

In conclusion, we ask the committee to remember the importance of the task before you. This America's cornerstone to conservation. The ESA is the last resort for plants and animals, the emergency room in a situation where the whole health care system needs repair. Don't gut the ESA in response to frustration with other issues.

It is time we view the big picture. We need to protect entire ecological systems, be it prairies or watersheds, mountains or valleys, city green spaces or the Arctic. This is not necessarily "lock it up" protection. It can, and over large landscapes must, be very interactive with local communities and people.

We need to do this before we're driven to use the ESA. But that work is not a substitute for a strong ESA. This is a tough job. For the good of the natural world, and for the good of the public's confidence in government, I hope you don't blow it.

Thank you for the opportunity to comment on this important matter, and if the Idaho Conservation League can ever be of help on this or other issues, please call us.



IDAHO CONSERVATION LEAGUE

1995 JUN -5 PM 1:47

June 4, 1995

Senator Dirk Kempthorne
 US Senate Office Building
 Washington, DC 20510
 Attn: Jim Tait

Transmitted via fax

FOR THE HEARING RECORD: Endangered Species Act

Senator Kempthorne:

On behalf of the Idaho Conservation League, I offer my thanks for the opportunity to testify before the subcommittee and other senators in Lewiston, Idaho, June 3, 1995. I would like to offer the following comments to clarify two points I made at the hearing.

I don't have the exact wording, but Senator Thomas asked me if I believed all species should be saved, including beetles, obviously referencing Noah's Choice. I answered yes. I would like to expound on that just a bit.

As a conservationist, for me to answer anything other than yes is saying that I have the knowledge--let alone the right--to play God. I do not, nor will I ever seek, the almighty authority to say yes or no to extinction of species. I also don't think playing God is an appropriate role for Congress or for state or local entities. The ESA has its "God Committee," and where appropriate, it can be called.

This is not to say the ESA is perfect in how it does its job, but I felt Sen. Thomas's question got right to the heart of what the act, and what ESA hearings are about. Obviously, there are species that will go extinct, some of which due to our action or inaction. But we must never forget the seriousness of the question, and we must resist the temptation to claim more wisdom than we have. We are just people, one of many species.

On another matter, after answering a question from Senator Craig regarding numbers employed by the wood products industry, I realized my comments and answer may have left an impression other than what I was trying to make.

The analysis I was referring to, based on Idaho's state employment figures, does not include numbers from calendar year 1995, and in retrospect, that may have been what Senator Craig thought I was saying in response to his question based on my testimony. I am not aware of wood products employment figures for the current year.

To further explain my point, environmental challenges to individual timber sales began to have significant impact in the late eighties and continue today. The cumulative impacts of these challenges have given rise to the concern that the timber industry is being severely impacted in terms of employment. Regionally, this has been the period of the spotted owl in Washington and Oregon, universally claimed to be causing collapse of the timber industry. More directly in Idaho there have been challenges to sales based on water quality concerns, roadless and riparian issues, and others.

Nevertheless, since 1988 through 1994 Idaho's timber job totals have increased by 2,031. That is an impressive figure, particularly when it is considered against the charges that conservation groups are devastating the industry with the ESA, etc.

These job figures include all timber jobs that can be collected and tracked with any reasonable accuracy, and include value added manufacturing, pulp and paper mills, and other workers who depend on forests for employment.

Since the committee is considering far more than just Idaho, I'll provide a regional perspective of the Northwest. In Washington and Oregon, the numbers are not so encouraging, but placed in context, are far better than one might expect. In this same time period Oregon lost 13,800 jobs and Washington lost 4,900. Bad as these numbers seem, they are less than one-third of the projected loss from industry, and even less than what was projected by the federal government. These job impacts are also at a time of one of the greatest expansions of log exports, automation of mills and, of course, long-overdue restrictions of unsustainable timber practices on public land.

Environmental restrictions in Washington and Oregon are also built around an assumption that once the battered ecosystems recover that more timber will come "on line," both increasing harvests to meet demand and increasing jobs.

In the last year for which there is data, total wood products employment has increased in the northwest.

As Ray Brady very clearly illustrated in his testimony in Lewiston, there is real disruption and pain associated with the transition in the timber industry. Localized impacts on employment are real, and in no way do I causally brush that aside. However, it's very important that the subcommittee consider the causes, and understand that the ESA is of minor direct impact. Mills have been closing for many reasons, but regionally, perhaps the greatest cause has to do with competition.

Larger corporate mills which have often survived on privately owned holdings are increasingly a player in bidding on public land sales as their own holdings are reforested or less intensively managed. These national forest timber sales are traditionally the sole source for many smaller, often family owned mills. The big boys can pay more for the timber and do so.

Automation of mills has caused major drops in mill employment. Mills that don't keep up with the latest technology--again, often the smaller outfits--cannot keep up in the marketplace. Frequently, these mills close rather than jump into huge capital expenditures.

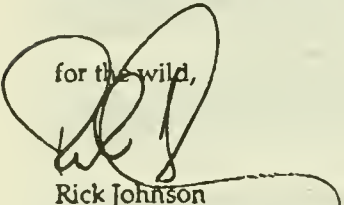
The timber industry is in a period of transition. It will never be what it was in Idaho, and no amount of legislative fixes is going to change that.

I would close with the following observations from the June 4 editorial page of the Idaho Statesman. Commenting on the misfortunes of Morrison Knudsen and it's impact on Boise, the editorial offers interesting advice, albeit unintended, concerning the diversification of Idaho's economy and transition from such heavy reliance on natural resource exploitation:

"Nothing can stay the way it is forever. People change, businesses change and cities change. We may hold all three dear to our hearts; we may remember times nostalgically, but the march of time changes all."

As I said in my testimony in Lewiston, the ESA has become a symbol for frustration to many things by many people. But, "(w)e ask the committee to not right these wrongs by writing law which helps species less."

for the wild,



Rick Johnson
Executive Director

COMMENTS OF
SAMUEL N. PENNEY, CHAIRMAN
NEZ PERCE TRIBAL EXECUTIVE COMMITTEE

AT

THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS'
SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE

FIELD HEARING IN LEWISTON, IDAHO

JUNE 3, 1995

Good Afternoon. My name is Samuel Penney, Chairman of the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Tribe. On behalf of the Nez Perce Tribe, I welcome the subcommittee members to Nez Perce country.

The Nez Perce people have always had a unique relationship with the natural environment than that of surrounding cultures. We try to integrate our culture, tradition and historical values with the commercial environmental practices necessary in today's society. Salmon, for example, have been a staple food for Nez Perce people since time immemorial. It has been estimated that Nez Perce people consumed nearly 600 pounds of anadromous fish per capita in the late 1800's. These fish are also of great cultural and spiritual significance to the Nez Perce people. Salmon have been and are, an integral part of our very existence. As the United States Supreme Court once said, the fishing rights of the tribes are "not much less necessary to the existence of the Indians than the atmosphere they breathed." The demise of salmon likewise means destruction of these traditional religious practices. This
SAM PENNEY TESTIMONY REGARDING ESA -1

is in contrast to statements by United States representatives that the loss of a species or two is without significance. Our belief is that every species is significant. We have looked on in disbelief as human development has overwhelmed the delicate balance of the ecosystems on which we have traditionally depended for subsistence.

In 1855, when the Nez Perce Tribe was contemplating a treaty with the United States government, our leaders determined that in exchange for huge cessions of tribal lands, certain rights reserved by the Nez Perce people must be retained. The Endangered Species Act must be read in light of these treaty reserved rights to harvest fish, plants and wildlife. Tribes have tried to take an active role in managing the resources through litigation, and otherwise, because past management of natural resources by other entities has largely failed, threatening our reserved right to such resources. Self-imposed limitations on the exercise of treaty reserved rights have been necessary for several years because of the Tribe's belief that the resources are at risk. Consider, for example, the fact that as a matter of tribal regulation, we have not allowed a fall chinook fishery within our reservation or treaty area for over thirty years. Our practices and objectives have always been similar to the intent and purpose of the ESA.

Litigation has resulted in decisions protecting treaty rights from conservation measures that are unfairly imposed upon Indian fishers, hunters and gatherers; and that are imposed without first restricting non-Indian activity and without first allowing

voluntary tribal measures to be implemented. Tribes have the ability and the expertise to contribute to the proper and efficient implementation of the ESA as well. The management of a listed species, which is also a subject of a treaty right, should be within the purview of the Tribes, as well as other agencies charged with protecting the resource. Partnerships should be formed to save money and produce efficient results.

Today, ecosystems have been so degraded by industries such as agriculture, mining, hydroelectric power and forestry that the original state of balance MAY never be regained. This is a very depressing prospect for the future, but it is no reason to eliminate the protections afforded under ESA. We must continue in our efforts to balance the scale by maintaining and restoring natural resources. We, as a Tribe, are committed to the long-term goals of returning balance to the environment and the ESA is an essential component of that effort.

Is the Endangered Species Act working? Clearly, the Act has not been as successful as it was envisioned. However, the remedy for this problem is not to throw out the protective language of the Act, but to administer the law in such a way as to have a direct and positive effect on the ecosystems of this country without unnecessary delay. An example of questionable implementation of the ESA is the application of jeopardy standards in determining the risk that a certain action has on a listed species. It is simply unreasonable that operation of hydroelectric dams is considered not to jeopardize the endangered fish runs while the taking minimal

numbers of fish for tribal ceremonial and subsistence purposes is held out as a possible threat to the same runs. Does the jeopardy language need to be thrown out? No, but the process is definitely in need of repair.

Science, not politics, should dictate ESA decisions. And, in fact, the very scientific panel appointed by Congress four years ago to review the Act, has recently released a report strongly supporting the ESA and recommending that the ESA's protections for wildlife habitat actually be strengthened. In fact, the panel stated that habitat protection should serve as a preemptive approach to species conservation that can help avoid triggering provisions of the ESA altogether. Efforts to prevent the necessity of listing a species should have more emphasis in any new version of the Act.

I am aware that the habitat issue is one of great debate because of the economic impacts resulting from enforcement of the Act. My understanding of the history of ESA is that it became law in 1973 because the human quest for commercial advantage was destroying interdependent relationships in nature. The law was passed to protect from human encroachment the ecosystems on which plants, fish and animals depend. Now, humans once again are asserting that the value of a healthy economy should outweigh the benefits of a healthy ecosystem. This is wrong.

We must focus our efforts on the long-term effects of this economic debate. Many of our natural resources may be gone forever. Do we want to make this destruction routine and

acceptable in the name of development? To borrow from the Great Law of the Iroquois Confederacy, "In our every deliberation, we must consider the impact of our decisions on the next seven generations." Let us think long and hard before protections of our most valuable resources are taken away. What we receive in return, and what our descendants will have to live with, may not be worth the price.

The ESA should be re-authorized. Strengthen the language; make implementation more efficient; involve Tribes in decision-making before and after a species is listed. Our philosophy has remained unchanged. Our concern is for all the creatures of the world. Let us focus on the legacy we leave to our children's children. The ESA was passed to help preserve this legacy. It should be reauthorized for the same reason.

In closing, I would like to emphasize that the Nez Perce Tribe's rights fish, hunt and gather as reserved in our treaty with the United States are essential. This was recognized by tribal leaders long before us. On June 9, 1855, at the Walla Walla Treaty Council, Chief Looking Glass questioned Governor Isaac I. Stevens about the effect of the Nez Perce treaty language. Governor Stevens stated:

Looking Glass knows that . . . he can graze his cattle outside of the reservation on lands not claimed by settlers, that he can catch fish at any of the fishing stations, that he can kill game and can to buffalo when he pleases, that he can get roots and berries on any of the lands not occupied by settlers.

We urge that in any consideration of the ESA that our rights be recognized and honored. Thank you.

SAM PENNEY TESTIMONY REGARDING ESA -5

Endangered Species Act Hearing
Lewiston, Idaho
June 3, 1995

Testimony by Dr. Falma J. Moye, Challis, Idaho

Senator Chafee, Senator Kempthorne, and distinguished members of the Committee:

Thank you for your time and effort in bring this hearing to Lewiston, Idaho and giving us the opportunity to speak on this critical issue.

I speak to you today as a scientist, educator, and recreationist. The Endangered Species Act has impacted all facets of my life. Recreationists are often viewed as incidental in this debate and are considered guilty until proven innocent. We are increasingly restricted from land use by over zealous implementation of the Endangered Species Act.

As a scientist and educator, I am appalled by the science run-a-muck in administration of this act. In my profession I must evaluate the level of success --or--failure of my work. Success --of course-- brings much satisfaction. A determination of failure mandates answering two specific questions:

What went wrong?

What change is necessary to ensure success?

You have the challenge of assessing the Endangered Species Act, an act that was written with the noble intent of saving species on the brink of extinction. By all measures, the Act has been an unequivocal failure. Since inception more than 900 species have been listed and only 11 delisted. Five of those went extinct; six were delisted because of bad science in the listing process.

ESA Reform Testimony

by: Dr. Falma J. Moye

June 3, 1995 hearing, Lewiston, Idaho

Page 2 of 2

None has been delisted due to recovery. Species are not being saved--regardless of cost and impact to taxpayers, business, recreation, private property owners, or families. (Attachment A)

The current ESA is flawed with ambiguous definitions and direction. It does not set the stage for success -- instead, it rewards failure through continued funding of programs and federal agencies which repeat the mistakes of the past and require no accountability for money spent or lack of recovery. (Attachment B)

Rather than dwell on egregious abuses and inadequacies of the current act, I would like to offer suggestions for revisions that would increase potential for recovery success and ensure that this act is no longer a major economic drain on this country.

The key to revision of this act is

"Maximize recovery at reasonable costs"

First, science is the absolute basis for this program from the listing to recovery to delisting stage. Best available science is a poorly defined concept. Inadequate science is not the best available science for making major decisions.

In the past 6 months in Idaho, there have been at least two examples where state and university scientists have presented data which contradicts that of federal lead agencies. Our scientific expertise has been ignored and the scientific controversy not resolved, potentially at devastating costs to species and exorbitant costs to the taxpayer. (Attachment C)

ESA Reformation Testimony

by: Dr. Falma J. Moye

June 3, 1995 hearing, Lewiston, Idaho

Page 3 of 4

To ensure best science, the act should be revised to require outside peer review and agreement beyond those who benefit from the listing. Specifically, I recommend that scientific data from the lead agency be the basis; however, that agency should be required to resolve conflicting science from other sources which petition to present scientific data into the record. Resolution should be done by unbiased, qualified third parties who have no potential for future benefit regardless of whether the species is listed or not.

Second the ESA as with any other federally funded program should have management goals, accountability, and a well defined yearly budget, no more open checkbook! I recommend that the listing process and the recovery effort be streamlined to remove duplication of effort by multiple federal agencies. Congress should allocate a specific yearly budget for species recovery programs and develop a system to prioritize recovery efforts and allocate those budgeted dollars to appropriate teams whether they be local, state, federal, or contracted. (Attachment D)

Revision of the Endangered Species Act should follow the lead of successful business by developing management strategy and assessment milestones to increase potential for recovery success. No business can afford to subsidize failure. (Attachment E)

In summary I ask you to consider this thought as you revise this act:

"A healthy environment and biodiversity will only occur in a country with a healthy economy"

ESA Reform Testimony

by: Dr. Falma J. Moyer

June 3, 1995 hearing, Lewiston, Idaho

Page 4 of 4

Please make the following changes:

1. stringent guidelines to define good science and resolve scientific controversy.
2. require goal-oriented recovery efforts and accountability for dollars spent.
3. encourage local and state oversight to avoid duplicity of spending and administration.

Thank you very much

ATTACHMENT A
FOR
FALMA MOYE TESTIMONY

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M A G A Z I N E

June 1995

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The ESA - Failure: Regardless of Cost

Dr. Falma J. Moya

Would you consult a brain surgeon with a 100% failure rate—regardless of cost? Would a corporation stay in business for more than 20 years with 100% failure rate—regardless of cost? As a taxpayer are you willing to continue subsidizing a program with 100% failure rate which has spent billions of unaccounted for dollars for 28 years—regardless of cost?

Recovery of endangered species has been a resounding, costly, and unequivocal failure. Since 1966, more than 900 plant and animal (including insects) species have been listed in the United States as threatened or endangered, yet no proven recoveries exist. Only 11 species have been delisted, 5 went extinct, 6 were mistakenly listed because of data error, and only 0 delisted due to recovery. The Endangered Species recovery program has a failure rate of 100%—regardless of cost.

Much publicity has been given to so-called successes such as the Whooping Crane, Bald Eagle and Peregrine falcon, which have still not been delisted. However, recovery of those species is directly attributable to the ban on DDT. Recovery of the American Alligator is a false success; the 'gator' was listed because of insufficient population data. None of these so-called successes can be directly attributed to enactment of the Endangered Species Act.

FACT: From inception of the ESA until 1988, federal and state agencies were not required to account for the money spent under the Endangered Species Act. There is no way for the taxpayer to ever know the total cost of this program, and there is no accountability.

FACT: Cost projections to recover currently listed species and proposed species are in the range of \$13.36 billion dollars. Given the 99.99% failure rate of the current program, the taxpayer can probably expect continued failure—regardless of cost.

FACT: There are species which have been listed for more than 20 years. In 1992 \$73.5 million was spent by 4 government agencies on recovery of the red-cockaded woodpecker, listed since 1970. In 1992 \$13.7 million was spent by 3 government agencies on the West Indian Manatee, listed since 1970. It is not known exactly how

much has been spent by federal agencies on just those two species, nor is the cost to business and private individuals known. Both have been in continual decline—regardless of cost.

FACT: In 1990 the General Accounting Office reported that only 11 of the 581 species listed at that time had achieved at least 76% recovery goal. More than 80% of the listed species continued to show decline—regardless of cost.

FACT: Agencies such as Fish and Wildlife Service and National Marine Fisheries Service are responsible for listing species and recovery programs. At least 15 other federal agencies receive funding for endangered species recovery. In 1992 alone, \$297,072,623 was spent by these agencies on 10 species; determining how much was spent on the remaining 875 species listed is virtually impossible because, there is no accountability.

FACT: For every dollar that Fish and Wildlife Service spend on actual recovery efforts, it spends \$2.26 on consultation, listing, law enforcement and permitting.

FACT: Recovery costs for these failures are exorbitant. Spotted owl recovery will range from \$21 billion to \$46 billion depending on the plan enacted—regardless of costs and regardless of failure.

FACT: Endangered species listing is not just a public lands issue in the west. In 20 states surveyed throughout the country, 44% of the lands affected by endangered species listings are private lands.

FACT: In San Bernardino County, California, 32,000 to 131,000 jobs will be lost in efforts to recover the spotted owl, depending on the plan enacted—regardless of cost to people and regardless of failure.

FACT: The current punitive measures against individual and business in the name of species recovery encourages negative attitudes and actions against endangered species.

FACT: Private land owners have been denied access to their own lands, fined, and imprisoned in the name of endangered species recovery.

FACT: The Sierra Club Legal Defense Fund (a not-for-profit organization) was reimbursed more than \$1.5 million dollars by the American taxpayer for spotted owl litigation

which put thousands of Americans out of work. In addition the Sierra Club Legal Defense Fund was reimbursed approximately another \$1 million dollars for other litigation to put people out of work in the name of endangered species protection. Other litigation groups have been similarly reimbursed, all in the name of 'Equal Access to Justice'—regardless of cost to the taxpayer.

Hopefully, the Endangered Species Act will be revised this year in Congress. Everyone must speak out and encourage revision which will improve success for species recovery— at reasonable costs.

Encourage your legislators to seek changes which will:

- 1) improve success for species recovery;
- 2) put recovery efforts into the hands of people with ownership of the results—state and local agencies, by providing positive rather than negative incentives for recovery;
- 3) develop a three tiered process of verification of endangered status with development of a cost effective recovery plan, and implementation of recovery, with an appropriate lead agency in charge of each stage;
- 4) end duplication of efforts and spending by multiple federal and state agencies;
- 5) require cost/benefit analysis of recovery plans;

6) provide tax or monetary incentives for private individual or non-profit groups to sponsor the recovery process.

7) have stricter guidelines to define 'best available science' in listing and recovery process;

8) demand accountability of funding spent on recovery; and

9) recognize that not all species will recover. Extinction has been a natural process throughout earth history and has played a role in the development of modern biodiversity.

10) require delisting after time and monetary constraints have been exceeded.

The American taxpayer can no longer be expected to subsidize failure. Show your concern for endangered species recovery by demanding that Congress revise the Endangered Species Act to require accountability of dollars spent, goal oriented recovery efforts, and protection of private property rights and the economic base of this country.

The author is a geologist with 24 years experience in industry, academia, and government throughout the United States, including Alaska. Information for this editorial was taken from "The Endangered Species Act: Time for Change," Endangered Species Blueprint, and Trashing the Economy.

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Going Broke?

Costs of the Endangered Species Act
as Revealed in Endangered Species Recovery Plans



National Wilderness Institute

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EXECUTIVE SUMMARY

The Endangered Species Act was designed to identify plants and animals endangered with extinction, add them to a list of federally regulated species, and then improve their condition to the point at which they could be removed from the list. After a plant or animal is added to the list, the US Fish & Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) typically produces a plan incorporating the steps that need to be taken to improve the status of a particular plant or animal, a "recovery plan." A plant or animal has reached the Act's ultimate goal of "recovery" once it has improved to the point where it can be "delisted." Between its listing and delisting, the level of protection afforded to a species may change. A species originally listed as "Endangered" whose status has improved to "Threatened" has gone through a "downlisting."

This study reviews the cost estimates of 306 recovery plans written between passage of the Act and 1993. These plans include 8 Amphibians, 72 Birds, 57 Fish, 58 Invertebrates, 35 Mammals, 135 Plants and 23 Reptiles covering 388 of the 853 currently listed endangered and threatened species. In most cases, recovery plans include cost estimates for some of their planned actions. In Section 2, these estimated costs are the basis for a list which ranks reviewed recovery plans by cost with all values expressed in constant 1994 dollars. A brief summary of the review:

Highest Plan Cost	\$88,236,000
Median Plan Cost	\$367,000
Average Plan Cost	\$3,059,391
Total Cost of Plans	\$884,164,000

(For purposes of comparison, the Fish and Wildlife Service has requested \$81,411,000 for endangered species in FY 1995.)

The reader is cautioned, however, that these figures do not reflect the actual cost of the Endangered Species Act. Many costs are not revealed in the recovery plan cost estimates. Additional costs include:

Actions called for in recovery plans for which costs are not estimated

Costs of maintaining at present levels, downlisting or delisting for those species which have plans with interim goals such as 'stabilization'

Costs of recovery for 466 species already listed but not covered by one of the plans reviewed in this study

Costs of recovery and other associated costs as mentioned above for some fraction of the current 3,996 official candidate species which will be added to the Endangered Species List

Listing and delisting of candidates or delisting species already on the list

Expenditures on any species in this study prior to the approval of its recovery plan

Costs of reduced or terminated business activities and jobs lost as a result of conflict

Increased costs of providing services by federal, state, county or city governments which result from conflict

Losses of tax revenue from reduced or terminated business income, personal income or property devaluation resulting from conflict

Derivative costs of public assistance provided to individuals who have lost jobs as a result of conflict

Section 3 provides a comparison between estimated plan costs and actual government expenditures over a three year period. Section 4 provides a count of those plans that reveal existing or potential conflicts with different activities, businesses, etc. which could result in higher total costs of implementation. Section 5 provides examples of the types of costs described on the previous page that are generally not reflected in recovery plan estimates.

During the course of reviewing the recovery plans in this study, several other important findings were made including:

- Plans often reveal that there is little information about plants or animals considered endangered or threatened
- Plans often call for additional laws and regulations
- Plans, in conflict with the definition of 'conservation' in the Act, often state that recovery is unlikely or impossible
- Plans often have criteria for 'delisting' or 'downlisting' which appear unattainable
- Plans routinely call for habitat purchase; often because the land on which a species exists is privately owned

Section 6 provides examples of these findings. Notes taken from selected recovery plans demonstrate in Section 7 that the cost estimates of recovery plans are often incomplete, and these notes illustrate some of the findings listed above or are of interest for other reasons. Section 8 offers some brief suggestions for improvement of current endangered species policy. Section 9 provides the outline for a guesstimate of the cost of implementing the Endangered Species Act, and Section 10 contains comments on the methodology used in calculating the costs in recovery plans. Finally, the Appendices contain samples of implementation schedules from several recovery plans and a recovery plan action diagram.

CONCLUSION

The federal endangered species program is out of control. Expenditures identified in recovery plans grossly understate the actual costs of recovery because many tasks called for in the plans do not include cost estimates and none of the costs imposed on the private sector are included. The government has no idea of the true cost of the endangered species program. Cost estimates in the recovery plans do not correspond to actual expenditures identified in FSA expenditure reports given to Congress.

Though unmeasured, the costs of implementing the Act as currently written are in the multi-billions, yet in over twenty years not a single endangered species has legitimately been recovered and delisted as a result of the Endangered Species Act.

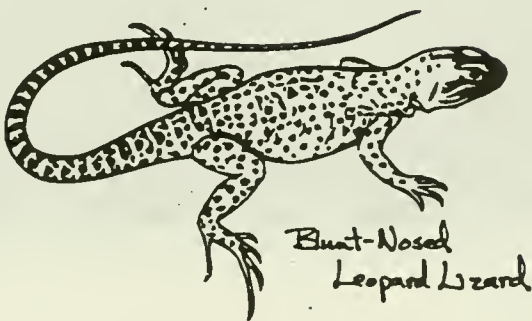
Rational, balanced decisions on how to allocate resources available for endangered species cannot be made under the law as presently written.

This study is only a first step toward gaining a full understanding of the costs of the Endangered Species Act. All figures used in this report are taken from government estimates of the cost of implementing official recovery plans.

RECOVERY PLANS RANKED BY COST

TOP 10 SPECIES

1	Atlantic Green Turtle	\$88,236,000 ¹
2	Loggerhead Turtle	\$85,947,000 ¹
3	Blunt-Nosed Leopard Lizard	\$70,252,000 ²
4	Kemp's Ridley Sea Turtle	\$63,600,000 ³
5 - 8	Colorado Squawfish Humpback Chub Bonytail Chub Razorback Sucker	\$57,770,000 ⁴
9	Black-Capped Vireo	\$53,538,000
10	Swamp Pink	\$29,026,000



ATTACHMENT B
FOR
FALMA MOYE TESTIMONY

NWI
RESOURCE

Volume 5 Issue 4 Fall 1994

ENDANGERED SPECIES

BLUEPRINT



National Wilderness Institute

"Voice of Reason on the Environment"

COSTS OF ESA



Determining the costs of the Endangered Species Act is difficult at best. In fact, the government has no estimate of the total cost of the program. The US Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are primarily responsible for implementing of the Endangered Species Act (ESA), but other federal and state agencies also spend large sums of money on endangered species. In fact, state and federal agencies other than FWS and NMFS made nearly 94% of the expenditures on the ten species receiving the most government funding in 1992, the most recent year for which data is available (bottom of page).

Most information available on costs of protecting our nation's endangered species is included in a single FWS annual report required by 1988 ESA amendments. This report includes a list of government agency expenditures (federal and state) attributable to particular federally protected species. On the opposite page a list begins of all government agency expenditures reported to FWS for FY 1992. Due to space considerations only expenditures totaling \geq \$100,000 for any particular species have been included. Federal expenditures are grouped by agency, while state expenditures reflect an aggregate for each species of all expenditures reported by states for 1992. Expenditures reported to FWS by states consist primarily of dollars spent by wildlife and environmental management agencies like Florida Fresh Water Fish and Game Commission or Texas Parks and Wildlife Department. Florida and Texas expenditures have been included as examples of individual states. Typically costs borne by other

types of state agencies are not reported—for example, costs of mitigation for a state agency that is completing road construction.

Costs imposed upon the private sector or on units of government below the state level are not reflected in any of the government expenditures annually reported to FWS.

In some cases, large government expenditures simply are not reported. For example, the Department of the Interior's Minerals Management Service has no reported expenditures in FWS's 1992 report although, according to MMS documents, "During the Fall 1992 season, the MMS [endangered] whale watch conducted surveys over 27,885 statute miles of Arctic water—enough miles to circumnavigate the planet," and from 1982-1992 MMS spent \$78,970,000 on endangered species environmental studies.

Top Ten 1992 Government Expenditures By Species 🐾

Species	1992 Identified Expenditures	% Spent By FWS & NMFS	Primary Sources of Expenditures ¹	Species Listed Since	Recovery Objectives Achieved ²	Status ³
1 Chinook salmon ⁴	\$89,483,380	1.5%	Corps, BR, USFS	'86	n/a	n/a
2 Red-cockaded woodpecker	73,502,926	<1	State, USFS, Army	'70	0-25%	D
3 Sockeye salmon ⁴	50,460,900	2.3	Corps	'92	n/a	n/a
4 Choctawhatchee beach mouse	16,105,200	<1	State	'85	25-50%	S
5 Loggerhead sea turtle	14,817,406	5.2	State, Corps, Air Force	'78	0-25%	D
6 West Indian manatee	13,667,800	2.7	State, Navy	'70	0-25%	D
7 Northern spotted owl	12,471,391	26.7	USFS, BIA, State	'90	0-25%	D
8 Bald eagle	11,081,821	66.7	USFS	'78	75-100%	I
9 American peregrine falcon	8,725,779	28.4	State, USFS	'84	75-100%	I
10 Grizzly bear	6,756,020	14.6	State, USFS	'75	25-50%	S
TOTAL	\$297,072,623	6.1%				

¹ USFS = Forest Service, BR = Bureau of Reclamation, BIA = Bureau of Indian Affairs, Corps = US Corps of Engineers. ² Recovery objectives achieved as of the 1992 Report to Congress. ³ Status of species according to 1992 Report to Congress — Unknown, Extinct, Declining, Stable or Improving. ⁴ Chinook salmon expenditures include \$33 million in lost power revenue and \$49 million spent on populations not yet even federally listed in 1992. Sockeye salmon expenditures includes \$26 million in lost power revenue.

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Additionally, many government expenditures (federal and state) are not reported to FWS because they fail to fit the required accounting parameters. For example, according to FWS, the information presented in their 1992 report:

"...does not reflect the total National effort... and continues to present an incomplete funding picture. A significant portion of threatened and endangered

species conservation activities includes law enforcement, consultation, recovery coordination and other actions that are not easily or reasonably identified to species. Accounting procedures by all agencies for most staff salaries, operations, maintenance and other support services are not recorded by species. Also not reported here are the extensive efforts of the private sector..."

1992 REPORTED GOVERNMENT EXPENDITURES ≥ \$100,000

\$\$\$

Federal Agencies



Animal & Plant Health Inspection Service —
\$1,049,233 on 36 species.

"In addition to the expenditures that can be identified as spent for a particular species, APHIS also has compiled a total for those expenditures that cannot be linked to a particular species." Non-specific expenditures = \$407,500. Total = \$1,049,233.

Gray wolf	252,000
California least tern	155,000



Army Corps of Engineers —
\$83,368,400 on 161 species.

"The economic benefits (power revenue) foregone during fiscal year 1992 amounted to \$52,000,000 from the Snake and Columbia River facilities and \$1,200,000 from the Missouri River hydropower plants."

Chinook salmon* (see note p.35) (Snake River, spring/summer run)	22,900,000
Chinook salmon* (Snake River, fall run)	22,900,000
Sockeye salmon (Snake River)	22,900,000
California least tern	5,216,100
Whooping crane	936,500
Green sea turtle	812,300
Pallid sturgeon	720,000
Least Bell's vireo	663,000
Desert tortoise	638,000
Loggerhead sea turtle	620,800
Kemp's ridley sea turtle	619,800
Hawksbill sea turtle	602,500
Leatherback sea turtle	602,400
Least tern	447,700
Red-cockaded woodpecker	434,400
Piping plover	431,700
Bald eagle	334,000
Valley elderberry longhorn beetle	235,000
Higgin's eye pearly mussel	100,500



Bureau of Indian Affairs —
\$2,960,700 on 31 species.

Northern spotted owl	1,447,400
Lahontan cutthroat trout	534,400
Black-footed ferret	256,700
Columbia River chinook salmon*	180,000
Mexican spotted owl	151,700
Grizzly bear	120,000



Bureau of Land Management — Although BLM reported \$2,390,000 on expenditures on 68 species in 1990, figures were not available from FWS regarding BLM's 1992 expenditures.



Bureau of Reclamation —
\$23,248,000 on 54 species.

"The table showing the compilation of expenditures from all the regions includes an expenditure of \$30,000 for research activities on the shortnose sucker and lost power revenues of \$9,000,000 associated with the conservation of the Sacramento River winter-run chinook salmon."

Chinook salmon (Sacramento River winter run)	12,321,000
Humpback chub	2,600,000
Colorado squawfish	1,653,500
San Joaquin kit fox	1,114,000
Lost River sucker	631,000
Razorback sucker	657,000
Shortnose sucker	661,000
C'ui 'Ui	551,000
Bald eagle	523,000
Whooping crane	437,000
Chinook salmon* (population not specified)	362,000
Sockeye salmon (Snake River)	362,000
Pecos blunt-nosed shiner	201,000
Bonytail chub	115,000



Department of the Air Force —
\$3,427,300 on at least 33 species

Green sea turtle	637,000
Loggerhead sea turtle	562,000
Red-cockaded woodpecker	425,300
Okaloosa darter	352,800
Mariana crow (plus five species below)	338,000
Mariana common moothern	

Guam rail	
Guam Micronesian kingfisher	
Vanikoro swiftlet	
Mariana fruit bat	
California sea lion (plus four species below)	244,400
Harbor seal	
Northern elephant seal	
Sea otter	
Guadalupe fur seal	
Desert tortoise	220,600
Unarmored threespine stickleback	160,000



Department of the Army —
\$4,788,300 on 27 species.

Red-cockaded woodpecker	3,255,000
Desert tortoise	243,000
Michoux's sumac	204,000
Rough-leaved loosestrife	204,000
Black-capped vireo	202,000
Bald eagle	182,000
Alabama cave shrimp	140,000
Golden cheeked warbler	125,500
Northern spotted owl	116,000



Department of the Navy — \$2,254,500 on 46 species plus the transfer of \$500,000 to FWS for endangered species protection, enhancements and restoration of habitat on Guam.

California least tern	478,000
West Indian manatee	377,000
San Clemente Island loggerhead shrike	346,000
Hawaiian stilt	128,500
San Diego mesa mint	170,000
Desert tortoise	161,500



Environmental Protection Agency —
\$2,861,572 mostly non-specific expenditures—\$206,672 of which was allocated specifically to 130 species.



Federal Aviation Administration —
\$45,000 on 2 species.

Federal Highway Administration —
No expenditures reported to FWS for 1992 although FHA spent \$13.7 million on 16 species in 1990.



U.S. Fish & Wildlife Service — (see p.36)

Bald eagle	7,389,040
Northern spotted owl	3,331,500
American peregrine falcon	2,475,500
Least Bell's vireo	2,046,430
Valley elderberry longhorn beetle	1,846,030
Chinook salmon	1,195,000
Aleutian Canada goose	1,150,740
Gray wolf	1,133,410

Puerto Rican parrot	992,200
Grizzly bear	937,800
Desert tortoise	966,600
California condor	881,500
Hawaiian duck	871,570
Hawaiian coot	870,570
Golden-cheeked warbler	868,170
Green sea turtle	832,740
Whooping crane	816,600
Black-capped vireo	777,170
Hawaiian stilt	761,700
Hawaiian common moorhen	759,700
Loggerhead sea turtle	718,040
Tooth Cave spider	673,170
Tooth Cave ground beetle	673,170
Bee Creek Cave harvestman	673,170
Kretschmar Cave mold beetle	673,670
Tooth Cave pseudoscorpion	673,170
Bonytail chub	640,290
Attwater's prairie-chicken	601,000
Leatherback sea turtle	556,940
Colorado squawfish	534,400
Black-footed ferret	519,800
Red wolf	516,000
Razorback sucker	467,100
Lahontan cutthroat trout	437,900
Wyoming toad	426,300
Southern sea otter	410,700
Key tree cactus	391,910
Piping plover	381,350
Lower Keys rabbit	378,910
Kirtland's warbler	376,330
Key deer	371,910
Rice rat	371,910
West Indian manatee	370,000
Hawaiian goose	290,270
Florida panther	286,700
Pallid sturgeon	269,600
Hawaiian hawk	265,770
Hawaii 'akepa	251,270
'O'u	250,670
Hawaiian creeper	248,470
Least tern	223,330
Hawaiian crow	218,900
Columbian white-tailed deer	207,500
Arctic peregrine falcon	185,700
Red-cockaded woodpecker	199,500
Stephens' kangaroo rat	181,100
Louisiana black bear	181,000
Wood stork	181,000
Manana crow	178,700
Mariana fruit bat	174,600
Apache trout	160,000
California clapper rail	159,500
California least tern	157,400
Light-footed clapper rail	147,800
Brown pelican	133,100
Woodland caribou	132,400
Ocelot	130,500
Akiapolaau	129,470

Hawaiian hoary bat	129,170	Right whale	288,000
Kauai Akialoa	123,100	Green turtle	264,000
Hawaiian monk seal	121,000	Chinook salmon (winter run)	190,000
Stock Island snail	119,000		
Florida scrub jay	112,000		
Cui-ui	109,900		
San Joaquin kit fox	109,600		
Kemp's ridley sea turtle	102,400		
Hawksbill sea turtle	100,900		



Forest Service —
\$21,808,300 on 190 species.

"We provided additional funding... in the form of program support, development, and coordination. However, it is not 'reasonably identifiable' on a species basis." "For instance, during 1992 we enhanced our ability to perform fundamental inventory and monitoring of rare plants by increasing our permanent botanical workforce by over 25 percent." "This pro-active approach... deals with species not listed as threatened or endangered, but for which population viability is a concern. For example, the California spotted owl and the Mexican spotted owl, neither of which were listed in 1992, were allocated more than \$4,026,000 above the expenditures reported here. Similarly, most of the funds expended on the rare plant program supported... work for sensitive plant species."

Northern spotted owl	6,522,070
Red-cockaded woodpecker	4,234,700
Chinook salmon*	3,068,400
(Snake River, spring, summer & fall runs)	
Grizzly bear	2,245,000
Bald eagle	1,091,350
American peregrine falcon	948,200
Gray wolf	663,970
Peurto Rican parrot	360,000
Kirtland's warbler	189,000
Black-footed ferret	146,000
Virginia northern flying squirrel	128,400
Gopher tortoise	120,700
Chinook salmon	120,000
(Sacramento River winter run)	

Minerals Management Service — No expenditures were reported to FWS for 1992 (see text p. 32).



National Marine Fisheries Service —
\$5,876,200 on 15 species.

Snake River sockeye salmon	1,184,200
Stellar sea lion	1,406,900
Hawaiian monk seal	731,200
Bowhead whale	685,000
Humpback whale	349,100
Kemp's ridley turtle	315,000
Sea turtles	313,600



National Park Service —
\$3,830,200 on 77 species.

Grizzly bear	606,600
Northern spotted owl	364,600
Gray wolf	302,600
Piping plover	280,600
Leatherback sea turtle	216,000
American peregrine falcon	213,500
Desert tortoise	179,000
Red wolf	125,000
Bald eagle	122,100
Florida panther	101,500



Tennessee Valley Authority —
\$200,000 on 13 species.

Gray bat	123,000
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US Geological Survey —
\$30,000 on 3 species.

* In 1992, the only listed salmon populations included Sacramento River winter run chinook salmon and Snake River sockeye salmon (including Idaho stock wherever found). Expenditures on other salmon populations were made before they were officially listed as endangered or threatened.

\$\$\$

State Expenditures
(Cumulative Total Per Species ≥ \$100,000)

Red-cockaded woodpecker	64,911,700
Choctawhatchee beach mouse	16,067,500
Loggerhead sea turtle	12,849,400
West Indian manatee	12,849,900
American peregrine falcon	4,932,400
Florida panther	4,387,400
Grizzly bear	2,780,600
Bald eagle	1,233,700
Schaus swallowtail butterfly	1,200,100
Key Largo cotton mouse	1,200,100
Key Largo woodrat	1,200,100
Florida scrub jay	772,200
Northern spotted owl	645,000
Deltoid spurge	556,700
Oregon silverspot butterfly	432,100
Desert tortoise	247,800
Black-footed ferret	199,600
Piping plover	194,900
Pallid sturgeon	163,800
Colorado squawfish	145,400
Chinook salmon	143,000
Gray wolf	134,200
Humpback chub	121,500
Hawaiian crow	121,400
Kemp's ridley sea turtle	104,700
Hawaiian goose	102,400

\$\$\$

Samples of Reported State Expenditures



Texas

Golden-cheeked warbler	99,900
Black-capped vireo	70,200
Atrwater's prairie-chicken	17,500
Fountain darter	16,000
Comanche Springs pupfish	15,500
Houston toad	13,800
White bladderpod	11,000
Large-fruited sand-verbena	10,900
Texas wild-rice	8,000
San Marcos salamander	8,000
Big Bend gambusia	8,000
San Marcos gambusia	8,000
Leon Springs pupfish	7,500
Bee Creek Cave harvestman	7,100
Tooth Cave pseudoscorpion	7,100
Tooth Cave ground beetle	7,100
Tooth Cave spider	7,100
Kretschmarr Cave mold beetle	7,100
Concho water snake	6,800
Texas blind snake	6,500
Jaguarundi	6,500
Texas snowbells	6,500
Navasota ladies'-tresses	6,500
Black lace cactus	5,500
Bunched cory cactus	5,500
Chisos Mountain hedgehog cactus	5,500
Lloyd's hedgehog cactus	5,500
Lloyd's mariposa cactus	5,500
Nellie cory cactus	5,500
Tobusch fishhook cactus	5,500
Terlingua Creek cat's-eye	5,500
Texas prairie dawn-flower	5,500
Ashy dogweed	5,500
Johnston's frankenia	5,500
Hinckley's oak	5,500
Texas trailing phlox	5,500
Davis' green pitaya	5,500
Texas poppy-mallow	5,500

Florida



Choctawhatchee beach mouse	16,067,500
Loggerhead sea turtle	12,849,400
West Indian (Florida) manatee	12,849,900
Florida panther	4,387,400
Key Largo cotton mouse	1,200,100
Key Largo woodrat	1,200,100
Schaus swallowtail butterfly	1,200,100
Florida scrub jay	772,200
Pygmy fringe tree	35,000

Scrub plum	35,000
Papery Whitlow-wort	35,000
Florida grasshopper sparrow	27,000
Anastasia Island beach mouse	11,400
Everglade snail kite	11,000
Florida golden aster	9,000
Key deer	8,500
Florida torreyia	6,400
Audubon's (Florida) crested catacara	6,000
Atlantic salt marsh snake	2,100
American crocodile	1,800
Lower Keys rabbit	1,000
Southeastern beach mouse	1,000
Perdido Key beach mouse	800
Wide-leaf warea	500
Stock Island snail	300
Four-petal pawpaw	100
Fragrant prickly-apple	100

Dollar figures were determined through cross referencing and do not include all species on which either state spent money. Nor are these figures necessarily all inclusive for the species listed; non-species specific expenditures or expenditures on multiple species may not be included in those listed here. Neither state's listed expenditures are likely to include costs such as increased services, mitigation, and so on by state agencies other than conservation oriented agencies. Florida's expenditures do include land acquisition costs.

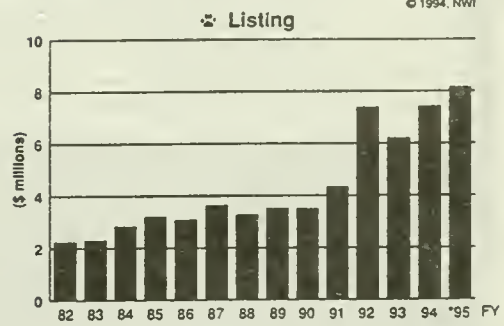
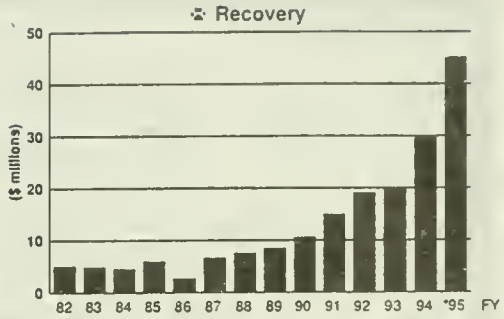
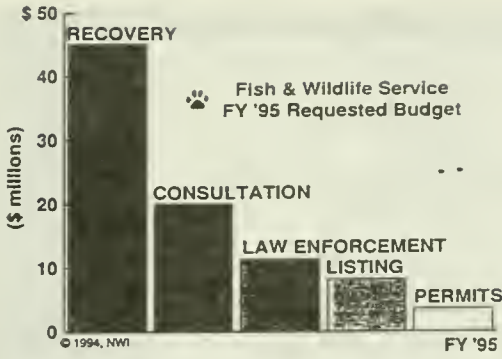
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A Closer Look at
Fish & Wildlife Service Expenditures

The Fish and Wildlife Service has jurisdiction over a significantly greater number of species and has greater annual expenditures on endangered species than the National Marine Fisheries Service. These FWS expenditures fall into five primary categories: listing, recovery, consultation, permitting and law enforcement. Actual expenditures enacted since 1982 for each of these FWS activities (not adjusting for inflation) are included in the column charts on the following pages. In these charts, FY '95 figures reflect FWS budget requests only. In a separate chart, all FY '95 budget requests are brought together and compared. Additionally, FWS has requested \$10.6 million for their Cooperative Endangered Species Fund and \$978,000 for endangered species fisheries for FY '95.

Listing

The first step in extending official endangered species protection to a plant or animal is including it on the List of Threatened and Endangered Wildlife and Plants. This listing process has become quite controversial and the focus of much debate (see *Taxonomy and ESA*). Some argue that many more species should be listed and at a faster pace. Others point out numerous instances when the scientific criteria used to justify a listing were too weak and resulted in 'species' such as the McKittrick pennyroyal, *Cuneate bidens* (a plant without a common name), pine barrens tree frog and at least 12 others being wrongly listed (see *Mistakenly Endangered*). According



Source: Figures for the charts on this page are taken from the Fiscal Year '95 FWS Budget Justification. Dollar values are not adjusted for inflation.

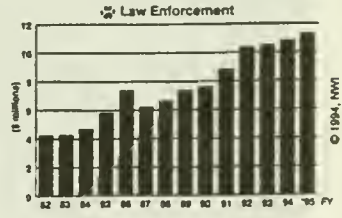
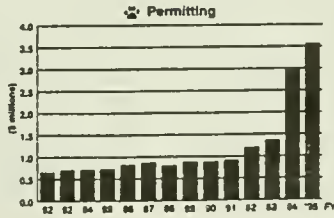
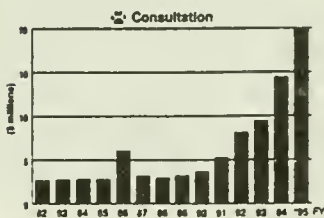
to FWS estimates (indexed to 1994 dollars), listing each of these species costs an average of \$68,400, while delisting each species costs \$39,220. That totals \$107,000 to list and delist a plant or animal—\$1.6 million for all of those species which are known to have been wrongly listed. The same amount of money could provide protection for several square miles of wetlands, salaries for 40-50 wildlife biologists for a year, retail purchase of 161,000 bluebird houses or food for 1,279 homeless individuals for one year.

The Department of Interior's Inspector General (IG) estimated in a 1990 Audit Report that between 43% and 60% of all Category 2 candidate species—those for which data are currently unavailable to support listing—would eventually require listing. The IG's report assumed that 100% of Category 1 species—those likely to be proposed for ESA protection—would be listed. Using a count of 295 Category 1 and 3,497 Category 2 candidate species (as provided by FWS on June 29, 1994) and an annual listing rate of roughly 100 species (higher than the current rate), it would require from 18 to 24 years to list this range of candidates and would cost from \$125.7 to \$166.4 million. Such a calculation does not account for the fact that species are continually added to the candidate list—a trend showing little evidence of slowing. A higher range of 50% to 100% of all category 2 candidates would require from 20 to 38 years to list and cost from \$118 to \$237 million (see *Projected Costs*, following page).

Recovery

The ultimate goal of the Endangered Species Act is to 'recover' endangered and threatened species to the point at which they can be removed from the federal list. Recovery accounts for a

significant portion of FWS's expenditures (top left). As their FY '95 budget request reflects, for every dollar FWS plans to spend on recovery, it will spend just under a dollar on listing, consultation, permitting, and law enforcement. In a 1985 study, FWS estimated that it would require a "high range" of \$2 million over 10 years to recover a single species. Two different projections of potential recovery costs for currently listed and candidate species (following page) use this "high range" of time and costs necessary for recovery (adjusted to 1994 dollars). Available empirical evidence, however, shows that this estimate is far lower than the recovery efforts for many species. Dozens of yet unrecovered species have had greater expenditures and have been listed longer than this "high range" estimate. In fact, regardless of the amount spent, FWS's endangered species management actions have yet to benefit a species such that it can be removed from the federal list as recovered.



Cost Projections

	A	B
Listed Species	627 (70% of 895)	806 (90% of 895)
Candidates Proposed	161	161
Category 1 Candidates	292	292
Category 2 Candidates	1,500 (43%) - 2,093 (60%)	1,744 (50%) - 3,488 (100%)
Total Number	<u>2,580 - 3,173</u>	<u>3,003 - 4,747</u>
Recovery (\$2.76 million/species*)	\$7.12 - \$8.76 billion	\$8.3 - \$13.1 billion
Listing (\$68,400/species**)	\$133.6 - \$174.1 million	\$150.3 - \$269.6 million
Delisting (\$39,220/species***)	\$101.2 - \$124.4 million	\$117.8 - \$186.2 million
Total Cost (List, Recover, Delist)	\$7.36B - \$9.1 billion	\$8.56B - \$13.56 billion

Note: Category 1 and 2 and proposed candidate species represented reflect the most accurate figures available as of August 11, 1994. *Based upon FWS "high range" estimates as reported by the Interior Department's Inspector General (IG). \$2 million (1985 dollars) x 1.38 Consumer Price Index multiplier = \$2.76 million (1994 dollars). ** Figures based upon FWS estimates reported by the Inspector General and adjusted to 1994 dollars. Not applied to already listed species. *** Figures based upon FWS Budget Justifications for FY '93 and adjusted to 1994 dollars.

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In these projections NWI has depended on the methodology and the Interior Department's Inspector General's estimates. However, the methodology for marking differences between the two estimates is not necessarily consistent. The methodology used in this report is based on the methodology used in the Inspector General's report. The methodology used in this report is based on the methodology used in the Inspector General's report.

\$\$\$ OTHER COSTS \$\$\$

Federal spending reports and recovery plan estimates do not measure the true cost of ESA or its effects on the economy. Remaining costs of endangered species regulations, although difficult to assess, undoubtedly far outweigh government expenditures for endangered species recovery programs. These costs include things such as increased costs of providing services at all levels of government; loss of tax revenue from reduced or terminated business activity or from personal property devalued by conflict; costs of public assistance for people who have lost jobs as a result of conflict; and, most significantly, costs borne directly by the private sector in the form of reduced or terminated business, lost jobs and devalued property. No comprehensive economic analysis of these costs has been undertaken, but some examples follow of the types of costs imposed on individuals and businesses.

The effects of listing certain species have been examined. Professor William McKillop of the University of California, Berkeley, performed an analysis of Option 9—President Clinton's plan to save the northern spotted owl. He found that "Aggregate national losses due to decreases in regional income and losses to consumers from higher wood product prices will amount to \$4.6 billion per year in the initial years of implementation of option 9."

A habitat preserve designed to protect the California Gnatcatcher and other species in just part of San Diego County, California is estimated to cost \$3.46 billion with households paying \$165 per year and to result in a reduction of 28,600 potential jobs and 43,000 forgone housing units.

Costs of protecting endangered species affect our entire economy; however, the burden falls heaviest on a few individuals. For landowners whose property gets caught up in endangered species regulations, the effects can be devastating. For example, a bank was forced to foreclose on property owned by Howard Burris of Austin, Texas when the federal government ordered a halt to his efforts to develop his land. According to Burris, "In just 3 years, 15 years of work and 50 years of family ownership are down the drain."

It cost another landowner \$60,000 to develop a habitat conservation plan for the red hills salamander. The plan permanently locks up 4,500 acres of timberland—a recurring loss of \$5 million worth of timber. This HCP is touted as proof that compliance with the act need not impose great public burden. In this case, the landowner was a large company, International Paper, which will not be put out of business by the plan. But costs like these cannot be borne by smaller businesses, and there is a limit to how many such 'success stories' even the biggest firms can afford.

The number of conflicts between human activities and regulated species provides one indicator of potential costs imposed on the private sector by the Endangered Species Act. During a review of over 300 recovery plans covering 388 species (see *Recovery Plans*), NWI kept track of conflicts when they appeared in the plans. The chart at right gives some indication of the likelihood that a particular activity will come into conflict with one or more of the endangered or threatened species covered by these recovery plans. Words that appear in the chart (including derivatives and related words/phrases) formed the basis of the search for conflicts. Next to these words is the number of recovery plans in which each word occurred one or more times. For example, 'agriculture' is found in 153 recovery plans. Therefore, it is likely that more than a third of the 388 species covered in this review are already considered to be in conflict with or threatened by some agricultural activity. In addition to the listed activities, at least 236 plans call for implementation or law enforcement actions, indicating that the author(s) of the plans perceived some human activity is in conflict with or poses a threat to an endangered species.

Notes for chart at right:

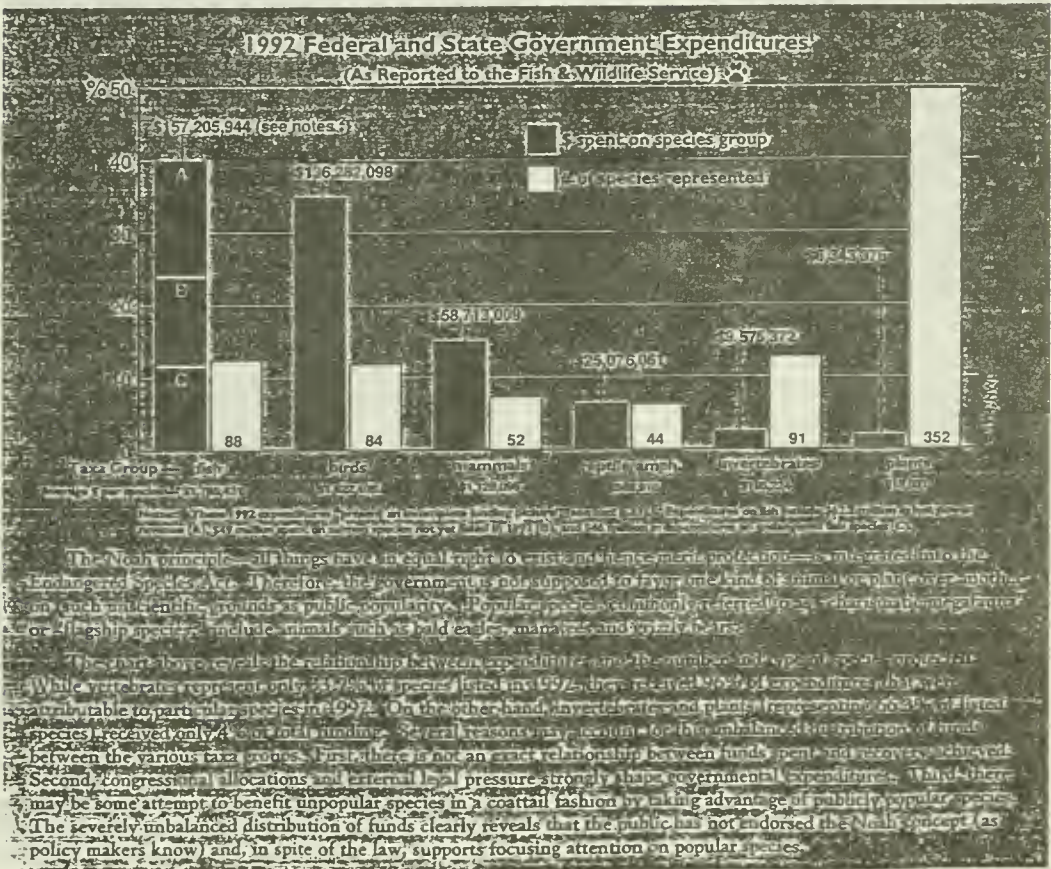
Many occurrences of hunting/fishing related words and phrases were in relation to the introduction of 'exotic' or non-indigenous game fish—cited as competitors, causes of hybridization, or predators of another federally threatened or endangered species.

Outdoor recreation can include other activities, such as hunting/fishing or use of off-road vehicles.

Occurrences of outdoor recreation related words and phrases were in plans for species such as the Chusqueo Ovale Amber Snail and Noonday Snail, which are considered affected or potentially affected by park visitors or canoeists.

Conflicting Activities and the Number of Recovery Plans in which each is Mentioned

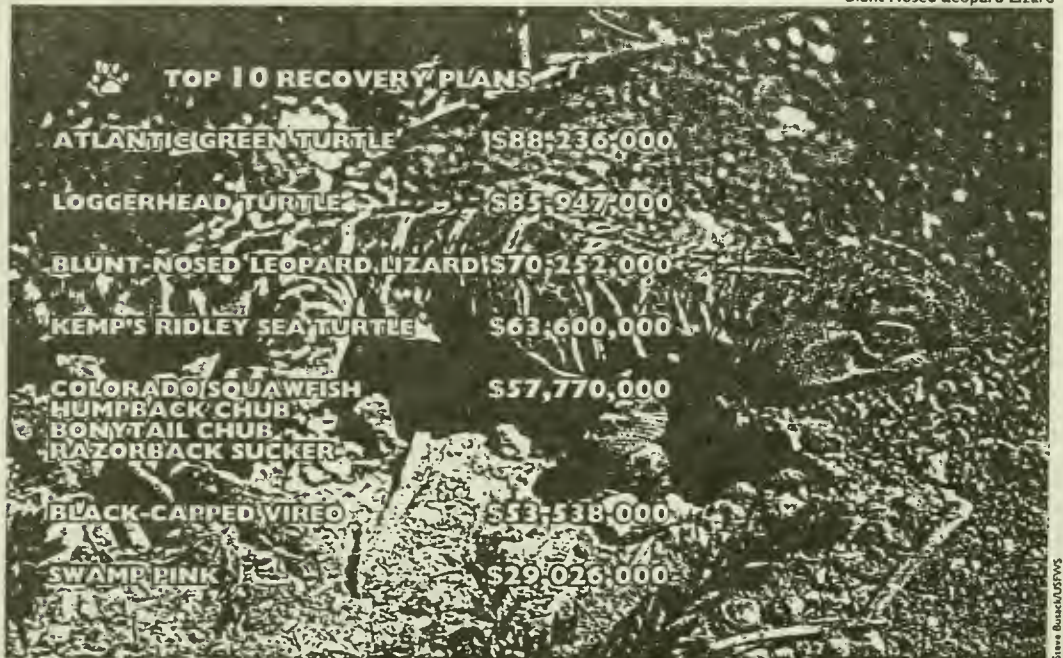
Agriculture	153
Cattle	100
Collecting	117
Development	245
Forestry	113
Grazing	128
Habitat Manipulation	199
Hunting/Fishing ¹	83
Irrigation	43
Mining	121
Off Road Vehicles	63
Oil/Natural Gas Development	64
Outdoor Recreation ²	146
Pesticides (insecticide, herbicide & rodenticide)	150
Water Development (dams etc.)	147
Wetlands Degradation (draining, ditching, etc.)	21



RECOVERY PLANS

The Endangered Species Act was designed to conserve plants or animals endangered with extinction. Under the act conservation means recovering a plant or animal to the point where it can be taken off the list. One of the first steps taken to bring this about is the creation of a recovery plan. FWS or NMES typically produce plans incorporating the steps necessary to improve the status of a listed plant or animal. NWI conducted a comprehensive study of 306 recovery plans written between passage of the act and 1993. These plans include 8 amphibians, 72 birds, 57 fish, 58 invertebrates, 35 mammals, 135 plants and 23 reptiles covering 388 of the 895 currently listed endangered and threatened species. Based on the 306 plans reviewed: highest plan cost = \$88,236,000, median plan cost = \$367,000, average plan cost = \$3,059,391, and the total identifiable costs of all plans = \$884,164,000. The complete report on recovery plans, *Going Broke*, is available from NWI (p. 27).

Blunt Nosed Leopard Lizard



Steve Banach/USFWS

These figures do not reflect the actual cost of the Endangered Species Act. Many costs are not revealed in the recovery plan cost estimates. Additional costs include: actions called for in recovery plans for which costs are not estimated, costs of recovery for 507 species already listed but not covered by one of the plans reviewed in this study, costs of recovery and other associated costs as mentioned above for some fraction of the current 3,831 official candidate and proposed species which will be added to the Endangered Species List, costs of reduced or

terminated business activities and jobs lost as a result of conflict. Additionally, many plans may not accurately reflect actual government expenditures (see *Costs of ESA*). For example, while the total identifiable costs in the recovery plan for Shaws swallowtail butterfly are \$128,000, in one 3 year period federal and state expenditures on the species exceeded that amount by 1,107 percent. Similarly, federal and state expenditures on the Florida scrub jay exceeded its determined recovery plan costs in a three year period by 33,340 percent.

Review of existing recovery plans reveals several findings, including:

- Plans often reveal that there is little information about plants or animals considered endangered or threatened.

Cave Crayfish: "Sufficient data to estimate population size or trends is lacking."

Louisiana Pearlshell Mussel: "...practically no information on the life history, population levels, and habitat requirements for the species..."

Noonday Snail: "Essentially nothing is known about the snail's biology," and "no estimates of population size have been made since the exact range has never been determined."

- Plans often call for additional laws and regulations.

Swamp Pink: "In addition, the enforcement capability of existing regulations will be strengthened where possible, and non-traditional avenues for endangered species protection... (through wetlands legislation, soil erosion control requirements, etc.) will be investigated."

- Plans conflict with the definition of 'conservation' in the act—to bring a species population to the point at which it can be removed from the list—often stating that recovery is unlikely or impossible.

Florida Scrub Jay: "Because of the extreme usefulness of the Act in this case, it is not desirable to remove the scrub jay from protection under the Endangered Species Act..." "There is no anticipated date of recovery because it may never be feasible to delist this species."

- Plans often have 'delisting' or 'downlisting' criteria that appear unattainable.

Iowa Pleistocene Snail: "With a return to glacial conditions it will be resuscitated over a major part of the upper Midwest, provided its relic tual areas are preserved and maintained..."

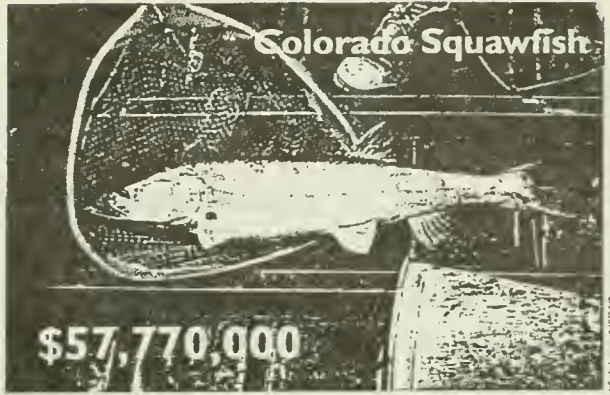


Wyman Heister, courtesy of USFWS

Mount Graham Red Squirrel: "At least 100 to 300 years will be necessary to restore Mount Graham Red Squirrel habitat."

- Plans routinely call for habitat purchase; often because the land on which a species exists is privately owned.

Blunt-Nosed Leopard Lizard: "A current target acreage figure of 80,000 acres has been established for the San Joaquin Valley floor, with additional emphasis on optional habitats containing high density blunt nosed leopard lizard... populations in identified 'priority' habitat areas.... conflicting land users will be reduced or eliminated in an effort to restore habitat to optimal condition."



JF Johnson/USFWS

ATTACHMENT C
FOR
FALMA MOYE TESTIMONY



IDAHO FISH & GAME

Phil Bat/Governor
Jerry M. Conley/Director**COMMISSION OPPOSES ENVIRONMENTAL LAWSUIT ON FORESTS**

Since the listing of Idaho salmon was first proposed, the position of Idaho Department of Fish and Game, from field biologist to the Fish and Game Commission, has been that Idaho production habitat is not a major limiting factor for Idaho salmon.

If salmon were limited by logging, grazing, and mining, what we would see is few in impacted habitat and far more in the wilderness. The fact that wild salmon in pristine habitat are declining at the same rate as those along the road at Stanley is proof that spawning and rearing habitat is not limiting recovery.

Clean water and healthy habitat are important to Idaho fish and Idaho citizens. But locking up Idaho's forests will not save Idaho salmon. Habitat protection is a long-term issue.

As we have said for the last five years, the only way to recover Idaho salmon is to fix the migration corridor between Lewiston and Portland. We are in court trying to make that happen.

The Commission wishes the environmentalists who filed this disruptive lawsuit would join our staff in solving the mainstem problems rather than further polarizing this complex issue with legal actions.

THE CHALLIS MILKVETCH STORY:

SUMMARY:

1. Possible curtailment of the Ingram project was based on NO SCIENCE.
2. Ingrams were not allowed to submit scientific data from an outside qualified botanist.
3. BLM felt no immediacy to complete their work for lack of funding, time, and a horse!
4. This entire family business was jeopardized because a federal agency could not get its job done in a timely manner.

In the summer of 1988, Will and Vangie Ingram, ranchers in Challis, Idaho were in the process of constructing a power plant cility on their property. The Ingrams had completed 75% of the construction of the facility and the only remaining work was to construct a canal.

In order to complete this project, the Ingrams had taken out an \$800,000 loan. Of that money 75% had been spent and the other 25% committed. For the Ingrams immediate completion of this project was imperative to avoid having to make monthly mortgage payments \$800,000 loan with no income to support the payments.

Will Ingram had planned to complete the canal in an several week interval between haying sessions on his ranch. The Ingrams had already received permits for the Easement from the Bureau of Land Management office in Salmon, Idaho. They assumed that the final stage of the project was a go.

Will and Vangie Ingram were attending a stewardship meeting with ranchers, federal and state agencies, and environmental representatives. During the course of the social hour, they were casually told that their project might be put on hold, because of a possible threatened species, the Challis milkvetch. The BLM representative told the Ingrams that there was not sufficient data about the species; therefore, their activities might be curtailed until the science could be completed. The Ingrams pointed out that they had grandfather rights and had a BLM easement.

This decision by BLM threatened the a major financial investment and potentially the Ingram's entire business. BLM did not have the courtesy to notify the Ingrams formally or as soon as it was known that there might be a problem.

Vangie Ingram, a grandmother, took charge to find out what could be done to resolve the problem as her husband was ready to start construction. BLM personnel told her that nothing would likely happen that summer because their botanist did not have "sufficient funding, time, or a horse." They informed the Ingrams that it would be at least one year. This left the Ingrams facing large mortgage payments on the loan and no potential for income

for another year. Their entire family business was jeopardized.

The Ingrams proposed to BLM that they would hire a botanist with equal or better qualifications than the BLM botanist. BLM would not allow any outside scientific input. They were adamant that only BLM personnel could complete necessary survey.

Vangie Ingram, determined to protect her family, began to deal with the problem. She told BLM to send her a botanist for a day and she would find 10,000 plants. Two botanists came to the area and spent a day with her in the field. During this time they found a great quantity of the supposedly threatened plant.

Vangie asked for a go-ahead, as it had become obvious that there was a healthy population of the plant in their project area. She was then told that a more extensive survey had to be done of the surrounding area and that furthermore the two qualified botanists did not have the authority to give a go-ahead and that they must forward the data to another office. When asked who they would forward the information to, BLM personnel refused to tell her. After much discussion, BLM finally gave Vangie the name of a botanist in Boise, Idaho who would make the final decision.

Upon learning this additional requirement Vangie immediately called the botanist in Boise at 4:50 on a Friday. She learned that the gentleman was preparing to leave on a 2-week vacation. However, he was very willing to take the time and discuss the situation. When Vangie explained that Challis Milkvetch was the species in question, this botanist immediately stated that he knew the species and had no problem with the proposed action. He then called BLM and confirmed the information with the local District BLM botanist.

In the end the Ingrams were able to complete their project without extensive loss of time or money.

Mr. Rolland Schmitten
Assistant Administrator for Fisheries
National Marine Fisheries Service
2725 Montlake Blvd., East
Seattle, Washington.
May 24, 1995

Re: Public comment on the proposed salmon recovery plan.

Dear Mr. Schmitten:

Thank you for the opportunity to comment on your salmon recovery plan, dated March 1995. By way of introduction, I am a fishery biologist with 35 years of field experience, primary with anadromous fish stocks in the Columbia River drainage. I was employed by the Idaho Department of Fish and Game from 1958 until my resignation in 1978. I conducted fishery research and managed both resident and anadromous fish stocks in central Idaho from the Snake River to the Middle Fork of the Salmon River. I hold a Doctorate in Fishery Science from the University of Idaho. I attended the hearing in Boise, Idaho on May 17 and I testified at the hearing in Stanley on May 18, 1995. As promised, enclosed are some figures I presented at the Stanley hearing.

During my career in fisheries, I have witnessed the decline of Snake River anadromous fish from an over-escapement of summer chinook salmon in 1960 in the upper South Fork of the Salmon River to zero redds in 1994 in several redd count trend streams in the Salmon River drainage. There is no correlation between resource use and the extent of the decline in these streams. Several wilderness streams had no salmon-redds in 1994.

For anadromous fish stocks in these redd count trend areas in Idaho, the only variable has changed since 1960 is the number of mainstem hydroelectric dams on the lower Snake and lower Columbia rivers. A simple correlation between the total number of salmon redds in the Salmon River drainage vs. the number of lower river hydroelectric dams yields an r^2 of 0.83. Therefore, hydroelectric development explains 83% of the decline in chinook salmon escapements in the Salmon River drainage.

Certainly there are some areas in the spawning and nursery stream segments where habitat improvements can be made. In my opinion, nothing we can do to improve habitat in Idaho would increase the production of juvenile anadromous fish more than a reduction in the predation levels of the common merganser. As I stated at the hearing in Stanley, predation by the common merganser can significantly reduce the production of juvenile salmonids in these nursery streams. On April 17, 1989, I counted over 50 adult mergansers in the upper Salmon River from Lower Stanley to the Sawtooth Fish Hatchery. Apparently, they were releasing salmon smolts from the hatchery and the mergansers had

keyed on them. These birds have a high metabolic rate with food requirements of 40% of body weight/day for adults and 80% of body weight for juveniles up to 40 days of age. Adult mergansers average over 2 lbs in weight so those 50+ birds were consuming over 50 lbs of smolts/day. As shown in the enclosed figures, mergansers killed 90% of the brook trout and 50% of the juvenile chinook salmon in one of my disertational study transects in upper Johnson Creek in 1987. Historically, when our anadromous fish production levels were higher, there were enough fish for all predators, including man.

I am very disappointed in NMFS repeated denial that any one factor is responsible for the decline of anadromous fish stocks in the Snake River drainage. Obviously, any one factor accounting for over 51% of the loss is the single most important factor. In my professional opinion, the Federal Columbia River Power System (FCRPS) dams are responsible for 90+% of the decline in Idaho salmon and steelhead escapements. In an examination of the freshwater and ocean habitat, overfishing, predators, disease, etc., it is easy to list at least 10 additional factors contributing to the decline. However, each of these factors is insignificant as compared to the losses within the FCRPS.

Therefore, the obvious solution is to make the FCRPS safe for both juvenile and adult anadromous fish. The programs of the past, such as screening of the turbines, collection and transportation of smolts etc., are badly flawed and proven failures. Because we are in a crisis mode and no other alternatives are viable, it is time to draw down the reservoirs to minimum operating pool levels during the spring smolt migration. We must also take meaningful steps to reduce adult salmonid mortalities during their upstream migration. We see juvenile mortality estimates as high as 15% and adult mortality as high as 5% at each dam. The loss of 5% of the adults has a greater adverse impact on the anadromous fish populations than the loss of 15% of the juveniles.

Any business in the private sector that had such dismal returns on such massive investments in labor and capital would have gone bankrupt 20 years ago. Lets us admit failure of past programs and quickly pursue different courses of action before salmon are no longer present in the Salmon River drainage.

At the hearing in Boise, a high school student from McCall, Idaho testified that he had caught steelhead trout in Idaho but not salmon because the salmon season had never been open during his lifetime. He had watched salmon spawn in several drainages in the Salmon River and hoped to someday be able to fish for them. He made an impassioned plea for the powers that be to preserve our salmon and steelhead runs. He stated that he did not want to be the first generation of Idahoans without salmon. I do not want to be the generation of fishery experts in positions of power when the salmon disappeared during our watch.

Sincerely,


Thomas L. Welsh, Ph.D.

Rock Creek Brook Trout Counts-1987

Primary Study Sites

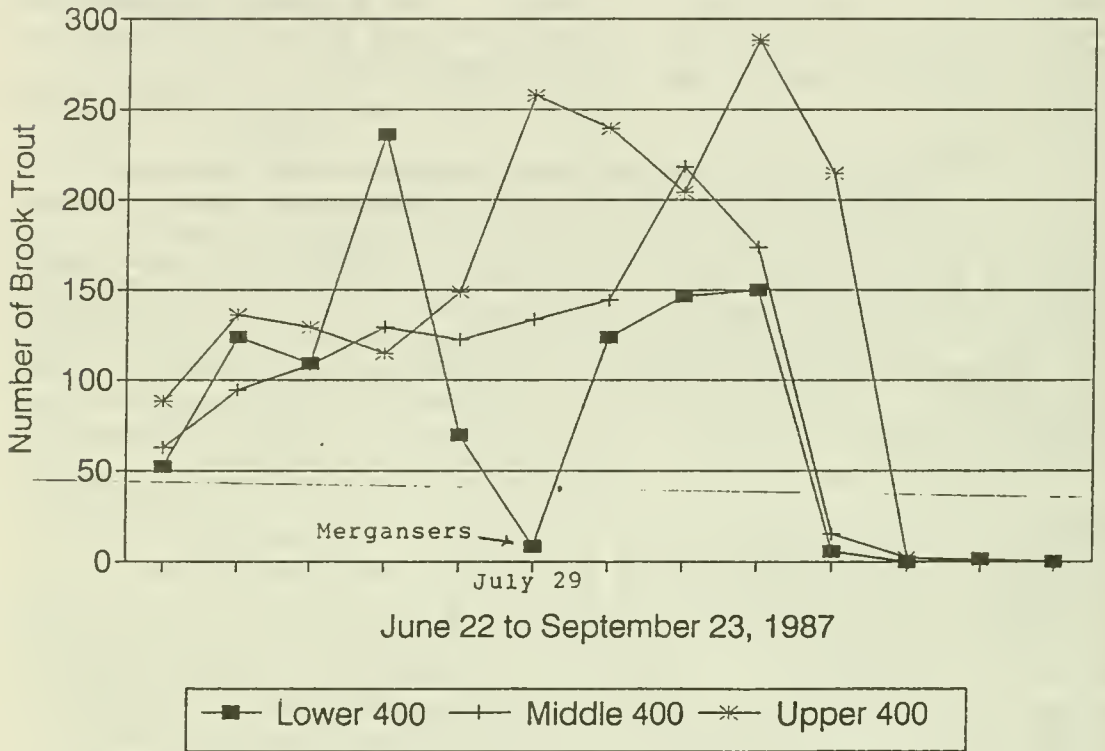


Figure 1. Effects of merganser predation on brook trout observed in weekly snorkel counts in 400 m study sites, upper Johnson Creek drainage. Unpublished dissertational data of Thomas L. Welsh.

Rock Creek Salmon Counts-1987

Primary Study Sites

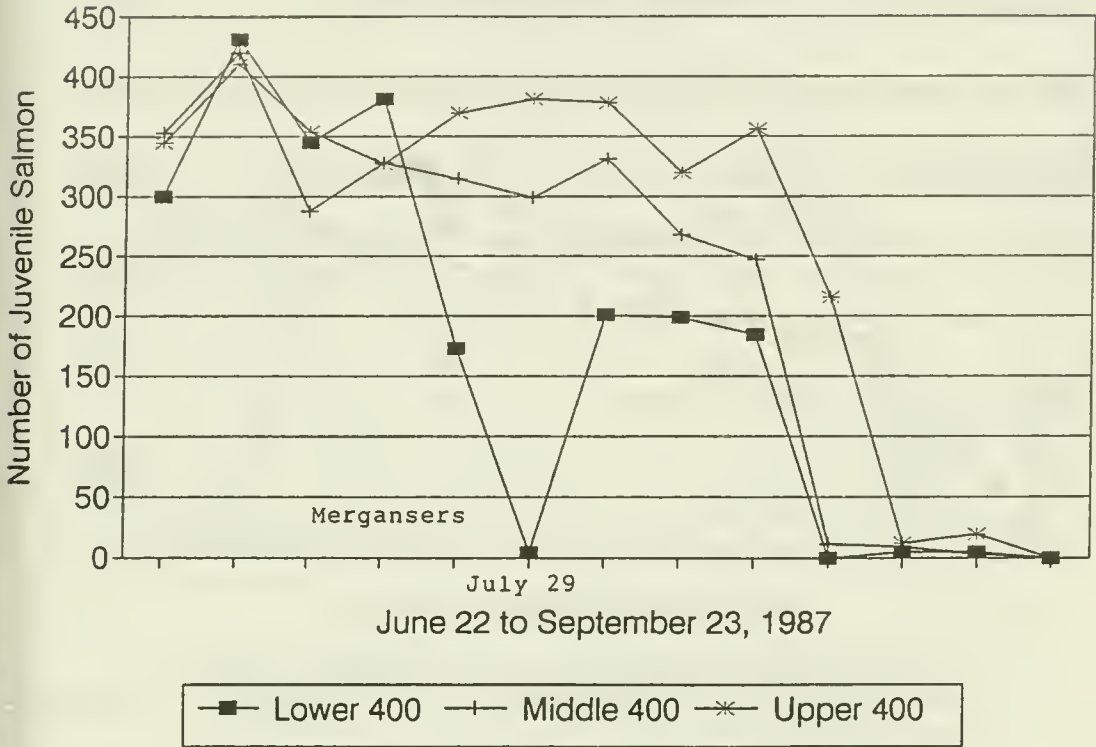


Figure 2. Effects of merganser predation on juvenile chinook salmon observed in weekly snorkel counts in 400 m study sites, upper Jounson Creek drainage. Unpublished dissertational data of Thomas L. Welsh.

Sand Creek Brook Trout Counts-1987

Primary Study Sites

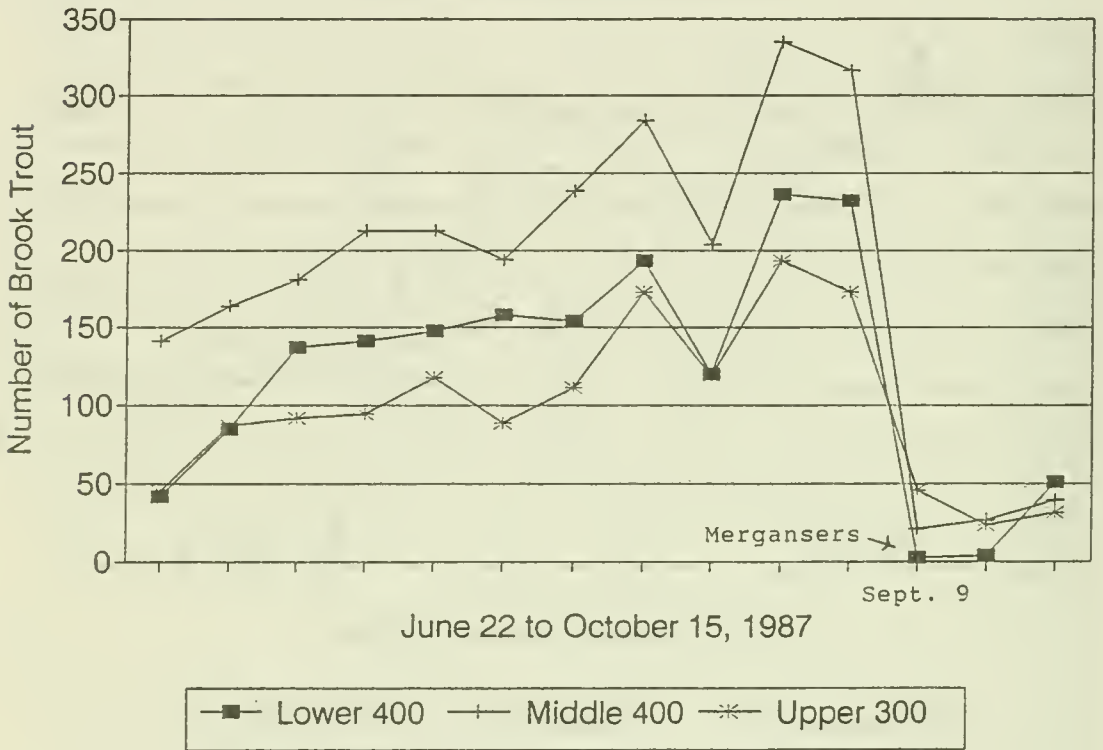


Figure 3. Effects of merganser predation on brook trout observed in weekly snorkel counts in 400 m study sites in upper Johnson Creek drainage. Unpublished dissertational data of Thomas L. Welsh.

Sand Creek Salmon Counts-1987

Primary Study Sites

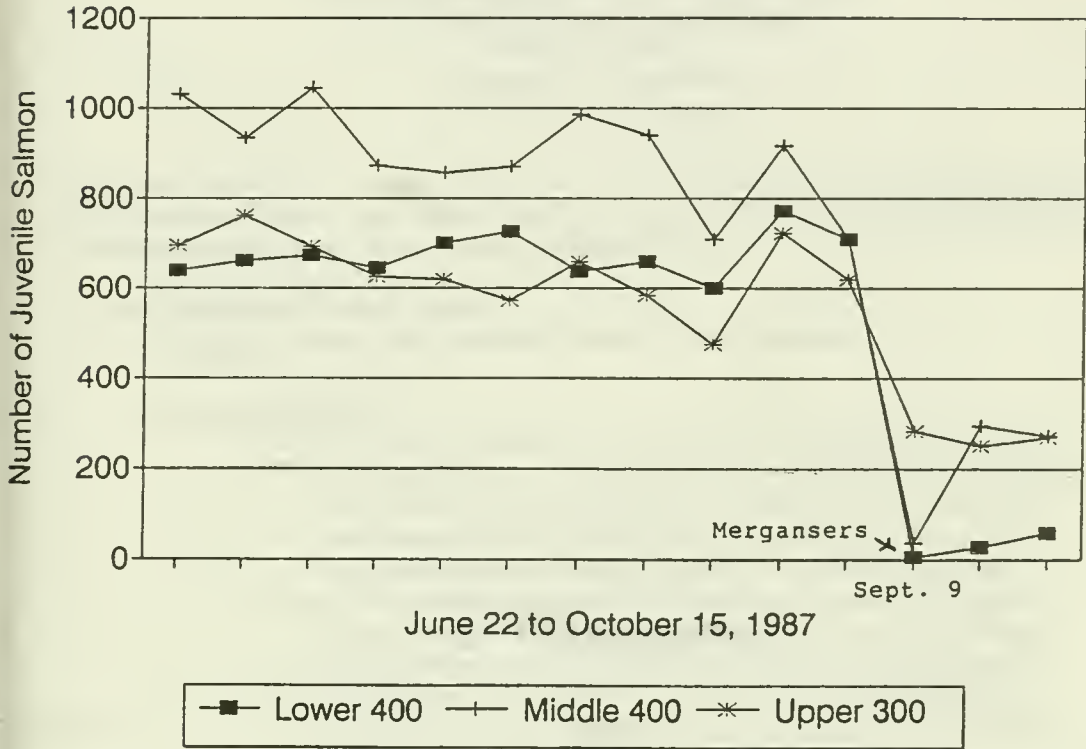


Figure 4. Effects of merganser predation on juvenile chinook salmon observed in weekly snorkel counts in 400 m study sites in upper Johnson Creek drainage. Unpublished dissertational data of Thomas L. Welsh.

ATTACHMENT D
FOR
FALMA MOYE TESTIMONY

Points of Concern and Suggestions For Change:
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**Endangered Species Act Reform
Ad Hoc Citizen Committee**

-Box 1145
Challis, Id 83226
fax 208-879-4280

We have identified 4 major problem areas which need to be addressed in the Endangered Species Act. Under each of those main areas we have suggested changes which would make this act more effective.

COST/BENEFIT ANALYSIS:

Concern: Under the current act, there is none required

Recommendations:

- * Limits should be placed on cost and time required to recover a species. When a recovery plan is developed for a species, it should identify at which point, based on cost, time, and population recovery data, the effort should sunset and a species delisted (letting natural processes take over.)
- * Cost/ benefit analysis based on local and regional economic impact needs to be completed before a species is listed. Actual listing may be prohibited based on that analysis.
- * The probability of success for recovery should be calculated before a species is listed. If that probability is low, because of certain factors, listing may be prohibited.
- * There needs to be adequate compensation for loss of private property or livelihood due to recovery efforts.

STATE AND LOCAL INVOLVEMENT

Concern: State and local governments and private individuals have very little control of their destiny during the listing process and after a species has been listed.

Recommendations:

- * Feasibility studies would be done by a congressionally appointed ad hoc committee, comprising scientists, economists, sociologists, and local representatives from the affected area.
- * State and local agencies should take full responsibility for recovery within their jurisdiction.
- * Funding for state, local, and private programs could come from the following:

- designate needed funding from Federal budget to lead agency
- return public land use fees to the state (or county).
- provide tax incentives
- partnership programs with federal agencies.
- grant or matching programs from the federal government
- * People in affected areas must have a say (role) in listing process and recovery process.

BEST AVAILABLE SCIENCE

Concern: Use of best available science and peer review is not currently required for listing of a species of concern. (Current) lead agency science may not accurately state recovery or failure status to permit delisting. Currently the lead agency has a vested interest in continued listings and management of recovery programs—regardless of success.

Recommendations:

- * The agency responsible for data collection to determine if a species will be listed **should not be the lead agency in recovery.** FWS and NMFS should act as data collection agencies. The recovery process should be put into the hands of state or local governments or federal land management agencies, who are closest to the situation and best empowered to manage. This would eliminate the opportunities for agencies to maintain a listing in order to continue their budget appropriations. It would also eliminate duplication of efforts.
- * There should be recognition that extinction is a natural biological process which has been ongoing throughout geologic time.
- * Species which are going extinct because of natural factors should not be listed.
- * Federal agency scientific data must have peer review (outside of the Federal government) before a species can be listed and during status review of the recovery process.
- * The consultation process must be more clearly defined. Biological opinions and Biological Assessments should be subject to public comment and challenge, in order to assure that quality science is maintained and personal agendas of authors do not enter into the process
- * Listing must be limited to the biological definition of species at risk of world-wide extinction. Concerns about genetic strains, populations and subspecies will not be funded under this act.

- * Private individuals or non-profit groups may receive tax incentives for efforts related to recovery of species.
- * If contested, DNA testing should be required to verify a distinct species.

MANAGEMENT /ADMINISTRATION

Concern: The hierarchy of agencies receiving funding for any species is too complex. As a result efforts and expenditures are duplicated. Agencies involved with recovery may use the process to assure continuation of their budgets.

Recommendations:

- * Lead agencies must be accountable for expenditures and recovery success measured.
- * Provide incentive for speedy recovery of species, rather than the current system which encourages no recovery to insure continued funding.
- * Designate 1 lead agency, not necessarily Federal.
- * Separate the "scientific research agency" from the "recovery agency" to provide a check and balance.
- * Employees of lead agency should be protected against being held personally liable if a management decision leads to a taking of the species.
- * The petitioner to list a species should be encouraged to take some role in recovery, either financial or in-kind service.
- * Encourage success of the program by:
 - allocating yearly/total dollars to be spent per species recovery plan
 - limiting the number of species listed at any one time.
 - limiting time allotted to recovery.
 - establishing a delisting policy and procedure
- * Mandatory delisting would be required after time and money limits have been expended, particularly if the recovery rate for the species has shown no improvement or continual decline.

OTHER

- * Encourage volunteer or partnership efforts for recovery without listing.
- * Once a species of concern has been identified, provide a finder's fee incentive to individuals for identifying additional populations of species. The purpose of this would be to accurately inventory populations and avoid unnecessary listings.

* In keeping with concerns about unfunded federal mandates and the national deficit, there must be cost constraints imposed on this process. Recovery regardless of costs is not acceptable.

CLEARING THE CURRENT LIST

There are many species which have been listed for years with no evidence of success. Therefore, the SEA revision should include a mandate which requires that all currently listed species be evaluated on a simple economic / success model. All species which do not meet the established criteria will be delisted. The following is our model

Model to evaluate the current Endangered Species List:

The 1995 revisions of the Endangered Species Act should include a requirement that the current list of endangered species be reassessed by a congressionally appointed team consisting of scientists, economists, sociologists, and —. This proposed model assumes no biological significance or aesthetic appeal. It is presented purely from a best management economic/ success probability perspective. We call it the Edsel Model, because regardless of emotional attachment, you must be realistic economic reasons.

A formula, based on the numbers of years a species has been listed and dollar amount spent on that species, would determine an economic index for the species. That economic index would be factored by the population status or recovery success, as presented by lead agencies.

$$\text{total dollars spent/years listed} \times \text{recovery success \%} = \text{ranking}$$

As a result of this formula we expect to generate a list ranking most to least successful based on the ranking. The following actions would be taken.

UPPER ONE THIRD (or within a defined range)	Species would remain on the Endangered Species List, but would be required to undergo another assessment in X years
MIDDLE ONE THIRD (or within a defined range)	Species would be dropped unless a non-profit group or private individual showed interest in managing the recovery plan. The US government would provide them some funding or work in partnership.
LOWER ONE THIRD a defined range)	Species would be dropped from the (or within Endangered Species List. No additional Federal money would go to recovery. Individuals or non-profit groups interested in maintaining the program may receive tax incentives <u>only</u> for their efforts

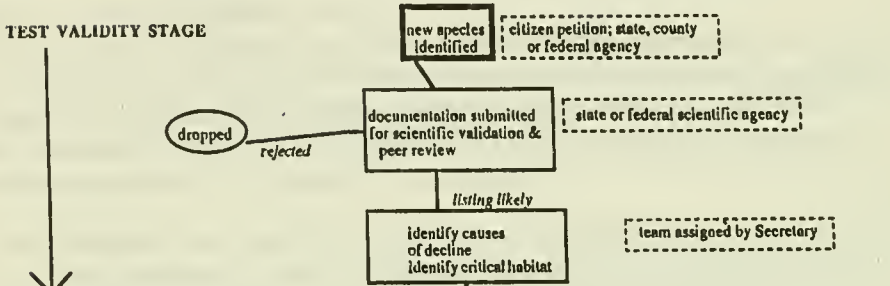
ATTACHMENT E
FOR
FALMA MOYE TESTIMONY

RECOMMENDED PROCEDURES FOR ENDANGERED SPECIES LISTING AND RECOVERY

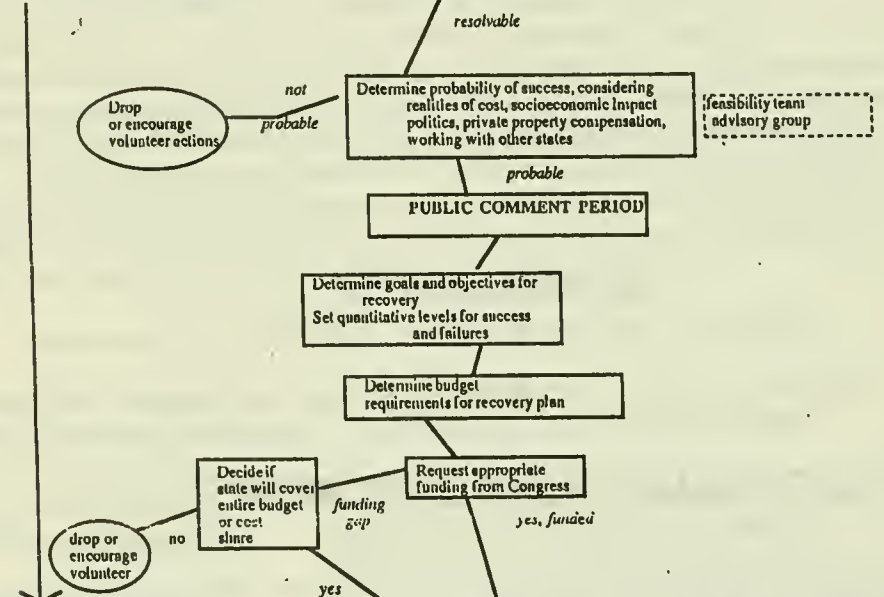
Procedural Flow sheet

responsible agency or committee identified

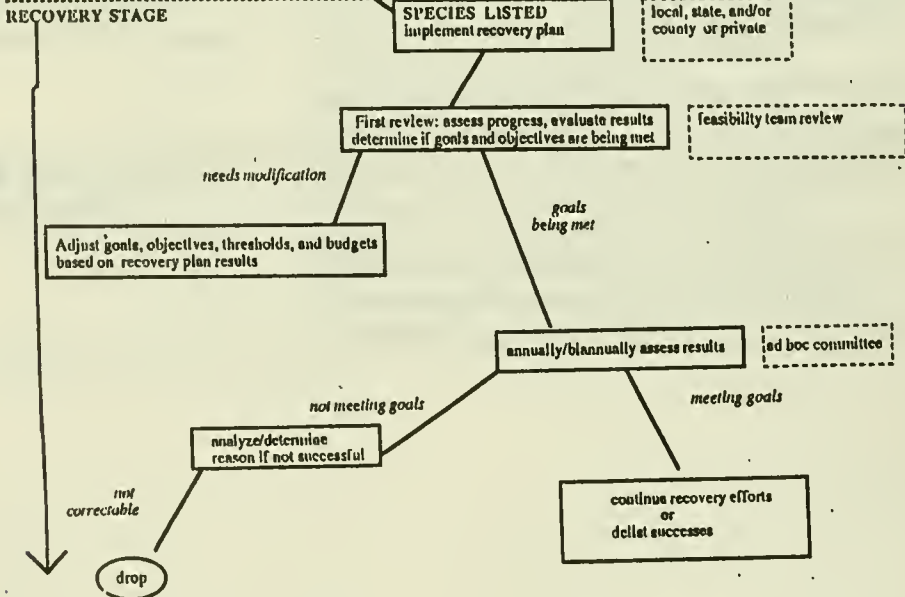
TEST VALIDITY STAGE



TEST FEASIBILITY STAGE



RECOVERY STAGE



March 18, 1995

By:
 Jim Brady
 Bert Doughty
 Rod Evans
 Jerry Hawkins
 Carolyn Hubble
 Ted Macy
 Falma Moyo
 Elsie Peck

Citizen Workgroup for Revision Of the Endangered Species Act
 Box 1145
 Challis, Id 83226
 phone contact: Falma Moyo @ 208-838-2473
 or Carolyn Hubble @ 208-838-2200
 Fax contact: 208-879-5836



Why We Must Rewrite the Endangered Species Act

By Conrad Burns

The most restrictive land-use law on the books is the Endangered Species Act (ESA), a law that has been misused and twisted from its original intent. As Congress looks to reauthorize this act, we must bring it a little common sense. People must be put back into the equation.

Currently, there are about 60 listed or candidate species in Montana, and there always seems to be a new species that some group wants listed or placed on the candidate list. The most recent effort is by a group in Colorado that wants the black-tailed prairie dog placed on the candidate list. This petition is related to the black footed ferret. The prairie dog is the food supply for the ferret, so some believe that in order to protect the ferret, we must now also protect the prairie dog.

This breakdown in logic is an example of the need for change. The question is whether we should work within the framework of the existing law or start from scratch with a new conservation law to recover endangered species.

I believe it will be difficult to find a solution within the framework of the existing ESA. We still have to deal with the regulations and rules under the current act. What is the fate of these regulations and rules? How will they be interrupted if we amend the existing act? I believe we should consider starting from a clean slate. This would allow us to craft a bill that truly protects and recovers species, won't cost millions of

dollars per species, and will protect private property owners' rights.

What our communities are lacking is the economic stability and predictability they deserve. The current law has put many communities in Montana and throughout our nation on pins and needles. Jobs have been lost because of the ESA, and the bottom line is that communities are hurting. If we start with new concepts, I believe we can have a basis for conservation plans that will both bring economic stability to our communities and provide the framework for recovering endangered species.

This new Act should be based on one thing: recognizing endangered species and restoring

on recovery, we would focus on the least costly alternative and we would assess the impacts of decisions made under the act for state and local economics. In addition, this would force priorities to be set and would generate recovery plans that are reasonable and obtainable.

The best decisions are those made at the local level, and I believe we need increased private participation in our conservation efforts. The fact is, local residents can best support any conservation plan. They work and live in the areas affected, and they have a stake in what happens in their own backyards. The Act should encourage cooperative management agreements for non-federal efforts.

The goal of the ESA is good. However, since it became law, it has been twisted and misused for other purposes.

the populations to healthy levels. Emphasis must be placed on recovery. The current law emphasizes the listing of species instead of protecting and recovering species. In order to do this, the new act should contain the following principles.

A new conservation bill should contain a better science process. Peer review procedures need to be added to improve the overall data collected so that the right decisions are made. We must have these decisions made outside the political world, and carried out by objective individuals with a background in science.

If we concentrate our efforts

However, we cannot rely solely on these agreements. Some landowners and communities will not have the resources to pay for them. It is in these instances that the federal government will have to play a larger role, but local involvement is still needed to carry out the objectives of recovering species.

Any proposal should require local public hearings in the affected counties to give communities the opportunity to express their support, comments and concerns. Also, the conservation and recovery process must recognize state and local laws. The federal agencies



Senator Conrad Burns.

should not be allowed to run roughshod over state management agencies, state laws or agreements.

Without a doubt, compensation must be given to individuals who lose the use of their private property under a federal government conservation plan. Our constitution and property rights need protection on every front. Anything short of that is selling our Constitutional rights down the river.

The goal of the ESA is good. However, since it became law, it has been twisted and misused for other purposes. Starting from a new point and crafting an act that truly reflects what we want to do — conserve and recover species — is critical. We can't let the existing law and regulations drive the concept of multiple use off our lands.

Montana's largest industry is agriculture. If you asked Montana's farmers and ranchers what law they want Congress to fix, they will say the Endangered Species Act. The wood products industry represents almost half of western Montana's economy. If you ask the folks who make a living in the woods what act is currently harming their ability to make a living for their families, they'll tell you about grizzly bears and road closures — once again coming back to the Endangered Species Act.

Montana's four largest industries — agriculture, timber, mining, and oil and gas — rely on the use of land. These industries supply the jobs and the tax base for Montana. Changing the laws governing conservation and recovery of endangered species is crucial for jobs for Montanans, and it is important for sound land-management activities.

Conrad Burns is a Republican Senator from Montana. He serves on the Senate Energy and Natural Resources, Appropriations, Commerce, Science, Transportation, and Small Business Committees.



Logging road closed to protect wildlife. Grimbake Mountain, Yaak watershed.

FALMA J. MOYE, Ph.D.
BOX 1145
CHALLIS, IDAHO 83226
208-838-2473 (phone)
208-879-5836 (fax)

Dear Senator Chafee,

Thank you for taking time from your busy schedule to come to Lewiston, Idaho for the Endangered Species Act hearing. You obviously share the concerns of Idahoans that the act be revised to be more successful in species recovery, yet not adversely impact human lives.

During the course of my panel discussion, you asked what science should be used in resolving the salmon recovery issue. Time did not permit me to answer that question in the depth that I wanted, so I am taking the opportunity now. There comes a point in the recovery plan where best science may indicate that realistic decisions need to be made. The salmon have fallen far below a critical mass necessary for recovery. Flushing, barging, and spilling have all been tested, and salmon numbers continue to decline. Best science may indicate that it is time to stop spending in excess of \$600 million per year on the Salmon recovery issue. At this time aren't we merely putting a band-aid on a gut-shot victim? Regardless of our token efforts, the victim will likely die.

The lesson of salmon recovery provides the framework for defining best available and adequate science. In revision of the Endangered Species Act, I would like to see such a definition and suggest the following:

" Best available science means adequate data collected for the listing process to provide a framework for recovery efforts which would begin immediately after listing the species. This data set would include population numbers, geographic distribution, and natural population cycles along with a thorough inventory of other natural factors which affect the species both positively and negatively. These include climate change, disease, predator cycles, and food chain. The data set collected prior to listing would ensure continuity and a link between listing and recovery. "

By ensuring adequate science prior and requiring resolution of scientific controversy before listing, we would solve several problems:

1. Species which have healthy population numbers, such as the Bruneau snail, would not be listed;
2. Species which have little chance of recovery would be identified before extraordinary amounts of time and money were spent and could be given lower priority in terms of funding and recovery efforts; and
3. Species which are declining because of natural causes or are merely in a downcycle in their population would not need to be listed. We must

remember than extinction has been occurring on this earth for 3.8 billion years and that 99.9% of all species which have lived have gone extinct. Extinction is a natural process; therefore, man should not interfere in cases where population declines are natural.

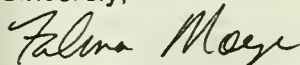
As a scientist, it concerns me that inadequate data are used for listing species. If your doctor had a hunch that you needed major invasive surgery, would you allow it? Probably not, you would expect him to have some hard data about your body functions. Similarly, listing species based on no science or very little science is irresponsible and has resulted in very expensive examples of unnecessary "recovery" of species which were never endangered. Once a species is listed, extensive data collection is necessary to develop a recovery plan. Why not reverse procedures and require data collection before listing. Species which truly warrant action and have potential for recovery are often relegated to lower status and lost, because inadequate science allows misuse of the act. Sometimes we lose sight of the need for good science because there are highly charged emotions.

Senator, I am in favor of maintaining protection of truly endangered species. However, the current act has been in effect for more than 20 years, and 80% of the species listed continue to decline. Is the act a failure? The current act, as written, does not encourage success, and because of that, yes, it is a failure.

I encourage the subcommittee and your oversight committee to strive for clear definition and procedures to ensure that we protect truly endangered species which have potential to recover.

Again, thank you for coming to Idaho and your efforts on this endeavor.

Sincerely,



Falma J. Moye, Ph.D.

cc:

Senate subcommittee on Drinking Water, Fisheries, and Wildlife
Senator Larry Craig

Attachments

FALMA J. MOYE, Ph.D.
BOX 1145
CHALLIS, IDAHO 83226
208-838-2473 (phone)
208-879-5836 (fax)

June 8, 1995

To: Senate subcommittee on Drinking Water, Fisheries, and Wildlife

Re: ESA hearing, Lewiston, Idaho

Thank you to the Senators and staffs for bringing this hearing to Lewiston, Idaho. We appreciate all of your time, energy and obvious interest in our concerns. Your selection of panelists presented a broad spectrum of issues, which illustrate the complexity of concerns about the Endangered Species Act.

Please enter the following comments into my testimony at the Endangered Species Hearing in Lewiston, Idaho on June 3, 1995. I have also attached a letter to Senator Chafee, which I would like to have entered into the record.

I would like to have the opportunity to respond to several questions which were asked of other members of my panel. In addition, I am providing an answer to Senator Kempthorne's written question which was given to me before the hearing.

A. Senator Craig Thomas asked, "Should all species be saved?"

My position is no. From a scientific perspective, the greatest flaw of the Endangered Species Act is that it does not allow for natural processes to occur, but instead puts man in the role of God, expecting him to halt and reverse nature. By mandating protection of species endangered due to man's activities and natural processes, the act is an exercise in futility.

Please keep in mind, as you read this, that I do not support intentional actions which drive species to extinction. I merely advocate that reason and logic be used.

For the Endangered Species Act to work, we must accept some facts about life on earth:

1. Extinction has been a dominant biological process since life first appeared on earth 3.8 billion years ago.
2. Of the 5 to 50 billion species which have lived on earth, 99.9% have gone extinct.
3. The average species on earth has a limited life in geologic time and that is about 4 million years. Species are temporary on earth.
4. Our modern biodiversity, including man, is directly attributable to extinction of other species.

5. Extinction occurs as species compete for space and resources and as species struggle to survive with changes in physical environment.

6. Had extinction not been an operative process in life history, the biosphere would have been saturated with few well adapted species. Instead of tree of life with many diverging branches, the tree of life would be more like a lombardy poplar with few long, straight branches.

7. Extinction creates space (habitat) for evolutionary innovation and gives other species the opportunity to explore new habitat and modes of life.

8. The premise that rates of extinction are 100 times greater now than any other time is poorly documented. We basically do not have adequate data to support such a hypothesis.

9. Concomitant with extinction which removes species from the biomass is another process, speciation which adds to the biomass.

10. There is a geologic periodicity to "mass extinctions". Approximately every 1 million years, 5% of all species go extinct. Every 10 million years approximately 35 % of all species go extinct. Every 100 million years 65% or more of all species go extinct.

11. Finally, the only constant on this earth is change, and extinction is part of change.

For more insight into these comments, I strongly recommend reading Extinction: Bad luck or bad genes by Dr. David M. Raup, 1991, published by W.W. Norton and Co.

Keeping all of that in mind, I suggest the following:

1. Species recovery funding should be prioritized in the following science-based hierarchy, from highest to lowest:

a. Single species genera. *Homo sapiens* is just such an example.

b. True species by the biological definition, a taxonomic unit of which all members are capable of producing fertile offspring.

Sockeye salmon (*O. nerka*) is an example; the populations in the Salmon River are not.

c. Sub-species. For example, *Salix exigua* (a willow) has at least 5 identified subspecies in Idaho which are clearly described in scientific literature. Unfortunately, hybridization among the subspecies clouds the issue.

d. genetic strains and populations, such as the salmon on the Columbia River system.

2. Species which are shown to be in decline due to natural processes, such as disease or predation will not be protected. To do so would be to tamper with ecosystems and natural processes.

B. Senator Kempthorne's written question asked me to address the problem that Fish and Wild life Service receives very little hard data during the public comment period. He asked if the problem was due to lack of good data, short comment period, or disregard for data that is submitted.

The question reminds me of a multiple choice quiz where the answer is "all of the above."

1. There is inherently a lack of hard data available for many species. Of the approximately 40 million species which are thought to inhabit the earth, only about 1.4 million or 3.5% have been identified. With that number in mind, it is unlikely that public comment will generate much hard data input, because it is just not there in most cases.

2. There have been substantiated cases where federal agencies have refused to accept third party data, such as the kokanee salmon story and the Challis milkvetch, which were submitted in my original testimony packet.

I am currently working with the Morgan Creek Grazing Association in central Idaho to resolve science questions and inconsistencies on their Biological Assessment which was written by the US Forest Service. The USFS fisheries biologist who wrote the report has deviated from standard procedures, used incorrect scientific information, and incorrectly evaluated statistical data. The association has addressed these issues and has been essentially told by the USFS that the report was written by a fisheries biologist; therefore, it is correct. The arrogance of this agency to assume that their scientists are infallible is not uncommon throughout all aspects of Endangered Species Act implementation.

3. Public comment periods are often too short, but a more critical issue is that they are too poorly advertised. To be blunt, most people do not read the public notice section of the paper. In the case of public comment for species listing, federal agencies should be required to make a concerted effort to solicit information through public meetings and advertising in the area of impact.

4. Finally, federal agencies should be required to ensure that they have adequate data, and should not be allowed to list until there is adequate, defensible data. If necessary a qualified neutral, peer panel who have no potential for further benefit, should be contracted to evaluate the data.

In reformation of the Endangered Species Act, I would like to see a definition of "best available science" and suggest the following:

" Best available science means adequate data collected for the listing process to provide a framework for recovery efforts which would begin immediately after listing the species. This data set would include population numbers, geographic distribution, and natural population cycles along with a thorough inventory of other natural factors which affect the species both positively and negatively. These include climate change, disease, predator cycles, and food chain. The data set collected prior to listing would ensure continuity and a link between listing and recovery. "

By ensuring adequate science and requiring resolution of scientific controversy before listing, we would solve several problems:

1. Species which have healthy population numbers, such as the Bruneau snail, would not be listed;
2. Species which have little chance of recovery would be identified before extraordinary amounts of time and money were spent and could be given lower priority in terms of funding and recovery efforts;
3. Rather than lose several critical years during which time more data is collected, recovery plans formulated, and public comment addressed, lead agencies would be able to implement immediate recovery plans as soon as a species is listed; and
4. Species which are declining because of natural causes or are merely in a downcycle in their population would not be listed. We must remember that extinction has been occurring on this earth for 3.8 billion years and that 99.9% of all species which have lived have gone extinct. Extinction is a natural process; therefore, man should not interfere in cases where population declines are natural.

C. The issue of incentives and state and local control of species recovery arose many times. My mother used to say "You can catch more flies with honey than you can with vinegar." That can be paraphrased to " You can save more species through positive feedback and incentives than through punitive measures."

This issue needs to be addressed from two perspectives: 1) endangered species recovery and private property rights, and 2) endangered species recovery on public lands. Regardless of land ownership, one basic thought needs to be kept in mind: People who are allowed access to the land are more likely to assume ownership of the problem than those who are excluded.

1. Private Property:

Unless malicious intent can be demonstrated, there should be no punitive measures against private property owners for actions taken on their own property. To encourage landowners the following incentives may be offered:

- a. leniency or removal of inheritance tax for family business which is passed from one generation to another, such as farms;
- b. remove all threats of punitive measures to private landowners;
- c. encourage a take-pride approach rather than actual monetary incentives;
- d. develop tax incentives for habitat restoration and protection measures.

2. Public Land:

This is inherently a more difficult issue to resolve, because there are many conflicting special interest groups. Development / multiple use of public land and species viability are not mutually exclusive.

- a. Users of public lands should be encouraged to participate in habitat restoration programs. Special interests groups, such as off-road vehicle users,

should be assured that they will be allowed to continue their activities, if they are willing to mitigate impacts through projects or donations.

b. Resource users, such as mining, logging, and ranching industries should be encouraged to use good stewardship on public lands. These companies should be given breaks on royalties or fees in direct proportion to the on-the-ground dollars spent on species protection and recovery. For example, if a rancher pays \$1.50 per AUM, he should be able to discount that total amount by a proportion (such as 25%) of the money which he spends on a species. That will serve two purposes: 1) to get money and effort directly into the problem, and 2) encourage the land user to take pride in his part of the effort.

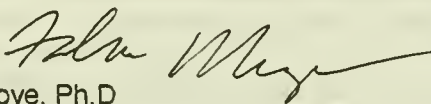
D. Finally, I would like to encourage the committee to examine Attachment E in my original testimony packet. One of the great problems with this act is that there is no requirement to delist a species. By having one lead agency, such as Fish and Wildlife Service in charge through the entire listing, recovery and delisting stages, we encourage failure to ensure continued funding. There is no check and balance, which an integral part of our government.

The purpose of this flowsheet is to develop a tripartite structure in which the agency which initially collects data and recommends or denies listing has no potential for future gain by their action. Once adequate data are collected, a feasibility team designed for that species would evaluate potential for recovery and socio-economic impacts and identify the source of funding for the recovery effort. If that team recommends, then listing would occur and a recovery plan implemented. The last team to be involved would oversee recovery efforts and could be federal, state, local, or contracted. During the recovery process, species recovery progress would be monitored and evaluated, and the team would be expected to adjust goals, methods, and budgets based on recovery plan results.

Finally, there must be a point at which a species is delisted, either due to recovery or to lack of recovery. We need to identify a population critical mass, below which recovery is unlikely, and the species would be dropped. Private groups could then be given incentives to take over the recovery efforts.

Thank you

Sincerely,



Falma J. Moye, Ph.D

cc:

Senator Larry Craig
Senator John Chafee



IDAHO STEELHEAD & SALMON UNLIMITED

Committed to Recovering Idaho's Anadromous Fish Runs

TESTIMONY TO SENATE ESA FIELD HEARING, JUNE 3, 1995, LEWISTON IDAHO

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EXECUTIVE COORDINATOR

Mitch Sanchotena

My name is Mitch Sanchotena. I am executive coordinator of Idaho

Steelhead and Salmon Unlimited (ISSU). ISSU was formed in 1985 by businessmen, guides, conservationists, sportfishermen, and concerned citizens from throughout Idaho, to help restore, protect, and preserve Idaho's steelhead and salmon resources. ISSU is a scientific, educational, and charitable organization presently representing about 2000 members. ISSU's primary goals are to restore and provide harvestable sustainable populations of wild steelhead and salmon to the state of Idaho.

Since 1985 ISSU has participated in the many forums of anadromous fish restoration. We served on the Northwest Power Planning Council's System Planning Oversight Committee. We were an amicus curiae in the ongoing U.S. v. Oregon litigation involving Columbia River Treaty and non-Treaty harvests. We travelled to Columbia River Compact hearings in Portland and Vancouver. We chased the Northwest Power Planning Council fruitlessly around the region. We held a seat at Senator Mark Hatfield's Salmon Summit, and have actively participated in every forum under the Endangered Species Act since Snake River salmon were listed in 1991.

Just three days ago we participated in the weekly meeting of federal

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agencies to decide hydrosystem management during salmon and steelhead migration. We heard again what we have heard for 11 years: the federal government will continue to kill nearly every Idaho salmon and steelhead it wants to, despite all the laws to the contrary including the Endangered Species Act.

I think the best testimony I can give you today is to tell you the story of our organization's changing view of the Endangered Species Act. Although we do not represent every Idaho fisherman, I believe our story is typical of how Idaho's 250,000 fishermen and women are coming to view the ESA as we confront the continuing decline of fish in our rivers.

There are over 250,000 fishermen and women in Idaho. There are 35,000 steelhead fishermen. These people are not a bunch of preservationist obstructionists. Our board includes a restaurant owner in Riggins, fishing guides in Challis and Ketchum, a bank manager in Orofino, a sporting goods manager in Idaho Falls. Most ISSU members are just plain Idaho folks interested in one of Idaho's great renewable resources. They are users of the resource, and businesspeople dependent on using the resource.

For many years, ISSU members viewed the Endangered Species Act with great scepticism. We were fearful that the ESA would be used to close down salmon hatcheries built expressly to mitigate for the Idaho sport fisheries lost due to the federal dams, and therefore shut down the already-meager sportfishing opportunities Idahoans enjoyed on hatchery salmon. Our business members feared that this in turn would harm or destroy their fishing-based businesses. Our members from central Idaho feared the ESA would be used to unfairly restrict land use activities in their areas.

We didn't have much confidence that the federal government would use the Act to go after the real killer of our wild salmon and steelhead - which is the federal government, in its operation of eight dams which begin just 40 miles from where we sit today. In short, we feared hardship for our dwindling sportfishery and related economies, without positive gains for the fish.

ISSU did not join in the 1991 petitions to list Snake River salmon, even though we knew that salmon deserved listing biologically. We did not join in the 1993 petitions to list Snake River steelhead, even though wild steelhead are now at lower levels than salmon were in 1991. There is no salmon fishing left in Idaho, but there still is steelhead fishing, and some of our members fear a steelhead listing could end it.

Some of our fears have been confirmed. The federal government has not stopped the federal government from killing Idaho's salmon. Today, four years after listing, Snake River salmon are at their lowest level in history, on the edge of extinction. As we sit here today, the federal dams are killing thousands of Idaho's juvenile salmon. Tomorrow they will kill thousands, and tomorrow and tomorrow...

And the federal government, spurred on by the aluminum companies and the likes of Mr. Chapman on this panel, is going after the easier, marginal targets. Idaho's hatcheries are being restricted. Some steelhead guides are not working because the federal government says their activities could harm salmon. You will hear many people today wail about lost jobs due to salmon, but the fact is that the only people that have really lost jobs due to the salmon listings are fishermen and fishing-based businesspeople.

And yet I come before you today directed by my board members to tell you that

ISSU supports the Endangered Species Act, and indeed that we support strengthening it.

Why? Why do ordinary Idaho fishermen, who know quite well how this law can be used against us, nevertheless ask you today, Senator Kempthorne, to keep the Act strong and mandatory. The answer is simple: we think our fish and fishing are probably lost without it.

Rather than rely on the ESA, our members would prefer that the federal hydro agencies get serious about changing their operations so the Columbia River can generate both fish and electricity. But they are not. Our members would prefer that Idaho's elected leaders make a commitment to restore salmon and steelhead, and then go into Congress and before the Administration to make it happen. But you are not. Neither Idaho's governor nor any of our Congressmen are fighting with us to restore our salmon fishing, hang on to our steelhead fishing, and protect these fishing-based economies.

We don't understand why this is so, but we know that it is so. The ESA, while it isn't working very well for salmon and is being badly administered for salmon, nevertheless is, to be blunt, one of the few points of leverage which Idaho fishermen seem to have anymore on unaccountable federal bureaucracies and on Idaho's elected leaders.

As you know, Senator Kempthorne, over 1000 Idaho fishermen have written you since January, asking your help to restore our steelhead and salmon. To us the main issue is not the ESA; the issue is Idaho's fish, and the ways of life and jobs dependent on them. We want our wild salmon and steelhead restored. We do not believe the extinction of Idaho salmon and steelhead, and other fish to follow, is acceptable. We know the ESA isn't perfect, that it has been misused and probably will be again, and that when it is misused it

can threaten our fishing and fishing-based jobs. But we also know something more important - Idaho's salmon and steelhead are disappearing.

Idaho fishermen have watched the federal government ignore Indian treaty rights. We have watched the federal government ignore the Northwest Power Act. We have watched for 10 years while Idaho's elected leaders, with a very few exceptions, did nothing to restore these fish. And we have watched the Endangered Species Act, despite its problems, start to make a little difference.

Before I make a few specific suggestions about changing the ESA to make it work better for people and fish, let me say a word about costs. Idaho fishermen are bombarded by complaints, led by your colleague Senator Craig, that salmon restoration is costing too much, that we can't afford to restore Idaho salmon. We agree that most of the money spent on salmon by Bonneville Power and the Army Corps of Engineers is wasted, but that's not the law's fault or the fish's fault.

But those same interests complaining about salmon costs never say a word about the multi-millions they suck from the taxpayer through the embedded subsidies in the Federal Columbia River Power System. Right here in Lewiston, socialism is alive and well. The Port of Lewiston would not exist without millions in direct federal subsidies each year. Those subsidies are killing our salmon and steelhead. If we can't afford the greatest renewable resource in Northwest history anymore, we surely can't afford state-supported uncompetitive enterprises either.

ISSU would now like to give you our suggestions for improving and strengthening the Endangered Species Act so that it works better to restore Columbia Basin salmon and

steelhead.

First, get National Marine Fisheries Service out of the ESA in all inland waters. It wastes money and resources to have the U.S. Fish and Wildlife Service enforcing the ESA for some fish in Idaho, and NMFS enforcing it for other fish. NMFS lacks the experience and competence needed to fairly administer the Act; I could provide you countless examples from the last few years. One of the biggest problems for salmon restoration so far is that NMFS is in charge, and they are just not up to the job. The ESA should be amended to place its enforcement with the Fish and Wildlife Service for all inland watersheds.

Second, make Northwest states and Indian tribes real partners in Northwest salmon and steelhead restoration. The federal government has a direct conflict of interest, since its dams are primarily responsible for the looming extinction of these fish. BPA and the Army Corps have ignored the states and tribes for years, and NMFS has continued that in the policy mechanisms it has set up under ESA. The states and tribes should be co-managers, not simply advisers, of the federal hydrosystem as it affects fish.

Third, make it more explicit that recovery efforts should focus proportionally on the largest sources of mortality. The federal hydrosystem is responsible for 75-95% of all human-caused mortality on Snake River salmon and steelhead. Yet NMFS is putting as much effort into all the smaller sources of mortality as it is into the hydrosystem. This is just plain stupid. Right now, NMFS is badly mismanaging the 1995 migration of juvenile salmon and steelhead - the most important in the species' history - in part because it is not concentrating its resources toward real-time monitoring and management of the complex hydrosystem.

Fourth, ISSU strongly opposes changes in the Act which would tend to make Alaskan

or Canadian salmon equivalent to Snake River salmon. Congressman Chenoweth notwithstanding, an Alaska spring chinook is not a Snake River spring chinook - genetically, economically, or socially. Snake River salmon and steelhead are distinct stocks, with their own life histories and their own unique irreplaceable roles in the rivers and communities they inhabit. Idaho fishermen simply will not accept our members of Congress writing off our fish by re-writing the ESA to lump them with healthy stocks elsewhere.

Fifth, since we know you are concerned about private property infringements, we urge you to consider whether the ESA should be strengthened to allow fishermen to bring claims against the federal government when it destroys all our fish. This year, in 1995, one arm of the federal government - NMFS - gave another arm of the federal government - the Army Corps - legal permission under Section 10 of the ESA to kill 100 percent of Snake River fall chinook juveniles. That is outrageous, but our lawyers tell us it may be legal under the current ESA. If so, that should be changed. Either the federal government should be prohibited from such legal slaughter of an endangered species, or the fishermen who suffer from it should be allowed to seek compensation for their loss.

Thank you, Senator Kempthorne and members of the committee.

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Comments on the Endangered Species Act

for

**U.S. Senate Committee on Drinking Water,
Fisheries, and Wildlife**

at

**Lewiston, Idaho
June 3, 1995**

by

Idaho Rivers United

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Idaho Falls

Tom Stuart

Wlodek Szczepanowski

Curtis Webb
Twin Falls

Idaho Rivers United

My name is Charles Ray. I am a resident of McCall, Idaho, in Valley County. I represent the members and Board of Directors of Idaho Rivers United, a private, non-profit conservation organization.

I appreciate this opportunity to represent our members' and the public's interests before this committee.

Idaho Rivers United is working to restore Idaho's salmon and steelhead populations and the ecosystems on which they depend, along with the economies, cultures, and traditions that depend on healthy, self-sustaining, harvestable runs of these fish.

Background

The Columbia River Basin was once home to the world's largest population of salmon and steelhead, with annual returns of adult fish as high as 16 million individuals, representing 300 million pounds of virtually free protein coming back from the sea every year. About 40% of those fish were destined for Idaho.

Salmon and steelhead bring nutrients from the sea as far as 1000 miles inland, to elevations near 7000 feet, and provide the thread that weaves together entire aquatic food webs, ecosystems, and Native American cultures.

Today, less than 100 years after large-scale development began in the Columbia Basin, Idaho's salmon and steelhead are almost gone. Snake River coho salmon were declared extinct in 1987. Last year, only one sockeye salmon returned to Idaho. In 1994, wild spring chinook, summer chinook, and steelhead returns were the lowest in history.

This year's return is proving to be even lower than 1994's. All this comes nearly 4 years after the salmon were listed for protection under the Endangered Species Act.

The decline of salmon and steelhead and the economies and cultures that depend on them indicates a corresponding human-caused disruption of the ecosystems inhabited by the fish. This disruption is most severe and apparent in the fish's migratory habitat, the lower Snake and Columbia Rivers.

There, eight federal dams have turned 350 miles of free-flowing river into 350 miles of slackwater reservoirs. Despite federal promises, these dams were not designed or constructed to safely pass juvenile fish.

In combination, the reservoirs and the dams kill most of Idaho's fish. Nearly all scientists not in the hire of industry agree that the critical limiting factor in the survival and recovery of Idaho's salmon and steelhead is the operation of the federal hydropower system on the lower Snake and Columbia Rivers.

Fifteen years ago, Congress and the public thought the Northwest Power Act, which promises restoration of the fish to the extent they are affected by the federal hydropower system, would change that. Five years ago, the public thought the Endangered Species Act listing of Snake River salmon would change that. Neither has happened.

The Distinction of Snake River Salmon

This Committee has heard, or will undoubtedly hear, that Snake River salmon are the same as salmon in Alaska or elsewhere that the fish are still relatively abundant. This argument is employed by those who

wish to deny Snake River salmon and their ecosystem the protection due under the law. The argument has no basis in fact.

Snake River salmon are genetically unique and distinct from any other salmon. This has been irrefutably proven by DNA analysis.

If the public and the legal system places enough credence in DNA analysis to use it to send a human being to the gas chamber, then DNA evidence proving the distinction of Snake River salmon should be afforded equal respect.

The citizens of Idaho receive no comfort in knowing that salmon and steelhead are thriving in Alaska.

Economics

As the Endangered Species Act process proceeded in Idaho, Idaho Rivers United became concerned that some economies in the state, particularly the economies of eight counties with critical habitat for ESA-listed salmon, could suffer a double jeopardy effect. First, their economies already suffered the loss of sport salmon fishing revenues, since Idaho hasn't had a general salmon fishing season since 1978. Second, the economies could possibly suffer due to restrictions on federal resource management activities, since these counties rely heavily on income derived from agriculture, forestry, mining, and recreation.

This Committee has heard, or will hear today, claims of widespread economic dislocation and hardship, primarily in the 8 counties containing critical habitat, supposedly caused by the Endangered Species Act. We have not found such claims to be supported by fact.

The facts show that the economies of those 8 counties, and Idaho as a whole, are stronger today than they were in 1991, the year before Idaho's salmon were listed for ESA protection.

For example, according to the Idaho Department of Commerce's unemployment statistics (see attachment) for the 8 counties, their average unemployment rate has declined from 7.8% in 1991, to 6.3% as of April, 1995. The statewide unemployment rate dropped over the same period by 21%, exactly the same percentage of reduction occurring in the 8 critical habitat counties. In regards to unemployment, these 8 counties are healthier today than they were in 1991, and their improvement in unemployment rate since 1991 has matched the improvement statewide.

In addition to an improved unemployment rate, total workforce in the 8 counties increased by 14% from the pre-listing year of 1991 through 1995.

According to the Idaho Power Company's Regional Economic Forecast (see attachment), average per capita income in the 8 counties, measured in 1987 dollars, has increased from \$12,390 in 1991, to \$13,700 in 1995, an 11% increase. Measured in current dollars, average per capita income in the 8 counties increased from \$14,850 in 1991, to \$18,520 today, a healthy 25% increase.

Generally, Idaho has enjoyed an increasingly healthy economy since the salmon were listed for ESA protection.

According to the Corporation for Economic Development's 1995 report (see attachment), Idaho was ranked best in the nation in controlling short-term growth in unemployment. In controlling the growth of long-term unemployment, Idaho ranked 7th best in the U.S., up from 29th in

1994. Idaho's business vitality rating was "Grade A", up from "Grade D" in 1990, and Idaho's overall economic performance for 1995 was "Grade A", up from "Grade C" in 1994.

The following conclusion is substantiated by hard numbers. The state of Idaho as a whole, and the 8 counties containing critical habitat for ESA-listed salmon, are economically stronger today than in 1991, before the fish were listed. The ESA has not wreaked economic havoc on Idaho as a whole, or on the Idaho counties containing critical habitat for listed salmon.

An exception is that sector of the state's economy that depends on healthy runs of anadromous fish. However, Idaho's dwindling anadromous fishery is still an economic asset.

This limited, uncertain fishery for hatchery-reared steelhead occurs in the same 8 counties containing critical habitat for listed salmon. According to a recent report by economist Don Reading (see attachment), a steelhead sport harvest comparable to the 1989-1990 harvest (the last good steelhead return to Idaho) is worth \$27 million in annual economic benefit to the state. This \$27 million benefit equals 35% of the total natural resource payroll in the 8 counties where the fishery is located .

A restored salmon fishery would be at least equally beneficial to the state and particularly to the 8 counties. For an example; in 1992, an 8-day sportfishing season for 500 surplus, hatchery-reared, salmon on a 4-mile long section of river generated over \$250,000 in economic benefit for Riggins, Idaho, an Idaho County town of 440 people.

Critics of the Endangered Species Act claim the Act will bankrupt the Bonneville Power Administration (BPA). These claims cite salmon

related costs to the BPA as high as \$600 million annually. Such cost estimates are the products of disingenuous accounting at best, outright "scare-tactic" deception at worst.

In 1994, BPA's total fish and wildlife expenditure was \$87 million, comprising 3.9% of total expenses. Of BPA's total debt in 1994, fish and wildlife debt amounted to \$11.8 million, or 1.8% of the total. (see attachment).

Poor business decisions are largely responsible the BPA's financial problems, not the Endangered Species Act.

Failure of Federal Agencies

The citizens of Idaho should reasonably be able to expect the Endangered Species Act to deliver the biological, cultural, and economic benefits that could be enjoyed from restored salmon and steelhead population. We expect implementation of the Act by federal agencies to at least save the fish from extinction.

But, because of the performance of federal agencies - the National Marine Fisheries Service (NMFS), the Bonneville Power Administration (BPA), and the Army Corps of Engineers (COE) - over the past 4 years, neither expectation has been fulfilled. Indeed, returns of listed Snake River salmon have declined precipitously since the listing occurred. All four stocks of Snake River steelhead are past due for a listing decision, as are 174 other steelhead stocks and scores of salmon stocks across the Northwest.

This travesty is not due to any inherent flaw in the Act. It has happened because the federal agencies - the BPA and COE - that should be

obeying the Act, have instead continued the lawless actions that have driven the salmon to the brink of extinction.

The NMFS, the federal agency that is supposed to be an advocate for the resource, is in charge of seeing that the BPA and COE obey the Act. It has proven unwilling or unable to do either. Recent decisions by both the U.S. District Court and the Ninth Circuit Court of Appeals have confirmed the failure of all three agencies to heed the law.

NMFS's failure is best exemplified by their Biological Opinions on operation of the federal Columbia River hydropower system. In 1992 and 1993, NMFS opined that the operation of the hydropower system posed "no jeopardy" to Snake River salmon, despite acknowledging that 70-90% of migrating juvenile salmon would die at the dams and that computer models showed continuing population declines.

When the federal court ruled that NMFS's 1993 Biological Opinion violated the law, NMFS came back in 1995 with a "jeopardy" Biological Opinion and then issued an incidental take permit that allows the Corps of Engineers to kill 100% of migrating juvenile fall chinook salmon.

The Role of States and Tribes

Many of these problems would be avoided if the state fishery agencies and Tribes had a bigger role in the management of the Columbia-Snake River hydropower system. The state fishery agencies and Tribes have the required experience and technical and biological expertise to optimize management of the river system for the benefit of all users, instead of the current management model that maximizes of benefits to power and navigation at the expense of salmon, steelhead, and the dependent economies.

The NMFS, the BPA, and the COE routinely ignore the management recommendations of the state fishery agencies and Tribes, as well as their biology. Last year, the state and Tribal management recommendation, the Detailed Fish Operating Plan, was summarily rejected by NMFS, BPA, and the COE. This year, the Technical Management Team that makes day-to-day decisions on river management excludes the states and Tribes.

Unfortunately, many members of the Northwest's Congressional delegation have done the same, paying more attention to COE, BPA, and industry biologists than to state and Tribal biologists.

Amending the ESA

Idaho Rivers United would support an amendment to the Act that limits the National Marine Fisheries Service's jurisdiction of salmon and steelhead to the salt water and turns over management of inland habitat to the U.S. Fish and Wildlife Service and state and Tribal managers. The U.S. Fish and Wildlife Service and the state agencies and Tribes are more experienced in, and better staffed to handle, inland management issues. The Service may be better able to handle the intransigence of the BPA and COE.

Conclusion

Let me make Idaho Rivers United's position on salmon, steelhead, and the Endangered Species Act clear. The big problem with salmon and steelhead in the Northwest is not the Endangered Species Act. The big problem with salmon and steelhead is not private property rights or water rights or states' rights.

The big problem is big government. The federal agencies in charge of the Columbia-Snake River hydropower system are defying the law, defying Acts of Congress, ignoring the public trust they are supposed to uphold, and abrogating our treaties with both Canada and sovereign Indian Nations.

They are destroying what was once the world's largest run of anadromous fish, and they are spending taxpayer and rate-payer money to do it. The facts (not wildly inflated, unfounded speculation) show that the federal government is spending more money to drive the fish to extinction than it would cost to restore them.

The citizens of Idaho want wild salmon and steelhead restored to healthy, self-sustaining, harvestable numbers. Hundreds stood up and said that at 4 Northwest Power Planning Council hearings in Idaho last year and at 3 NMFS Recovery Plan hearings in Idaho so far this year.

Public testimony at the hearings was nearly unanimous in favor of making government work, making the federal hydropower system work for fish, and restoring the fish. Thousands more have written that in letters to our Governor, our Senators and Representatives, and the NMFS.

The citizens of Idaho, of the Northwest, and of the United States value salmon and steelhead. The majority of the people wants to keep intact, even strengthen, the Endangered Species Act. Non-partisan and bi-partisan polls have consistently shown that to be true.

This hearing should not be about fixing the Endangered Species Act. It should not be about changing the Act so that federal agencies that have mismanaged the Act can continue that same behavior.

It should be about making those agencies more responsible. It should be about fixing the government.

If this Committee and the U.S. Congress weakens the Endangered Species Act, or allows federal agencies to continue lawless, irresponsible behavior, salmon and steelhead will soon be extinct in Idaho. There will be no more salmon in the Salmon River.

That needless extinction would be the most profound environmental, economic, and cultural tragedy to ever befall this state and the Northwest.

The loss of this incredible resource would be unforgettable. If you allow these fish to be driven to extinction, no matter what else you do during your careers in public service, you - not the industry lobbyists who wrote Senator Gorton's bill, not the people who testified against the Act here today, not the government agencies that have bungled the administration of the Act - will be remembered for it.

I hope that doesn't happen.

Thank you.

**Unemployment Statistics for Idaho Counties with
Critical Habitat for ESA-listed Salmon Species**

Counties - Adams, Boise, Clearwater, Custer, Idaho, Lemhi, Nez Perce,
Valley

	1991 - before listing		1995 - thru April	
<u>County</u>	<u>Labor Force</u>	<u>Unemp.</u>	<u>Labor Force</u>	<u>Unemp.</u>
Adams	1548	209	1848	267
Boise	1844	124	2457	120
Cl'rwater	3983	558	4124	485
Custer	1941	119	2583	147
Idaho	6110	662	5682	584
Lemhi	3166	328	3969	256
N. Perce	19713	919	22548	812
Valley	<u>3313</u>	<u>328</u>	<u>3969</u>	<u>256</u>
totals	41618	3232	47459	2987

1991 unemployed = 7.8%
in 8 counties

1995 unemployed = 6.3%
in 8 counties

1991 unemp. statewide = 6.1%

1995 unemp. statewide = 5.0%

decrease in unemployment - statewide 1991-1995 = 21%

decrease in unemployment - 8 counties 1991-1995 = 21%

Source: Idaho Department of Commerce

**Personal Income Statistics for Idaho Counties with
Critical Habitat for ESA-listed Salmon Species**

Counties - Adams, Boise, Clearwater, Custer, Idaho, Lemhi, Nez Perce,
Valley

<u>County</u>	1991 - before listing	1995 - thru April
	<u>per capita personal income</u>	<u>per capita personal income</u>
	current \$ 1987 \$	current \$ 1987 \$
Adams	15,050 12,550	19,650 14,550
Boise	14,500 12,100	14,200 10,560
Clearwater	15,250 12,700	20,555 15,200
Custer	12,950 10,600	18,060 13,300
Idaho	13,600 11,600	18,150 13,400
Lemhi	13,200 11,000	16,500 12,400
Nez Perce	16,850 14,050	21,200 15,650
Valley	17,450 <u>14,550</u>	19,850 <u>14,650</u>
averages	14,850 12,390	18,520 13,700

Average % increase 1991-1995, in current \$ = 25%

Average % increase 1991-1995, in 1985 \$ = 11%

Source: Idaho Regional Economic Forecasts, Idaho Power Company

Idaho's Economic Development Scorecard

Controlling Growth of
Short-term Unemployment - 1995 - Best in the Nation

Controlling Growth of
Long-term Unemployment - 1995 - 3rd in Nation

1994 - 10th in Nation

Growth of Average Annual Pay - 1995 - 7th in Nation

1994 - 29th in Nation

Business Vitality Rating - 1995 - Grade A

- 1990 - Grade D

Business Development Capacity - 1995 - Grade B

- 1990 - Grade C

Overall Economic Performance - 1995 - Grade A

- 1994 - Grade C

Source: Corporation for Economic Development, in *The Lewiston Tribune*,
5-25-1995

The Corporation for Economic Development is a Washington, D.C. based corporation financed by businesses, labor unions, and private foundations. It assesses the ability of states to strengthen their economies and their potential for future economic growth. It measures economic performance by the benefits and opportunities a state's economy provides its populace.



A Summary of Fiscal Year 1994 Expenses at the Bonneville Power Administration

Renewable Northwest Project

The Bonneville Power Administration (BPA), spent \$2.26 billion in fiscal year 1994¹ (FY94) to produce 8,199 average megawatts (aMW) of electricity and deliver 14,879. aMW². This summary provides an explanation of BPA's expenses.

Table 1

BPA FY 1994 Expenses

Category	\$M	% of Total
Generation	\$1,120.5	49.7%
Transmission	\$421.3	18.7%
Non-Operating Nuclear	\$321.6	14.3%
Residential Exchange	\$159.9	7.1%
Conservation	\$146.4	6.5%
Fish & Wildlife	\$86.9	3.9%
Total	\$2,256.6	100.0%

Note: Depreciation, interest, bond payment, and debt service expenses were allocated to appropriate categories, based on BPA staff analyses and recommendations.
Source: See footnote 1.

The Overview

BPA spent \$1,120.5 million (49.7%)³ on power generation. Generation expenses included power marketing, scheduling, hydro operations, operating nuclear facilities, purchased power/storage, and allocated depreciation, debt service, and administrative overhead. Nuclear resources provided 9.4% of BPA's electricity, and cost \$386.3 million; hydro resources cost \$373.5 million and accounted for 37.4% of total generation. BPA also spent nearly \$160 million on purchased power.

- Expenses for BPA's transmission system totaled \$421.3 million (18.7%), including operations and maintenance, system development, and related depreciation, interest, and bond payments. Combined expenses to generate and transmit BPA power were \$1,541.8 million, or over two-thirds of BPA's expenses.
- Non-operating nuclear facilities cost BPA \$321.6 million (14.3%) in expenses and debt. Although the third largest expense category, it alone is not a complete picture of the entire nuclear program's expenses (see below).
- The net costs for the residential exchange program were \$159.9 million (7.1%). The exchange allows private utility customer access to cheap, publicly funded hydroelectric generation. It is a transaction wherein private utilities sell power to BPA at their average production cost, and BPA exchanges this power for an equivalent amount of power at BPA's lower rate.
- Conservation expenses were \$146.4 million (6.5%). This covered acquisition by BPA, Northwest aluminum smelters, EWEB and other entities, and includes amortized program expenses, and interest on long-term bonds.
- Fish and wildlife expenses were \$86.9 million (3.9%). These included operations and maintenance, implementation of the Endangered Species Act, US Fish and Wildlife, amortized expenses, and interest on long-term bonds.

The Nuclear Program

- BPA spent \$737.1 million (32.7%) on its total nuclear program. This includes all expenses for both the operating and non-operating facilities.
- Debt accounts for 63% of all BPA nuclear expenses.
- WNP-2, the only operating plant, accounted for 52.4% of all nuclear spending. As listed by BPA, expenses are split roughly 2/3 for operations, and 1/3 for debt.
- Non-operating plants cost \$350.8 million (47.6% of nuclear spending) in FY94, with all but \$27.8 million directed towards debt payment⁴.

¹ Federal Columbia River Power System Detail of Expenses of the year ended September 30, 1994. All data is for FY 1994 unless otherwise noted.

² BPA Fiscal Year 1994 Generation and Power Sales Statistics.

³ Figures in percentages represent that item's percentage of the total spent in FY 1994, \$2256.6 million.

⁴ See note 1.



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Renewable
Northwest
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Research Group

Portland Energy
Conservation Inc.

Proven Alternatives, Inc.

Sierra Club

Solar Energy
Association of Oregon

KENETECH Windpower

Washington Environment
Council

- WNP-2 provided 9.4% of BPA's generated power⁸, while consuming 17.1% of its expenses. The Trojan nuclear facility generated no electricity in FY 94, but accounted for 1.3% of BPA's costs⁹.

- Including all expenses, electricity produced at WNP-2 cost 6.60 ¢/kWh⁷, whereas hydro operations produced power for roughly 0.60 ¢/kWh⁸.

- As a whole, the nuclear program provided 772 aMW of power⁸, at a total cost of \$737.1 million to BPA. This translates into an average cost of 10.91 ¢/kWh.

Table 2
BPA FY 1994 Nuclear Program Expenses

FY 94 Status	Facility	O & M	Debt	Total	% *
Operating-					
	WNP No. 2	\$247.8	\$138.5	\$386.3	17.12%
	Total Operating	\$247.8	\$138.5	\$386.3	17.12%
Non-operating-					
	Trojan	\$19.1	\$10.1	\$29.2	1.29%
	WNP No.1	\$0.0	\$167.8	\$167.8	8.31%
	WNP No.3	\$8.7	\$125.3	\$134.0	5.94%
	Total Non-Operating	\$27.8	\$323.0	\$350.8	15.55%
Total Nuclear Program		\$275.6	\$461.5	\$737.1	32.66%

Source: See note 1.
Percent of total FY 1994 expenses.

Conservation Compared

Table 3, below, details FY 94 conservation expenses.

Table 3
BPA FY 1994 Conservation Expenses

Subcategory	\$M	% of Total
Conservation and consumer services	\$44.1	30.1%
Other entities conservation	\$3.2	2.2%
Aluminum smelters modernization	\$6.4	4.4%
EWEB conservation	\$1.9	1.3%
Amortization	\$49.1	33.5%
Long-term debt BPA bonds	\$41.7	28.5%
Total	\$146.4	100.0%

Source: See note 1.

- Since 1981, BPA has acquired 518 aMW of conservation savings¹⁰, at a cost of less than 3.0 ¢/kWh¹¹.

- In its 1991 Plan, the Northwest Power Planning Council identified over 3,000 aMW of available conservation, at an average cost of about 5 ¢/kWh¹².

Debt

- BPA debt payments were \$641.1 million in FY94, or 28.4% of total expenses.
- Debt for the nuclear program was \$461.5 million, or 72.0% of all debt payments.
- The debt for non-operating nuclear facilities was \$323.0 million, or 70.0% of the total nuclear program debt, and 50.4% of all debt payments.
- Debt payments for conservation totaled \$41.7 million, or 6.5% of total debt.
- Fish & wildlife debt amounted to \$11.8 million, or 1.8% of the total debt.¹³

For additional information or more detail, contact Andrew Geller at the Renewable Northwest Project at (503) 223-4544.

March 16, 1995

⁸ See note 1.

⁹ See note 1. Trojan used 8,311 MWh during FY 94.

⁷ Washington Public Power Supply System, 1994 Annual Report. This total includes an extraordinary loss of \$102,368,000 in FY 1994. Including this item would increase total costs to 8.00 ¢/kWh.

⁸ R/P calculations based on sources in footnotes 1 and 2.

⁹ See note 2.

¹⁰ BPA, Conservation and Generation Resource Supply Data, The Red Book, March 1995.

¹¹ Ruth Ann James, BPA staff, private communication, March 16, 1995.

¹² This average cost includes administration, transmission and distribution adjustments. All costs are in 1990 dollars. Levelized cost calculations are performed using a nominal discount rate. In real terms, the average cost of all conservation is about half the 5 ¢/kWh nominal number. Additional information on including 1990 dollars is available in Volume 2, Part 2, Chapter 15 of the 1991 Plan.

¹³ See footnote 1.

The Economic Impact of Steelhead Fishing in Idaho

- > Steelhead fishing in Idaho is **VERY** important to the economy of Idaho.
- > Steelhead fishing impacts primarily 8 counties in central Idaho.
- > These counties;
 - *lost population between 1980/1990 (-2,340 or -2.6%).
 - *unemployment rate 25% higher than the rest of the State (7.8% to 6.4%).
 - *have a median age 5 years older than the State (36.3 to 31.5).
 - *primarily are rural, natural resource based economies.
- > Steelhead specific study for Idaho "Net Economic Value of Recreational Steelhead Fishing in Idaho - use because specific to Idaho steelhead fishing and results check (make sense) with related studies.
- > Focus on *expenditures* for steelhead fishing (not value, CVM, TCM) in order to measure the economic impact on communities from steelhead fishing.
- > Study found;
 - *\$72.21 expenditures per steelhead trip.
 - *1.55 days per trip.
 Hence;
 - * $[(72.21/1.55)/.655]$ \$71.13 per day in 1994 dollars.
 - *89/90 steelhead season 239,730 angler days (Idaho F&G).
 - * $[239730*71.13]$ \$16,781,100 direct expenditures.
 - *multiplier (Lemhi County Study) 1.6.
 - * $[16781100*1.6]$ \$26,849,760 — \$27 million annual impact.
- > Natural resource payroll of 8 counties (Ag., Fish, Forest, Mining) 1994 \$'s, \$76.9 million; therefore steelhead fishing expenditures is equal to 35% of natural resource payroll for these counties.
- > This analysis is concerned with steelhead fishing only -- not salmon, if included the impact would be greater.
- > Loss of steelhead fishery would be devastating.

Testimony at Endangered Species Act Hearing
before Fisheries, Drinking Water and Wildlife Subcommittee of the
Senate Environment and Public Works Committee
Lewiston, Idaho, June 3, 1995

Good Afternoon. Mr. Chairman, members of the committee and ladies and gentlemen.

My name is Bill DeVeney. I am a rancher near Riggins which is in Central Idaho and have run cattle in the area for 45 years except for two years out for service in the Korean War. I am also a state director for the Idaho Farm Bureau Federation. I am testifying in behalf of myself personally and also in behalf of the Idaho Farm Bureau Federation. My concern is that the endangered species act is being used to control land and people - not to protect endangered species. Protecting truly significant endangered species is important, but the way we are going about it needs to be changed. The economy, strength and viability of this whole country is based on wise utilization of natural resources. Disappearance of a species is not unique to this era. It has been going on for eons. Species have also been evolving. If this were not the case, we wouldn't be here today. A revised endangered species act must recognize that mankind has a place in the environment and a right to utilize natural resources beneficially. The act must also recognize and protect private property rights. One of the foundations and strengths of this country is private property rights.

Currently the law is being used to manipulate activities and the reasons are not always based on any scientific or even on-the-ground evidence. The impacts in some cases are small, but the cumulative effects are having serious adverse consequences on the well being of this country. I have several examples of this impact.

The allotment where I run cattle is on a rest rotation system and has been since 1976. There are six pastures used in rotation with one rested each year. The Rapid River pasture in the allotment was eliminated from use this year because the National Marine Fisheries Service in consultation with the Forest Service was concerned that the cattle might step on a salmon redd. (A redd is the nest the salmon makes to lay eggs usually on a place the female has cleared with her tail before laying the eggs). There is no basis for this concern because the unit is used in the spring from June 1 to early July and the salmon are not spawning until August and September, so there are no salmon redds at the time cattle are in the area. Also, Rapid River is running at high water in June. Originally the determination was made correctly that the area was not likely to affect salmon habitat. This decision was reversed with no basis and without anyone making the decision having knowledge of the area or what could be done to mitigate any possible chance of damage. There is a fish hatchery and fish trap on Rapid River downstream from where the

cattle are grazing, so no salmon can get past the trap unless they are allowed to by the Fish and Game Department. At the same time there was no concern for a permit on the south side of Rapid River where 400 head of cattle use the area in late summer and early fall. This is the time when the salmon are spawning. Even then there is a serious question that the cattle would disturb the salmon redds because of the nature of the steep stream banks. The decision to eliminate grazing use on this part of the allotment was strictly arbitrary and did not do one single thing to improve or protect salmon habitat, but it did have an adverse impact on the two permittees using the allotment.

In the summer of 1994 another area of the allotment known as the West Fork of Rapid River was seriously damaged by wildfire. Sparks and cinders were found here at home and in Riggins which is 7 to 8 miles away. This indicates the fire was burning with a high intensity. Last fall I tried to persuade the Forest Service to seed the area with grass to minimize the impacts from soil erosion during spring runoff, but they refused preferring instead to wait for natural regeneration. The potential for sedimentation from this fire is much greater than anything livestock could possibly cause. Because of the fire damage and the possibility of soil erosion and sedimentation that might endanger salmon habitat, this area of the allotment has also been eliminated from use for at least the next two and possibly three years.

Right now disputes are resolved through the courts. This is unworkable and expensive. Small entities affected by a decision cannot afford the exorbitant costs involved in court cases. When the Bruneau Hot Springs snail in Owyhee County was listed as endangered, the livelihood of people in the area was threatened. This small group of people who were being impacted by the decision could not afford to challenge the decision in court, but friends from around the State who could see they might be the next victims joined with Owyhee County to challenge the listing. The challenge was that agency personnel had not followed applicable laws and regulations and that the listing was based on faulty data. The judge ruled that the agencies had not followed procedures and ordered the species delisted. Agency attorneys decided not to appeal the decision, but an environmental group did appeal to the Ninth Circuit Court thus adding more expense to the case. Cost of this litigation to date is \$190,000 plus staff time, time of affected parties, time of members of other organizations and thousands of hours and miles of uncompensated travel of volunteer members. A better way needs to be found to resolve disputes and at the same time hold agency personnel accountable for their actions and protect individuals against this insidious act.

The Nez Perce National Forest made a timber sale in an area above my house. After the contract had been awarded, a peregrine falcon was "discovered" in the bluffs of the North Fork of Shingle Creek. This discovery was used as an excuse to delay the timber sale and to modify the units that could be harvested.

Logging traffic across the canyon from the nest was curtailed; but recreation vehicle traffic on the road just above the nest was not restricted. The falcon is still being used as an excuse to restrict activities in the area. This is using the endangered species act for land and people control and not to protect an endangered species. Peregrine falcon have been known to nest on the West One bank building in Boise and in downtown Seattle and are nesting successfully on the silo at the sugar factory in Nampa which indicates they apparently are not alarmed by human activity.

The introduction of the wolf into Yellowstone Park and Central Idaho is another example of abuse of the intention of the act. Clearly introducing the wolves is nothing more than land and people control. The EIS for wolf introduction failed to consider the danger to human health and safety stating there was no documented evidence that a wolf had ever harmed a person. Here are the criteria that were used before an incident was considered documented:

1. The wolf has to be killed, examined and found to be healthy
2. It must be proven that the wolf was never kept in captivity in its entire life
3. The person must die from their wounds (bites are not attacks according to the biologists.)

Using this criteria explains why no historical account of a wolf attack on a human is considered to have occurred. There were two other factors concerning wolf attacks on humans in this country. Our forefathers believed that they had the right and obligation to protect their livelihoods. Efficient weapons were available that gave man the upper hand in the protection of his livelihood and person. The environmental impact statement concerning wolf introduction ignored human safety simply because there was no documentation using the above criteria. To me this is another indication of irresponsible action by agency personnel. They had an agenda and considered only such information as supported their agenda which was to introduce wolves i. e. land and people control.

Serious punitive measures are in effect for anyone harming an endangered species. For this reason private landowners have a real aversion to having an endangered species on their land. The law should encourage incentive based measures to protect species and eliminate or at least minimize punitive measures, particularly those involving habitat modification. This probably would do more than any other single thing to help endangered species recover and at much less expense and animosity. Multiple agency jurisdiction and consultation should be eliminated. This is unworkable and results in more expense to taxpayers without any measurable benefit to endangered species.

The taxpayers are footing the bill for huge expenditures that are not being effectively used. The costs of the wolf introduction are exorbitant. I am not sure anyone knows what the cost is. The duplication of agency responsibility is adding tremendously to the cost, but not helping to protect a species. The situation

in Rapid River where the Forest Service had to consult with the National Marine Fisheries Service is an example. Personnel in NMFS were being asked to make a decision in an area they knew nothing about and had never seen. In the case of other species consultation is with the Fish and Wildlife Service. This cross consultation should be eliminated and the agency responsible for land management in the area should be fully responsible for species protection.

Agencies such as the Forest Service, Bureau of Land Management, Fish and Wildlife Service and National Marine Fisheries Service should get out of the law enforcement business. Any need they have for law enforcement should be channeled through the proper local authorities which is the county sheriff in most cases. Funds should be available to the local authorities to cover these added responsibilities. This was the procedure until a few years ago and law enforcement was handled as well as or better than now with considerably more public trust. Local officials are subject to election by the local people. Federal agents are completely out of control of any local authority. Federal officials have been known to abuse their authority with no recourse available to the public or the individuals affected. The emphasis should be on voluntary and incentive based compliance so people want to protect the species, not law enforcement. That seldom works.

Actions under the ESA must only be undertaken after a determination that the benefits of the action outweigh the costs to the communities involved and further prohibiting any ESA action from imposing an unfunded mandate on state or local governments. Listings must be accompanied by a management plan that considers economics and other factors. Requests or proposals for listings must be supported by credible, verifiable, scientific evidence and the listings and other agency actions must be subject to scientific peer review. Public hearings should be held prior to any listing and the communities or areas most directly impacted should have ample opportunity to comment on the proposal. Voluntary actions to protect the species should be undertaken before more specific measures are advocated.

Recently Farm Bureau sought to take legal action involving the Five snail listing on the Snake River. The judge appeared to rule that Farm Bureau did not have standing. If Farm Bureau did not have standing where many of their members were being impacted, how can environmental groups file lawsuits on a regular basis where they have no interest in the action at all? This uneven playing field must be leveled. Environmental groups must be accountable for the economic distress that they create. Perhaps those requesting a listing of a species should be required to post a bond.

Unfortunately when government agencies become involved in an action, it begins to take on a life of its own and the results are not always beneficial. Nature has her own way of taking care of things. Interference by man seldom has a lasting impact. Look

at the Mt. St. Helens eruption which was supposedly a disaster. The area is well on the way to recovery now. The government should confine itself to providing those services that people cannot provide for themselves. Conflicting laws are on the books. Protection of endangered species should become a local, voluntary endeavor and the involvement of the federal government should be held to a minimum. Presently the costs of the ESA are high and the benefits are nil except for a few notable exceptions such as the bald eagle. Even that is attributed to things other than the ESA.

A way must be established to curb agency zeal so they do not get carried away spending huge amounts of taxpayer dollars on such concepts as biodiversity and ecosystem management. These concepts have the potential to cause more harm than anything we have seen to date. Preservation of species must be driven by market forces and a free enterprise system. A police state just simply will not work. There should also be curbs on the National Biological Service, probably eliminating it entirely, and never ratify the proposed biodiversity treaty. Nature can manage all these complex interrelationships, but it is beyond the scope of government or ordinary man.

In summary the new act should provide for protection of private property rights, work to truly protect endangered species rather than be used as a vehicle for land and people control, hold agency personnel responsible for their actions and decisions, provide a forum for dispute resolution other than court action, limit the involvement of federal agencies in law enforcement, and encourage voluntary and/or incentive based compliance rather than punitive measures. Thank you for the opportunity to comment.

Submitted by Bill DeVeney
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FOR THE RECORD RE-AUTHORIZATION OF THE ENDANGERED SPECIES ACT

written testimony

to

Senate Environment and Public Works Committee
 Drinking Water, Fisheries and Wildlife Subcommittee

by

Idaho Farm Bureau Federation

June 3, 1995

at

Lewiston, Idaho

Senator Kempthorne and members of the committee, the following, in addition to the verbal presentation given by IFBF Director Bill DeVeney, is submitted as Idaho Farm Bureau Federation testimony regarding the Endangered Species Act (ESA) re-authorization. We in Idaho recognize the importance of saving species from extinction, but we are also in a position in this state to witness the excesses contained in the present act and plead with this committee and congress to authorize a new Endangered Species Act that has as its focus prevention of extinction through cooperation. This would include cooperation with states, counties, local jurisdictions and individual citizens.

The 1973 act when passed, was a noble effort to save species which were on the way to extinction. The act received the governments highest priority and is an enormously powerful law. It is widely hailed as one of the most powerful environmental laws on the books and unfortunately, the act is a failure!

Since it's passage 22 years ago, there have only been 27 species taken off the endangered or threatened species list - some for errors in the original listings. Only 8 species could be described as recovered under this act, the Brown Pelican, 3 Palau Island birds, the American Alligator, the Tydberg milk-vetch, the Grey Whale and the Arctic Peregrine Falcon. A few others are doing well, but not because of this act, mostly because of other changes like banning DDT. The sea lion is doing so well in its protected status that it is consuming the endangered salmon to the point that this species may not ever recover until the government addresses the voracious sea lion population.

Costs associated with recovery efforts have been staggering and with the Nations' efforts to balance the budget we must find more cost effective methods to employ in actually saving species from extinction. For the few wolves stashed away in Idaho and Yellowstone Park, the bill is already exceeding 7.5 million dollars and rapidly increasing.

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Yet, the latest National Academy of Science report on the ESA indicates that costs should not be a consideration at all, rather, ignore reality and spend ourselves into bankruptcy should be our goal. This is partly what is wrong with the current law, it simply ignores costs and the federal agencies who administer the ESA specifically state "that their charge under the ESA is to not take costs into account". It has led to a mindset of being exempt from spending limitations and since there are no economic incentives to limit their demands under this act, US Fish & Wildlife service (primary agents of the ESA) or National Marine Fisheries Service (NMFS) in Salmon issues, keep demanding more control, more authority and more dollars. If costs became a part of the equation, rest assured that these same federal administrative agents would find much more cost effective means of saving species that might even include "cooperation".

The use of property (both private and public) has become a bellwether issue under the ESA and since the US Fish & Wildlife service has no requirements to compensate owners of land they control in the name of the ESA, and since there is no budgetary constraints to limit them, they simply demand control from owners without compensation. This of course has led to justifiable animosity from property owners. It is this ability to control how property is used that makes an enemy out of the most harmless bird. By focusing the enormous power of the Federal Government on protection of a rare species, the Act has made rare species unwanted and has even encouraged some people to get rid of such species. This explains the Act's enormous power and very puny results. This is the main issue in the Bruneau Hot Springs snail listing under the ESA. The US Fish & Wildlife service made an enormous grab for private water rights on the basis of a snail that lives in geothermal waters in Idaho in the Bruneau area of Owyhee County. They did this with no regard for science, they did this with faulty information based upon this snail occurring in only 2 sites, when in fact it exists in at least 124 other sites. They did this with no regard to the public hearing process or timetables listed in the ESA and they did this with erroneous assumptions of the aquifer and the effects of agriculture on the aquifer. When the District Court negated the listing it cited the US Fish & Wildlife Service as being, "arbitrary and capricious and not in accordance with law". The court further castigated them for breach of duty and failure to allow public review and finally characterized their defense as self-serving and superficial. This has been the Idaho experience and as it continues it even worsens. The US Fish & Wildlife Service in introducing the Canadian Grey Wolf to central Idaho, would not wait for the Idaho Legislature to adopt a wolf management plan even after they had agreed that no wolves would be introduced until such plan was adopted. USF&WS believes that their mission transcends all others including our Idaho Legislature. This mindset creates confrontations with private citizens and it was the primary problem that occurred in the incident at Salmon Idaho. USF&WS agents believe they have authority superseding private property rights and exercised this authority on a private ranch. These fully armed agents displayed an arrogance and outright contempt for private property that resulted in a verbal confrontation with both the landowner and the sheriff. In this case, as in Bruneau, the vast power included in the present act has led to an abuse of power. The US Fish & Wildlife Service has become a policeman, a usurper of property and water rights, a confronter, an enforcer and has long forgotten its original mission which was to manage wildlife. The ESA must be

modified to return the USF&WS to this role of wildlife managers, eliminate their armed and confrontational modes and restore a mindset of cooperation in the broad interest of wildlife and human needs. Only then will the ESA become workable.

The Federal Government including it's agencies, should be bound by the 5th amendment to the Constitution that requires compensation when government takes property. This simple constitutional requirement would go very far in eliminating landowner resistance to the ESA. Some suggestions the Idaho Farm Bureau would make are:

1. Provide property tax credits for landowners committing to long-range habitat protection.
2. Pay landowners bounties or rewards for endangered species found on their land
3. Rent the land
4. Above all eliminate the ability of USF&WS to seize control of land without compensation. Once this agency had to pay for what it used, it's staff would begin to search for cost effective ways to preserve species.
5. Change the Role of USF&WS from policemen looking for arrests, to wildlife managers. As wildlife managers, there would be no need (or justification) to arm them and the confrontational mindset they now have would quickly change to one of cooperation and solution finders.

In public land issues, once again the USF&WS (NMFS for Salmon) preempts all other goals and management objectives of all federal agencies. Grazing, Timber harvest, mining and other uses give way to USF&WS demands. The Idaho Farm Bureau Federation feels there must be some reason applied to the elimination of multiple uses on federal land and such reasons should not include the agenda of groups who use the ESA to achieve personal goals of removing grazing from federal lands and eliminating timber harvesting or mining from federal lands. In many areas of the west and particularly in Idaho if the multiple uses are eliminated, so is most of the economy in the counties that are primarily made up of federal land. Economy, community well being, history and way of life must be a part of any consideration to withdraw federal lands from multiple use concepts. Perhaps congressional oversight over any federal land removed from uses because of the ESA should be considered. In some cases where leases or grazing allotments are lost, some compensation to the affected party might have to be considered.

The Idaho Farm Bureau Federation feels any ESA revision should include as elements of the law, in addition to the above, the following:

1. Human needs for food and energy must have priority over endangered species.
2. Economic impacts must be considered in any listing process
3. Critical habitat for a species should be identified and enumerated before a species is listed.
4. Congress must appropriate monies to compensate animal owners for losses caused by endangered species.

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5. There must be a simpler and more scientific way to de-list a species once it gets on the Endangered Species List.
6. A state should be given a weighted vote in deciding whether an endangered species should be introduced into such state.
7. Recovery plans must be based upon exacting science not speculation and job enhancement.
8. When 2 or more endangered species are in conflict (like sea lions and Salmon) there must be a means to eliminate the conflict which should include the right to destroy animals if necessary.

In closing, the Idaho Farm Bureau Federation appreciates the committee allowing for input into the re-authorization of the ESA. Farmers and farm families have long been the major contributor to the well-being of the nations rich heritage in plants and animals. With a minimum of assistance, these same farmers could bring about an abundance of species that otherwise would end up on the Endangered Species List. We highly recommend that congress consider a contract with farmers to breed and raise many of the species that could slip into endangered. This type program would be cost effective, imaginative and would actually recover species, unlike the current Endangered Species Act.

Respectfully submitted,



Tom Geary, President
Idaho Farm Bureau Federation

Testimony
of
Michael A. Guerry

Representing
The Idaho Wool Growers Association
The American Sheep Industry Association
The National Public Lands Council
before the
United States Senate
Committee on Environment and Public Works
Subcommittee on Drinking Water, Fisheries and Wildlife

June 3, 1995
Lewiston, Idaho

Senator Kempthorne and Members of the Committee, I appreciate the opportunity to discuss the Endangered Species Act as it effects the public lands ranching industry and more specifically the western sheep industry. I commend the members of the Committee for their efforts in conducting field hearings in the West and for allowing participation from the Multiple Use Industries directly affected by the Act.

For purposes of introduction to those members of the Committee that I don't know, my name is Michael A. Guerry, I am a third generation sheep and cattle rancher, as well as a farmer and Certified Public Accountant. Our family ranching and farming operations are located in the Castleford and Three Creek, Idaho areas and the accounting practice of which I am a partner has offices in Buhl and Mountain Home, Idaho. I am also the Vice President and Federal and State Lands Committee Chairman for the Idaho Wool Growers Association, a Director of the American Sheep Industry Association, and Secretary/Treasurer of the National Public Lands Council, and it is on behalf of these associations that I will be testifying today.

The National Public Lands Council, the American Sheep Industry Association and the Idaho Wool Growers Association support the bill introduced the first part of May by Senators Gorton, Shelby and Johnston to amend and reauthorize the twenty-two year old Endangered Species Act.

We strongly support the bills efforts in protecting species while providing for economic needs of landowners and permit holders, in providing incentives for non-federal species protections efforts, and in creating a system for reasoned development of conservation plans. We also support its requirement that the U.S. Secretary of the Interior set a "conservation objective", its allowing for cost-share arrangements on certain activities, and very importantly its requiring that the act be administered to minimize the impact on the use and value of private property.

We are very optimistic that these abovementioned changes will in the future help to avoid such situation as when the Alliance of the Wild Rockies filed suit in Federal Court asking that all National Forests in Washington, Oregon, Idaho, Western Montana, and Northern Nevada shut down grazing because the Forest Service failed to provide for the long-term viability of the Bull Trout in the Forest Management Plans. (Bull Trout at this point are listed as a sensitive species, not threatened or endangered).

We are also hopeful that under these amendments when the Forest Service addresses situations such as the Bull Trout in the future, they will come up with better conservation planning than just no sheep grazing after August 15th, whether or not there are any fish present in the stream, as they are presently trying to implement on the Sawtooth National Forest.

It is also the opinion of the associations that I represent that as good as this bill is, it needs to go even further. Some of the additional items that we believe need to be addressed, are as follows:

I)Section 6 of the Act for both plants and animals needs to be amended such that the State rather than the State agency is given the authority to conserve resident species as determined by the State or the Secretary to be threatened or endangered. It is our opinion that this change would not allow the Fish and Wildlife Service to bypass the executive and legislative branches of the States involved, and deal only with the State Fish and Game department in making their determinations.

II)Effects to the budget of the Animal Damage Control Program administered by USDA APHIS by programs developed under the Endangered Species Act must be mitigated. An example, of which, being the additional manpower and equipment costs to the Animal Damage Control in Idaho associated with the wolf re-introduction project. These funds must be replaced in order to maintain an effective program, and it is our opinion that the replacement funds should come from the U.S. Fish and Wildlife Departments budget. (The Idaho Sheep Industry lost 19,000 head of sheep and lambs last year to predators, a loss of approximately \$1.6 million).

III)Delisting language needs to be more adequately addressed, as it has become extremely difficult if not impossible to downlist or delist a species once it has been recovered under the individual plan. Case in point being the down listing of the Eastern Timber Wolf from endangered to threatened after it had reached the plans population goals, which would have allowed limited wolf predation work to resume. However, a lawsuit was initiated, at that point, by environmental groups, the outcome of which was an overly restricted, ineffective Animal Damage Control predation program.

In closing, I would like to state that it is the belief of myself, and the organizations that I represent, that an Endangered Species Act that is properly amended can be something that works for all the Citizens of the United States, and that it doesn't have to cause the range livestock industry, or other multiple use industries to become endangered themselves.

As additions to the record, I would like to submit copies of Elaine Allestad's testimony on wolves before the U.S. Senate Subcommittee on Parks, Historic Preservation and Recreation in May of this year and the American Sheep Industry Association paper on the Review of the Wildlands Project, as back-up to my testimony.

Thank you for the opportunity to testify here today.

TESTIMONY OF
BOB ADAMS
BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT
AND
PUBLIC WORKS' SUBCOMMITTEE ON DRINKING WATER,
FISHERIES AND WILDLIFE

JUNE 3RD, 1995
LEWISTON, IDAHO

GOOD AFTERNOON, MY NAME IS BOB ADAMS. I RESIDE IN PRIEST LAKE, IDAHO, A SMALL RURAL COMMUNITY ABOUT THREE AND A HALF HOURS NORTH OF LEWISTON. I AM HERE TODAY TO SHARE THE PERSPECTIVE OF A SMALL, RURAL COMMUNITY AS YOU CONSIDER THE REAUTHORIZATION OF THE ENDANGERED SPECIES ACT.

PRIEST LAKE IS A UNIQUE PLACE. IT IS OFTEN DESCRIBED AS IDAHO'S GEM BECAUSE OF THE PRISTINE BEAUTY OF THE LAKE, AND THE SURROUNDING FORESTED MOUNTAINS. THE LAKE ATTRACTS FISHERMEN WHO REGULARLY CATCH TROPHY CLASS TROUT. THE FORESTS AND MOUNTAINS ATTRACT CAMPERS, HIKERS, BERRY PICKERS AND HUNTERS. THE AREA'S NATURAL BEAUTY AND ABUNDANT FISH AND WILDLIFE MAKE PRIEST LAKE VERY SPECIAL TO BOTH THE LOCAL RESIDENTS AND THE THOUSANDS OF VISITORS WHO VACATION IN OUR AREA EACH YEAR. THE CRYSTAL CLEAR LAKE AND

SPECTACULAR FORESTS PROVIDE DRAMATIC EVIDENCE THAT NEARLY 100 YEARS OF LOGGING AND DIVERSE RECREATIONAL ACTIVITIES HAVE SUSTAINED THE VALUES THAT MAKE OUR AREA SPECIAL.

I AM SHARING ALL OF THIS WITH YOU NOT ONLY BECAUSE I AM JUSTIFIABLY PROUD OF MY COMMUNITY AND ITS NATURAL SETTING, BUT BECAUSE IT WILL HELP HIGHLIGHT WHAT MANY OF US BELIEVE IS THE CENTRAL FLAW WITH THE ENDANGERED SPECIES ACT. LOCAL PEOPLE IN MY COMMUNITY HAVE WORKED TOGETHER FOR GENERATIONS TO MAINTAIN ONE OF THE MOST SPECTACULAR NATURAL SETTINGS ON THIS PLANET. IN SPITE OF THIS HISTORY OF COOPERATION AND OUR ENVIRONMENTAL SUCCESS, WE ARE NOW BEING TOLD BY THE FEDERAL GOVERNMENT THAT OUR APPROACH IS OUTDATED AND INAPPROPRIATE. OFFICIALS FROM THE U.S. FISH AND WILDLIFE SERVICE HAVE JOINED FORCES WITH THEIR PEERS IN THE U.S. FOREST SERVICE AND DECIDED THAT THE LOCAL COMMUNITY NO LONGER UNDERSTANDS HOW TO MANAGE THE FORESTS, FISH AND WILDLIFE THAT SURROUND OUR HOMES AND BUSINESSES.

ALL OF THIS FEDERAL WISDOM IS BEING IMPOSED UPON US AT PRIEST LAKE UNDER THE BLANKET OF THE ENDANGERED SPECIES ACT AND ASSOCIATED MANAGEMENT GUIDELINES DESIGNED TO PROTECT THE GRIZZLY BEAR. THE WORDS "GRIZZLY BEAR" OFTEN CONJURE UP IMAGES OF FIERCE BRUINS

STRIKING TERROR IN THE HEART OF EVERY MAN, WOMAN AND CHILD. HOWEVER, AT PRIEST LAKE WE HAVE LEARNED FROM PERSONAL EXPERIENCE THAT THE GRIZZLIES ARE NOT NEARLY AS THREATENING AS AN UNYIELDING FEDERAL BUREAUCRACY. IN FACT THERE ARE MANY OF US AT PRIEST LAKE WHO WILL TELL YOU THAT, GIVEN THE CHOICE, WE'D MUCH RATHER DEAL WITH A HUNGRY GRIZZLY THAN THE CURRENT E.S.A. CONSULTATION PROCESS. LET ME GIVE YOU A CLEARER PICTURE OF THE PROBLEMS WE HAVE EXPERIENCED WITH THE ENDANGERED SPECIES ACT. IN ITS CURRENT FORM THE ACT PRODUCES "ONE-SIZE-FITS-ALL" PRESCRIPTIONS THAT IGNORE THE LOCAL NEEDS OF BOTH PEOPLE AND SPECIES. IN OUR REGION, FOR INSTANCE, THE U.S. FISH AND WILDLIFE SERVICE AND THE U.S. FOREST SERVICE ARE FIXATED ON ACHIEVING A 70% GRIZZLY BEAR SECURITY STANDARD. THIS MEANS, SIMPLY, THAT 70% OF THE SPECIFIED GRIZZLY BEAR RECOVERY AREA HAS TO BE MORE THAN 1/4 MILE FROM ANY OPEN ROAD. THIS STANDARD IS BEING ZEALOUSLY ENFORCED DESPITE SUBSTANTIAL EVIDENCE THAT IT HAS NO SCIENTIFIC CREDIBILITY OR RELEVANCE TO BEAR SURVIVAL. THE STANDARD HAS NOT BEEN ABANDONED BECAUSE IT HELPS MEET THE HIDDEN AGENDA OF LOCKING PEOPLE OUT OF THE FOREST. IRONICALLY, THE AGENCIES HAVE IGNORED THE REAL PROBLEM WITH GRIZZLY BEAR RECOVERY: PEOPLE ARE KILLING BEARS BECAUSE THEY HAVE NO STAKE IN THEIR SURVIVAL.

AT PRIEST LAKE , LOCAL RESIDENTS THOUGHT THAT WE DID NOT NEED TO PERMANENTLY CLOSE 125 MILES OF FOREST ROADS TO MEET THE 70% STANDARD. WE FELT THAT, IN SPITE OF AN EARLIER PROBLEM WITH BEAR MORTALITIES IN THE SELKIRK RECOVERY AREA, LOCAL EFFORTS TO EDUCATE THE PUBLIC AND ENFORCE EXISTING RULES WERE BEARING FRUIT. IN FACT, WE HAVE SEEN A DRAMATIC REDUCTION IN GRIZZLY BEAR MORTALITY FOR FOUR YEARS AS WE ENTERED 1995. IN SPITE OF THIS PROGRESS, THE U.S. FOREST SERVICE AND THE U.S. FISH AND WILDLIFE SERVICE PLUNGED AHEAD WITH AGGRESSIVE PLANS TO IMPLEMENT ROAD CLOSURES TO ACHIEVE THE 70% SECURITY STANDARD. AFTER A PROLONGED BATTLE WITH THE FEDERAL AGENCIES, A COALITION OF COMMUNITY INTERESTS INCLUDING RESORT OWNERS, TIMBER COMPANIES, BERRY PICKERS, HORSEMEN, OUTFITTERS AND CONCERNED CITIZENS SUBMITTED OUR OWN PLAN FOR IMPROVING GRIZZLY BEAR SECURITY. RATHER THAN FOCUSING SOLELY ON ROAD CLOSURES OUR GROUP PUT TOGETHER A COMPREHENSIVE AND BIOLOGICALLY SUPERIOR PLAN TO DEAL WITH THE CHALLENGE OF PROTECTING THE BEAR FROM ILLEGAL SHOOTINGS. WE DEVELOPED A PROGRAM TO IMPROVE PUBLIC EDUCATION AND A LOCALLY OWNED SAWMILL PROVIDED FUNDING FOR THE STATE FISH AND GAME TO HIRE A CONSERVATION OFFICER.

WE ALSO WORKED WITH OUR LOCAL IDAHO STATE FISH AND GAME BIOLOGIST TO DESIGN A MORE THOUGHTFUL ROAD CLOSURE PROGRAM. WE PROPOSED

CLOSING SIGNIFICANT PORTIONS OF THE RECOVERY AREA TO MOTORIZED TRAFFIC DURING THE SEASONS WHEN THE BEARS USE THOSE AREAS MOST. WE DIDN'T CLOSE EVERY PART OF THE RECOVERY AREA FOR THE ENTIRE YEAR. IN AN EFFORT TO COMPROMISE WITH OUR OWN FEDERAL GOVERNMENT, WE SUBSTANTIALLY EXCEEDED THE 70% SECURITY STANDARD DURING THE FALL AND SPRING MONTHS, WHEN NEARLY ALL OF THE PREVIOUS MORTALITIES HAVE OCCURRED. WE ALSO TARGETED ROADS FOR CLOSURE THAT WEREN'T REALLY IMPORTANT FOR LOCAL TIMBER OR RECREATION USES. IN SHORT, WE INTEGRATED THE SOCIAL AND ECONOMIC VITALITY OF OUR COMMUNITY. A GOAL THAT WAS IGNORED IN THEIR HEADSTRONG EFFORT TO ACHIEVE THE MAGICAL 70% STANDARD. DID OUR EFFORT TO BREAK THE MOLD SUCCEED? WE DID MAKE SOME PROGRESS, AND THE U.S. FOREST SERVICE HAS INCORPORATED MANY OF OUR RECOMMENDATIONS. BUT UNFORTUNATELY OUR COMMUNITY BASED ALTERNATIVE WAS ONLY ACCEPTABLE TO THE FEDERAL AGENCIES AFTER IT WAS MODIFIED TO MEET THE OBSOLETE 70% STANDARD. HIDING BEHIND THE REQUIREMENTS OF THE E.S.A. CONSULTATION PROCESS, FEDERAL OFFICIALS ASSURED US THAT IT WAS ESSENTIAL TO IMPLEMENT ADDITIONAL SUMMER ROAD CLOSURES TO MEET THE UNIFORM STANDARD. THIS OCCURRED, IN SPITE OF THE FACT THAT ALL OF THE BIOLOGISTS AGREE THAT GRIZZLIES ONLY USE OUR PORTION OF THE RECOVERY AREA DURING THE SPRING AND FALL. THE BEARS MIGRATE NORTH DURING THE SUMMER.

WHY DID OUR CURRENT ENDANGERED SPECIES ACT FOSTER SUCH A RIGID BUREAUCRACY THAT HAD SUCH DIFFICULTY INTEGRATING THE INTERESTS OF OUR LOCAL COMMUNITY? IT IS MY BELIEF THAT TODAY'S E.S.A. DOESN'T PROVIDE AN ADEQUATE MECHANISM TO LOCALIZE RECOVERY PLANS AND MEANINGFULLY ENGAGE CITIZENS AND COMMUNITIES. THE SCIENCE GENERATED BY THE ACT IS OFTEN WEAK SPECIFICALLY BECAUSE LOCAL KNOWLEDGE IS NOT ADEQUATELY INCORPORATED.

I BELIEVE THAT IF THE SCIENCE GUIDING GRIZZLY BEAR RECOVERY WERE ADEQUATELY PEER REVIEWED A VERY SERIOUS QUESTION WOULD ARISE. WE WOULD BE FORCED TO ACKNOWLEDGE THAT A LONG TERM VIABLE POPULATION FOR THE SELKIRK RECOVERY AREA WOULD EXCEED THE CARRYING CAPACITY OF THE AREA SET ASIDE FOR GRIZZLY BEAR HABITAT. IN OTHER WORDS, TO HAVE ENOUGH BEARS TO MAINTAIN THE GENETIC BASE NECESSARY TO SUSTAIN AN INDEPENDENT POPULATION OF GRIZZLIES WE WOULD SUBSTANTIALLY OVERRUN THE CURRENT SELKIRK RECOVERY AREA. IT WOULD BE INTERESTING TO HEAR THE PUBLIC'S REACTION IF THEY WERE INFORMED THAT THE SIZE OF EXISTING RECOVERY AREA HAD TO BE INCREASED BY A FACTOR OF FOUR OR FIVE TO ACCOMMODATE A FULLY RECOVERED GRIZZLY POPULATION.

IN ITS CURRENT FORM, THE E.S.A. GENERATES HABITAT REQUIREMENTS FOR THREATENED AND ENDANGERED SPECIES THAT SEEM TO PURPOSELY FOCUS ON RESTRICTING ECONOMIC ACTIVITIES. I HAVE YET TO SEE THE FEDERAL AGENCIES PROPOSE A COMMON SENSE PLAN FOR ANY SPECIES. I HAVE YET TO SEE ANY PLAN WHICH PROVIDES FOR HABITAT NEEDS WHILE PURPOSELY PROTECTING LOCAL ECONOMIC INTEREST. THE ACT SEEMS TO BE TAILOR MADE TO BE USED AS A TOOL TO ACHIEVE THE POLITICAL GOALS OF THOSE WHO WOULD LIKE TO CHANGE THE HUMAN SPECIE'S RELATIONSHIP TO THE LAND. THE ACT AND ITS SINGLE SPECIES FOCUS HAVE MADE A MOCKERY OF THE TRADITIONAL MULTIPLE-USE DOCTRINE FOR FEDERAL LANDS.

ALTHOUGH THE ERA OF MANIFEST DESTINY IN AMERICA MAY HAVE PASSED, THE ACT SEEMS TO DIRECT FEDERAL MANAGERS TO MAINTAIN OR RETURN THE LANDSCAPE TO A "PRE-SETTLEMENT" CONDITION. THIS NOTION THAT WE CAN OR SHOULD PRETEND THAT MAN NEVER OCCUPIED PARTS OF OUR COUNTRY IS NOT ONLY MORALLY BANKRUPT, IT IS PRACTICALLY INDEFENSIBLE. PEOPLE AND THE ASSOCIATED ECONOMIC ACTIVITIES REQUIRED TO SUSTAIN THEM, ARE VALID AND PROPER PARTS OF EVERY ECOSYSTEM IN AMERICA. USING THE E.S.A. AS A TOOL TO AVOID THIS TRUISM, IS DESTRUCTIVE NOT ONLY TO OUR LOCAL SOCIAL FABRIC, IT ALSO CRIPPLES THE RECOVERY PROSPECTS FOR THE SPECIES THE LAW IS DESIGNED TO PROTECT. BY FORCING LOCAL COMMUNITIES TO MAKE ALL OR NOTHING CHOICES IN SPECIES RECOVERY

PLANS, THE E.S.A. UNDERMINES THE SUPPORT OF PEOPLE WHO CO-HABITATE THE LAND, NO THREATENED OR ENDANGERED FISH, ANIMAL OR PLANT WILL SURVIVE FOR A SIGNIFICANT PERIOD OF TIME.

DO I HAVE SUGGESTIONS FOR THE CONGRESS TO CONSIDER AS YOU TAKE UP THE ISSUES OF REFORMING AND REAUTHORIZING THE E.S.A.? ABSOLUTELY! FIRST WE MUST BREAK THE "WASHINGTON KNOWS BEST" MENTALITY OF SPECIES MANAGEMENT AND DELEGATE SIGNIFICANT AUTHORITY TO THE INDIVIDUAL STATES AND LOCAL COMMUNITIES FOR THE DESIGNATION OF CRITICAL HABITAT AND THE DEVELOPMENT AND IMPLEMENTATION OF RECOVERY PLANS. STATE AND LOCAL OFFICIALS WHO WORK ON THE LAND EVERY DAY, ARE IN A MUCH BETTER POSITION TO MAKE EFFECTIVE DECISIONS TO PROTECT ANIMALS WITHIN THEIR REGION. SHOULD SCIENCE PLAY A ROLE IN THE PROCESS? OF COURSE, BUT IT MUST BE PEER REVIEWED SCIENCE THAT FOCUSES ON PRACTICAL OPPORTUNITIES RATHER THAN POLITICAL AGENDAS.

SECOND, THERE HAS TO BE SOME INCENTIVE FOR FEDERAL LAND MANAGERS TO DEVELOP PLANS THAT MINIMIZE HUMAN IMPACTS. WE HAVE TO LOOK FOR WAYS TO COEXIST, AND THERE HAVE TO BE FORMAL INCENTIVES FOR LOCAL STATE AND FEDERAL OFFICIALS, WE SHOULDN'T HAVE TO WAIT UNTIL THE LIVELIHOODS OF LOGGERS, OUTFITTERS AND TOURISM BUSINESSES ARE THREATENED FOR THE SYSTEM TO BE FORCED TO CONSIDER THE IMPACTS OF

DECISIONS ON LOCAL ECONOMIES AND CULTURE. MY NEIGHBORS AND I AT PRIEST LAKE SHOULD ALSO NOT BE FORCED TO ACCEPT DRAMATIC CHANGES TO OUR LIFESTYLES AS THE PRICE FOR PROTECTION MEASURES WHICH PROVIDE ONLY SMALL, MARGINAL BENEFITS FOR THREATENED AND ENDANGERED SPECIES.

IN SUMMARY, LET'S LOOK AT OUR OPTIONS FOR PRESERVING AND MAINTAINING FISH AND WILDLIFE FROM A DIFFERENT PERSPECTIVE, WESTERN CIVILIZATION CAN PROGRESS IN A COMPATIBLE FASHION WITH OUR ENVIRONMENT AND ITS OTHER INHABITANTS. WHEN THE HISTORY OF GRIZZLY BEAR RECOVERY IN THE NORTHERN ROCKIES IS FINALLY RECORDED, IT WILL SHOW THAT SUCCESS OR FAILURE WAS RELATED TO THE SUPPORT AND PARTICIPATION OF INDIVIDUAL PEOPLE AND LOCAL COMMUNITIES.

THE AMERICAN PEOPLE SUPPORTED THE ORIGINAL VERSION OF THE E.S.A. BECAUSE THEY BELIEVED IT WAS IN THE PUBLIC'S COMMON INTEREST TO PROTECT ENDANGERED WILDLIFE, UNFORTUNATELY, THE ACT IN ITS CURRENT FORM HAS TAKEN AWAY THAT SHARED INTEREST FROM THOUSANDS OF PEOPLE AND COMMUNITIES. LET'S RESTORE THE AIMS OF THE ACT IN THE UPCOMING REAUTHORIZATION PROCESS. BUT LET'S NOT FORGET THAT PEOPLE SHOULD BE THE BENEFICIARIES OF SPECIES' PROTECTION, RATHER THAN BECOMING VICTIMS OF A RIGID AND CUMBERSOME FEDERAL BUREAUCRATIC PROCESS.

Testimony of Ted Hoffman, DVM before hearing of U.S. Senate Committee on Environment and Public Works, Subcommittee on Drinking Water, Fisheries, and Wildlife, 6/3/1995, Lewiston Idaho.

I am a practicing veterinarian. With my immediate family I also raise beef cattle on privately owned lands that I lease.

I have had extensive experience with the impact of the ESA on Idaho's citizens, economy and environment. I have been the Chairman of the Wildlife Committee of the Idaho Cattle Association for 6 years. I am on the Steering Committee of the Bruneau Valley Coalition which successfully brought suit in federal court to overturn the listing of the Bruneau Snail. The Coalition is currently seeking to develop a Habitat Maintenance and Conservation Plan for our underground aquifer and the snail. Since 1993 I have been a member of the Wolf Legislative Oversight Committee formed by the Idaho Legislature to develop a wolf management plan for the State of Idaho in conjunction with federal wolf reintroduction efforts.

Anyone involved in natural resource use or management who cares about the economy, society and environment we will leave to our children must be concerned about the impacts we have on our environment. These impacts include the effects we have on the populations and habitats of plants and animals which may, correctly or incorrectly, be referred to as endangered species.

THE ESA IS NOT WORKING

It is now evident that any successful program to safeguard these populations and habitats will require a scientifically valid and coordinated effort between the federal, state and local governments and the private landowners and resource users who are in immediate contact with these species. If any of these entities do not participate, the effort will suffer from:

- 1) inadequate funding
- 2) inadequate knowledge of the species and habitat, to include understanding of the interrelations with other species and the local society and economy, and
- 3) inadequate public or private will or cooperation.

It is equally evident that the ESA as currently written is not a successful program. The dismal record of this primarily federal program has been well documented. Few if any species have been significantly assisted. Astronomic federal expenditures have been ineffective. Even greater hidden costs have been borne by our economy and society through disruption of economic activity.

Sec 6.(a) of the ESA states "In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States." That seems fairly clear. Has this mandate been followed?

The State of Idaho is currently suing the federal government regarding salmon recovery. The Idaho Department of Water Resources, the lead state agency regarding the Bruneau Snail, was completely ignored by the USF&WS. This was one of the reasons Federal Judge Ryan overturned the listing.

Secretary Babbitt personally brought Canadian wolves into Idaho this winter, ignoring the comments and concerns of Idaho citizens, the state Wolf Legislative Oversight Committee, virtually the entire state legislature, all the state-wide elected officials and the entire Congressional delegation. His autocratic action so infuriated the majority of Idaho citizens that the state has refused to participate in the effort in any way.

For similar reasons, the Wyoming legislature passed a law offering a bounty on wolves outside of Yellowstone Park. The Wyoming Governor vetoed the law only to avoid encouraging Wyoming citizens in acts that would result in costly federal lawsuits.

This act, intended to protect species, has instead created an incentive to destroy them. For most citizens who own land or use natural resources, the unfortunate economic incentives of this program have become quite clear: Kill every individual of a species and irrevocably alter its habitat before the species is listed or face dire economic consequences.

Fortunately few individuals have yielded to this economic incentive, or, more appropriately, disincentive of the ESA. But as public awareness grows of the damage the ESA can do to individuals and communities, I fear that more will.

It is ironic that the ESA treats people who have chosen to live near these species or their habitats in such a manner. In many cases these species still exist there only because of the good management or stewardship of the resources provided by these individuals or their forebears. Yet the ESA punishes their good deeds.

ECONOMIC EFFECTS OF THE ESA ON CITIZENS

Bruneau Hot Springsnail

Shortly after the Bruneau Snail was listed as endangered in Jan 1993, Dr. Charles Lobdell, chief of the USF&WS Boise Field Station, stated in a press release that the farmers and ranchers in the Bruneau Valley would not be harmed by

the listing. Within one month he informed the Farmer's Home Administration that they must consult with him before renewing operating loans to 13 farmers in the valley who were dependent on FHA financing, and that he did not intend to approve the renewal of operating loans for 1994.

He informed the Soil Conservation Service and the Agricultural Stabilization and Conservation Service that they also must consult with him before providing technical assistance, cost-share assistance, crop support programs, or disaster payments or loans to the 59 farmers and ranchers in the valley who irrigate with groundwater. Agriculture is a competitive business. While the merits of these programs are open to debate, there can be no debating the fact that closing these programs to these 59 citizens would cause them to operate at a competitive disadvantage to other farmers and ranchers - eventually they would go out of business.

The USF&WS has failed to develop convincing scientific data that the snail is endangered or that local groundwater irrigation has any significant impact on the snails' water supply. No hydrologist, not even a federal government hydrologist, can state with any certainty that stopping groundwater irrigation would benefit the snails' water supply.

USF&WS had no legal right or authority to stop these farmers' water usage and rights unless they condemned the water rights and compensated the farmers. Instead USF&WS chose to interfere with the farmer's legitimate use of their rights indirectly, by destroying the financial viability of their farms. Farmers who can no longer farm cannot afford to sue for just compensation under our Constitution. Fortunately we won our lawsuit and reversed the listing of the snail before USF&WS bankrupted the valley. We spent over \$200,000. in legal fees and research in the effort.

Wolves

Six years ago the Idaho Cattle Association sought to end the interminable controversy about the return of wolves to Idaho. We changed our policy of opposition to return of wolves. We still find it ludicrous to spend scarce federal dollars to transplant wolves when 60-70,000 wolves in secure populations live in Alaska and Canada and Minnesota. But we agreed to cooperate with wolf reintroduction if we would be allowed to protect our families and property and we would be compensated for the property losses that all sides agreed we would suffer to a greater or lesser extent. We were and are the group who will lose the most to wolves in Idaho.

Since that time we have participated extensively in each and every committee or hearing or request for public comment involved with wolf reintroduction. A few minor concessions

were made to our requests. Our main concerns remain essentially ignored. Page 1-21 of the Final Environmental Impact Statement for the Reintroduction of Grey Wolves states: "Wolf recovery will not impact or change individual property rights as defined by law." This is a complete and bald-faced lie.

We cannot kill a wolf attacking our stock dogs. Wolves that attack our stock dogs and pets will not be removed, even though such animals will certainly pose a threat to our children. We can only kill a wolf after they have killed or wounded our livestock. The federal government provides no compensation for this loss or any loss.

Within a month after introduction to Idaho, a wolf was shot while eating a calf. DNA testing of the wolf's stomach contents revealed parts of another calf in the wolf's stomach.

Salmon

The USF&WS, BLM, USFS and BOR are all seeking minimum in-stream flow water rights in the Snake River Water Adjudication process under the guise of protecting endangered species and habitat. If these water rights are granted, the water rights of irrigators must be denied. Again, farmers who are no longer allowed to farm cannot afford to sue for compensation.

Seven Idaho ranchers in the Stanley Basin lost 2/3 of their USFS grazing allotments because environmentalists threatened lawsuits on the basis of the ESA and salmon. These ranchers lost 2/3 of their ability to produce income from cattle and 2/3 of the value of their ranch despite the fact that virtually everyone knows that the downstream dams are the cause of salmon decline, not availability of salmon spawning habitat, and despite a long-term Forest Service study in the Stanley Basin indicating the compatibility of livestock grazing and healthy riparian areas.

These and other actions have had a chilling effect on natural resource dependent industries in Idaho. Most people are very reluctant to make long-term investments because one never knows when a real or imagined endangered species will appear. Consequently Idaho's ability to produce food, fiber, minerals, jobs and tax dollars is being significantly impaired.

Recommended Changes to ESA

1. First and foremost I want to emphasize that no change to the ESA will be effective unless the people who implement the act are changed. These are not the stereotypical federal bureaucrats who are ignorant of the effects of their

actions and are merely putting in their time, waiting for that federal pension.

Many, if not most, of the members of the USF&WS and their coordinating counterparts in the BLM, USFS, and BOR are very capable individuals who are highly motivated to pursue their personal ecologic agenda. They have not chosen government service as a career out of a desire to serve the people or government of this nation, but out of their desire to gain power to serve their own agenda. This agenda has been shaped to a large extent by the so-called environmentalist non-profit corporations whose funding, payrolls and future depend on constant stirring of the cauldron of environmental hysteria.

Some examples:

a. When the Bruneau Valley Coalition and Owyhee County Land Use Planning Committee approached the Portland Regional office of the F&WS with a draft Habitat Maintenance and Conservation Plan we were informed we should coordinate with Patricia Klahr of the Boise USF&WS Field Station. Patricia Klahr is a former paid staff member, lobbyist and director of the Idaho Conservation League - who sued USF&WS to list the snail, intervened in our suit to delist the snail, and appealed the federal court ruling to delist the snail. Patricia Klahr failed to inform us when a meeting was cancelled, has resisted meeting with the Owyhee County Land Use Planning Committee, and arrives at meetings inadequately prepared. Progress on this privately funded, grass-roots effort to address concerns about our aquifer and the snail has been rather limited.

b. I have discussed Dr. Charles Lobdell's deceit and efforts to damage farmers financially. Federal District Court Judge Harold Ryan found the efforts of Dr. Lobdell and others in the USF&WS in the listing of the Bruneau Snail to be "arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law."

c. USF&WS Law Enforcement agent Paul Weyland refused Eugene Hussey's request to wait for the Lemhi County Sheriff before entering Hussey's property with a search warrant. Hussey is a 74 year old WWII veteran of 5 major land campaigns in Europe. A wolf was shot on Hussey's property near Salmon ID, while eating a calf of Hussey's. Weyland taunted him, calling him a subsidized farmer and claiming that eating beef was unhealthy.

d. The office of the Secretary of the Interior, Bruce Babbitt, issued a press release concerning the Hussey calf-wolf incident. The press release grossly misinterpreted the preliminary investigation of the National Fish & Wildlife

Forensics Laboratory by claiming the Hussey calf was stillborn.

The problems in the USF&WS and DOI run from bottom to top, and are long-standing. Similar problems existed in the Bush and Reagan administrations. The environmentalist corporations can address their concerns by calling their own members or friends in power in the federal agencies, or by filing sweetheart lawsuits, which, by the way are highly profitable.

Those same federal employees have learned that they can ignore the concerns, the rights and the property of state and local government and citizens. Their leaders have demonstrated to them that they can lie to us and about us, that they can treat us in an arbitrary, capricious, and unlawful manner, at no risk to themselves.

This situation will not be corrected without a radical dismantling of the people and structure of the agencies, or a dramatic change in the laws which they must be forced to obey.

2. A system of checks and balances must be established that prohibits any ESA activity in a state or a county that is active in land use planning unless the state or county agrees to that activity. Due to the problems outlined in 1 above, simply urging cooperation will not be adequate. State and local government must have real power. In the federal lands states of the west, it is critical that this prohibition also apply to all coordination with other federal land management agencies. such as the BLM, FS or BOR. Because ESA activities can result in increased state expenditures, decreased economic activity and property values, and decreased state revenue, they are very similar to the unfunded mandates Congress has so wisely discontinued.

3. Private property rights of citizens must be specifically protected. Agents of the F&WS and NMFS have ordered innumerable actions, based on scanty scientific evidence, which deprive citizens of the use of their property or the right to protect their property. To stop this abuse and to prevent huge losses to the U.S. Treasury through the U.S. Court of Claims, I urge reform of the ESA to require that:

- Any action which affects property rights must meet a high standard of scientific validity and necessity, and must be approved by independent scientific review.

- Property rights should be clearly defined and should include the use of federal permits that are investment backed expectations.

- All such actions must be compensated from funds annually allocated by Congress to the ordering agency (such as NMFS or F&WS) before such actions are taken. This

allocation should be specific, that is, Congress should know exactly what action they are funding. If compensation can not be paid in that year, the damaging or restricting action cannot be taken. Compensation should be thru the F&WS or NMFS budget so that the agencies will become cost conscious.

_____- Compensation is not the end goal here. Cooperation and coordination is the goal. Compensation should be minimized through effective coordination and cooperation with state and local government and citizens to devise effective strategies that do not impair property rights.

4. Priorities should be established.

Species that are in no danger of extinction because of healthy populations outside the U.S., for example, wolves, would go to the bottom of the list.

Species for which little or no success for recovery can be reasonably expected should not drain scarce federal funds from more productive efforts.

5. Decisions should be made within the context of a broad and comprehensive review of ecologic and economic costs and benefits. Tough choices will have to be made, just as in our national budget debates. Our social demands for food, housing, jobs, and tax dollars will be met one way or another. All human activities have some ecologic impact. We should seek to make our society and economy as a whole ecologically sustainable. Narrowly focused, piecemeal decisions on individual species and habitats will be uncoordinated and ineffective.

For example, hydropower generation and livestock grazing are two industries which, when properly managed, can produce social benefits at relatively minor ecologic costs. Restricting these activities may result in replacement of those social benefits at a higher ecologic cost, (e.g. power generation from burning fossil fuels, more intensive food production.) Such restrictions may benefit one species in one place, but the benefits may not justify the ecologic cost to other species or habitats or to the overall effort to make our society and economy ecologically sustainable.

6. Independent scientific peer review must be required for each step of the listing process and the processes for developing critical habitat designations and recovery plans. Peer review by economists should also be required for any decisions involving economic effects or property rights effects.

7. Higher standards should be set than "the best commercial or scientific information available." Unless evidence is convincing, through peer review, that claims of endangerment are valid or that specific actions are necessary and will be effective, action should not be taken. We do not have excess federal dollars to spend on purely speculative

efforts. Time requirements for decisions must be modified to allow informed decisions.

8. No action should be taken regarding a species proposed for listing until the scientific process of listing, designating critical habitat, and formulating recovery plans is completed. Proposals for listings are a popular tool for environmentalist groups for restricting all economic activity in an area without first proving the need for restrictions. While federal agencies should be allowed to address concerns for candidate species in their land management plans, such concerns should not take priority over other existing uses until the species is listed.

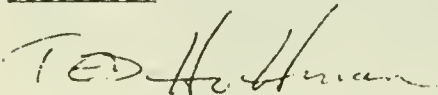
9. Those parts of the act that allow federal agents to be individually responsible for failures to enforce the act should be removed, or balanced with individual responsibility for uncompensated or unnecessary takings of private property rights. Federal decision-makers should not be stampeded by environmentalist corporations and their batteries of lawyers.

10. States should be allowed to designate what agency will be their coordinating agency with the USF&WS. States should not be required to coordinate only through their Department of Fish & Game.

11. Cooperative programs with states should not be jeopardized by the Sec'y because the state and the USF&WS have been unable to reach agreement on one or more species or actions.

12. Voluntary programs based on economic incentives should be the primary form of recovery actions. Private landowners or federal lands permit holders should be provided technical advice and offered incentives to institute new activities or make management changes in existing activities to benefit listed species.

13. In order to stop existing abuses and speed corrective action, I urge that no funding or authorization be provided for any ESA activities until the act is reauthorized and reformed.



Ted Hoffman, DVM
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208-587-6374 , phone and fax

Senator Dirk Kempthorne, Chair
 Senate Committee on Environment and Public Works,
 Subcommittee on Drinking Water, Fisheries and Wildlife

Statement by James M. Peck at field hearing on Endangered Species Act, Lewiston, Idaho, 3 June 95

I am submitting for the record of the Lewiston hearing on the Endangered Species Act the final report of the Idaho Grizzly Bear Management Oversight Committee. This committee was appointed by the Idaho Legislature to review and recommend action on grizzly bear recovery efforts in this State. This is an example of how a committee of informed lay citizens representing a diversity of competing interests can develop a means to resolving a controversial issue involving an endangered and threatened species. Based on my Idaho experiences with endangered and threatened species, including the mountain caribou, the gray wolf, and the grizzly bear, several things are apparent:

- 1) When informed lay citizens are provided opportunities to be involved in resolving problems, and agree to resolve them, compromises and progress can be made. This is the case with the grizzly bear.
- 2) When full-scale interagency cooperation occurs, adequate public support is present, and financial support for a program is provided, progress can be made. This is the example of the mountain caribou. Fish & Wildlife Service, two regions of the US Forest Service, the Washington and Idaho state fish and wildlife agencies, and the forestry and wildlife counterparts in British Columbia, are cooperating in this program. Citizens from both countries contribute substantially to the program.
- 3) When committees of informed lay citizens cannot agree, then no progress is made, the agencies are less efficient in carrying out their obligations and coordinating the uses of the resources, and the issue continues to fester without resolution. This is the case with the gray wolf, where a legislative oversight committee failed to agree on suitable action.
- 4) Funds are tight, people are spread fewer and further, obligations and workloads are not reduced. This should eventually compel the federal agencies to cooperate more effectively with the public and their state counterparts that manage natural resources, in an effort to get the job done, but they can use encouragement. The conservation dollar can be put to more efficient use, including that portion of it going towards the conservation of threatened and endangered species. The Endangered Species Act provides for cooperation with the states, provides flexibility under the section 10j nonessential experimental rule, and the administrators of the Act obviously have flexibility to manage in a diversity of ways, if that cooperation and flexibility is taken advantage of. There are examples where this occurs of course, but as the attached grizzly bear report shows, it could be better.
- 5) Efforts to encourage a more sensitive and flexible administration of the Endangered Species Act are in order. Hopefully these hearings will foster more extensive coordination and more effective means of working with the public and with the several states by the federal agencies. An adaptive management approach to managing endangered species issues is most certainly indicated. I doubt that the Act needs revision as much as the agencies need more encouragement to practice a broader based approach to its implementation.

James M. Peck
 Professor, Wildlife Resources
 University of Idaho
 Moscow ID

17 FEB 95

REPORT OF THE IDAHO GRIZZLY BEAR MANAGEMENT OVERSIGHT COMMITTEE

EXECUTIVE SUMMARY

The Grizzly Bear Oversight Committee met five times between July 1993 and October 1994, and held four evening hearings, in Orofino, Grangeville, Idaho Falls, and Sandpoint. These hearings revealed a substantial range of opinions concerning grizzly bear management, conservation, and restoration. Concerns centered on effects of bear management practices on other uses of bear habitat, including access and logging. Some concern about human safety was expressed. Support for bear conservation came largely in the form of preserving the wildlife heritage and associated wild lands that many Idahoans cherish. A general consensus among interest groups has developed for restoration of grizzly bears to the Selway Bitterroot Wilderness using the 'nonessential experimental population' provision of the Endangered Species Act which allows for substantial flexibility in management. An extensive recovery area would be designated so any bears which become problems within the region could be dealt with under that provision (bears occurring outside of the recovery area would not be considered 'nonessential experimental'). Recommendations from the Committee to confine reintroduction to the wilderness, to not implement any land-use restrictions outside of the wilderness for bears, and to make the State of Idaho an integral partner in development of the Environmental Impact Statement concerning the reintroduction were accepted by the Interagency Grizzly Bear Committee which has responsibility for providing policy and guidance for management of this species. There is a serious need for the federal agencies to provide more information to the public in a timely and comprehensive manner, and to coordinate management of this species between the agencies more effectively. Because grizzly bears will be dealt with at the local level, direct involvement by the State of Idaho in their management will facilitate prompt and effective resolution of problems which may arise.

The 52d Legislature of the State of Idaho (1993) established a Grizzly Bear Oversight Committee for the purpose of guiding development of conservation plans for this species in Idaho (House Bill 317). The following individuals were appointed to this committee:

The Honorable Laird Noh, Kimberly (representing Senate Resource Committee)
 The Honorable Golden Linford, Rexburg (representing House Resource Committee)
 Jerry Conley, Director, Idaho Dep. Fish & Game (representing the Department)
 W.G. Nelson, Director, Idaho Dep. Agriculture (representing Animal Damage Control)
 Andy Andrus, Idaho Wildlife Federation, Boise (representing Recreation)
 Bob Deurloo, Meridian Gold Company, Salmon (representing Mining)
 Mike Luque, Idaho Wildlife Federation (replaced Andrus, representing Recreation)
 Jim Peek, University of Idaho, Moscow (representing Wildlife)
 Cindy Siddoway, Siddoway Sheep Co., Terreton (representing Livestock Grazing)
 Dick Willhite, Shearer Lumber Co., Elk City (representing Timber)

TEACHING/RESEARCH/SERVICE
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24 February 1995

THE HONORABLE LAIRD NOH
SENATE RESOURCE COMMITTEE
THE HONORABLE GOLDEN LINFORD
HOUSE RESOURCE COMMITTEE

RE: FINAL REPORT, IDAHO GRIZZLY BEAR MANAGEMENT OVERSIGHT
COMMITTEE

The enclosed report supplements earlier reports of meetings which you have and summarizes efforts of our committee. The lasting impression I have obtained from this experience is that people in this state representing the diversity of interests involved can indeed work out equitable compromises if given the chance and provided with adequate understanding of the problem and of each other's concerns. I want to thank you both for providing us with the proper guidance which lead to this highly satisfying experience.

Sincerely,

James M. Peek
Professor

cc: Committee members

The Committee held five meetings:

July 13 & 14 1993	Boise
August 22 & 23, 1993	Orofino and Grangeville
November 23 & 24, 1993	Idaho Falls
July 20-22, 1994	Powell
October 18 & 19, 1994.	Coeur d'Alene, Sandpoint, Bonner's Ferry

The Boise meeting was informational for the Committee with US Fish & Wildlife Service, Idaho Department of Fish & Game, and attorneys familiar with the Endangered Species Act giving presentations. The Powell meeting was held in conjunction with the Interagency Grizzly Bear Committee (IGBC). The other meetings included hearings which provided the public located within the four recovery areas in the State with opportunities to deliver testimony to the Committee.

Four areas in Idaho are within recovery zones for the grizzly: Yellowstone, Bitterroot, Selkirk, and Cabinet-Yaak (see map). Overall responsibility for management and conservation of the grizzly lies with the Interagency Grizzly Bear Committee which is comprised of US Fish & Wildlife Service, US Forest Service, US National Park Service, USDI Bureau of Land Management, Idaho Department of Fish & Game, Montana Department of Fish Wildlife & Parks, Washington Department of fish & Wildlife, and Wyoming Game and Fish Department.

BITTERROOT ECOSYSTEM RECOVERY AREA MEETING

The meetings in Orofino and Grangeville on 22 and 23 August 1993, included evening hearings in which 99 people provided comments concerning a restoration of grizzly bears into the Bitterroots. Of these, only one person, a newly arrival from the east coast, supported bear recovery. It was readily apparent that people were substantially uninformed about the proposed restoration. Concerns over the effects of the presence of bears on other uses, particularly on recreation and timber harvest in the North Fork of the Clearwater River, were commonplace.

Subsequently, contacts with individuals and organizations indicated that if bears were to be restored, an acceptable approach would be to restore to the Selway-Bitterroot Wilderness (SBW), use the 'nonessential experimental' designation, and specify no land use modifications outside of wilderness specifically for bears. The timber-based group, Resource Organization On timber Supply (ROOTS) is very active and supports recovery in the SBW, and perhaps the Frank Church River of No Return Wilderness (FCRNR). The Northern Chapter of the Sierra Club is on record as supporting recovery in the SBW and the FCRNR. The Blue Ribbon Coalition (off-road vehicle organization) supports restoration to the wilderness as well. Local opposition to any recovery from the Clearwater County delegation to the Idaho legislature, and the several county commissioners exists, but nevertheless the beginnings of general agreement for a restoration to the central Idaho wilderness areas by the various interest groups exists. Information obtained from members of the Bitterroot Grizzly Bear Working Group (wildlife biologists from Montana, Idaho, US Fish & Wildlife Service, and US Forest Service) and others knowledgeable about the biology of the bear and the situation within this area was also sought and considered. Following the meetings in Orofino and Grangeville, a recommendation for restoring grizzly bears into the Selway-Bitterroot Wilderness was developed. This recommendation was submitted to the IGBC,



Figure 2. Present grizzly bear ecosystems in the conterminous 48 States, 1990 (the San Juan Mountains area of Colorado is not shown).

for consideration as an alternative and will be one of the alternatives in the draft EIS which IGBC decided to proceed with at the summer 1994 meeting at Powell. The recommendations are:

1. The US Fish & Wildlife Service proceed with actions necessary for compliance with the National Environmental Policy Act, including an Environmental Impact Statement, regarding recovery of the grizzly bear in the Bitterroot Grizzly Bear Ecosystem.
2. The preferred alternative for recovery of grizzlies in the Bitterroots proceed under Section 10(j) of the Endangered Species Act as a 'nonessential experimental population'.
3. Actual reintroduction of grizzlies into the Bitterroot Ecosystem be confined only to the Selway-Bitterroot Wilderness Area.
4. No land-use restrictions specific to grizzly bears be applied outside the Selway-Bitterroot Wilderness Area. Existing restrictions identified for other species will be considered adequate for grizzly bear recovery.
5. Management of problem grizzly bears will be provided for under existing nuisance grizzly bear guidelines.
6. A wide array of boundaries should be considered for delineation of the nonessential experimental population area.
7. The State of Idaho should be an integral partner in the development of the EIS.
8. The US Fish & Wildlife Service should immediately seek to obtain the funding necessary in order to comply with NEPA for recovery of grizzly bears in the Bitterroot Ecosystem (funding is now available).

It is apparent that if grizzly bears are to be restored to the Bitterroot Recovery Area, two major issues have to be addressed. The first concerns available habitat and its quality, and the second concerns survival of the reintroduced grizzlies. Evaluation of grizzly mortality patterns from Montana, Western Canada, and Alaska illustrate that the major factor is humans (Table). When hunting seasons are allowed, legal hunter mortality is the primary cause. When populations are not subject to hunting, then various combinations of legal control of bears causing problems and illegal take become the major mortality factors. Where populations are small, as when they are being restored to vacant habitat, mortality of one or two bears, especially adult females, may be critical. Steps to minimize opportunities for human-caused mortality of grizzlies that are introduced into vacant habitat are thus a high priority.

Steps to minimize human-caused mortality may include introducing bears into areas where opportunities for human contact are low, and close monitoring of individual bears (all would be radio-collared) and patrolling to contact people who are in the area to apprise them of the presence of a bear. These direct efforts to track bears and people should be augmented by broad-scale public information concerning the program and the bears; however, grizzlies are scavengers, so efforts to prevent introductions of poisoned bait and other illegal takings by those opposed to recovery should include consideration of local sentiment. Local support, or at least tolerance of the restoration effort is crucial. Extensive contacts with individuals in towns adjacent to the proposed recovery area reveal a level of intolerance and concern about restoring grizzly bears which must be addressed by open communication and consideration of local suggestions. Restoration of grizzly bears to the Bitterroot Recovery Area will be a long-term effort. Problems of locating suitable individuals for reintroduction, ensuring their survival, and the naturally low rate of reproduction of the species, all indicate that persistence, patience, and understanding will

Table 2. Causes of grizzly bear mortality by region* of North America. The period of record is given in parentheses under the region.

Cause	Alaska (1970-1981)	British Columbia (1970-1977)	Alberta (1973-1984)	Northwest Montana (1973-1985)	Cabinet Mountains (1950-1980)	Greater Yellowstone Ecosystem	
						(1973-1983) ^b	(1970-1984)
Legal kill	11,601	2,653	305	112	10	4 ^c	43 ^c
Illegal kill		660 ^d	63	38		13 ^e	83
Control	598 ^f		63 ^g	47		6	87 ^h
Other			22 ⁱ	7	27 ^j	5	10 ^k
Unknown						2	14
Natural			2 ^l	1		1	13
Total kill	12,199	3,313	455	205	37	31	250
Annual mean	871	414	35	19	1	3	17

* Sources of data were as follows: Alaska—Alaska Fish and Game (unpubl. rep., Juneau, 1984); British Columbia—B.C. Minis. Environ. (1979); Alberta—J. R. Cunson, R. B. Schaufele, and D. H. Treichel (unpubl. rep., Alberta Wildl., Edmonton, 1985; Northwest Montana—Dool et al. (1986); Cabinet Mountains—W. Kasworm (unpubl. rep., Moni. Dep. Fish, Wildl. and Parks, Helena); Greater Yellowstone Ecosystem—Knight and Eberhardt (1984).

^b Adult females only.

^c Hunting seasons closed in 1973.

^d Estimated from Tompa (1984).

^e Includes 8 illegally shot by nonhunters, 3 killed illegally by hunters, and 2 killed illegally by sheep operators.

^f Includes defense of life and property; excludes illegal kills and other forms of mortality.

^g Includes 29 in self-defense and 34 in "problem" situations (related to livestock depredations).

^h Includes 18 deaths related to capture and handling, plus 4 killed during research activities.

ⁱ Includes 10 shot by Indians, 7 killed in population research, 5 killed in accidents.

^j Includes illegal kills, controls (bears killed or moved that repeatedly damage property, frequent campgrounds, or have been involved in human death or injury), poisoning, and defense.

^k Vehicle collisions.

^l Includes 1 2-year-old male due to predation, 1 12-year-old female, cause unknown (M. W. Barrett, Alberta Wildl., pers. commun.).

be needed by all involved. If two-year old individuals are selected for reintroduction, then initial production of cubs will be at least three and probably four or more years off.

A number of uncertainties exist about the proposed recovery, which will be addressed in the Environmental Impact Statement. We don't know if there is enough area within the 3 million acre central Idaho wilderness to recover a viable population. We don't know if linkage between populations in the several recovery areas could be established. We don't know how naive bears coming from unroaded wilderness will react to roads in adjacent areas, if and when they encounter roads. While experiences in restoring black bears provide encouragement, grizzly bears have never been restored to vacant habitat. Also, we can't predict bear behavior or movements in the central Idaho area, and will have to deal with problem bears on a case by case basis.

The timing of bear recovery places perspective on the long-term nature of this project. The attached graph illustrates six possible scenarios of population increases after different numbers of bears would be introduced. Assumptions are that no mortality would occur, females breed first at 6 years, and two cubs are produced by each female every third year. These assumptions are obviously unrealistic, but serve to provide maximum population sizes possible. The goal is to reintroduce 2-year-old bears which have not established home ranges in their native habitat and are most apt to stay within the intended area. Scenario 6, introducing 15 bears over the first five years, provides the highest population. Scenario 5, introducing 45 bears over a 15 year period, is the next best approach. Scenario 3, which may be the approach that logistics and conflicts dictate, would probably not be successful in restoring grizzlies. The more female bears that can be placed into the population as rapidly as possible is the obvious strategy.

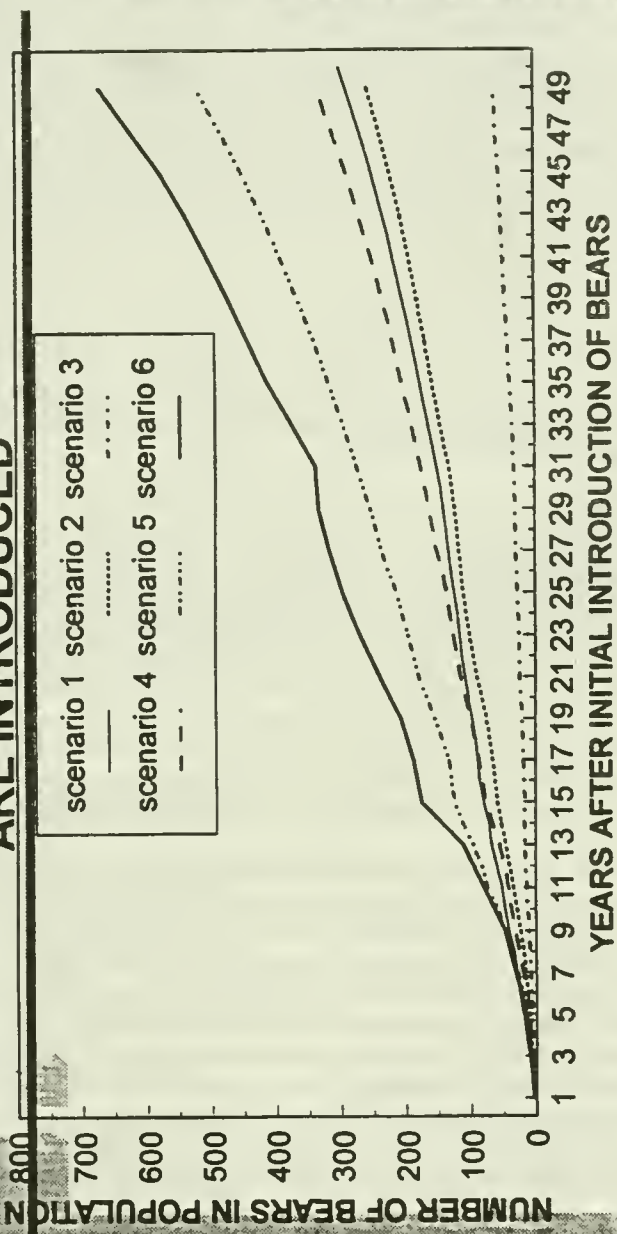
YELLOWSTONE ECOSYSTEM RECOVERY AREA MEETING

The meeting and public hearing at Idaho Falls on 23 and 24 November included reports from officials of the US. Forest Service regional office in Missoula and the Targhee National Forest, Yellowstone National Park, Idaho Department of Fish & Game, and Greater Yellowstone Coalition, from a sheep rancher operating in the Yellowstone ecosystem, and other livestock operators in the eastern Idaho area. Testimony from the evening hearing was provided by 9 individuals representing 7 organizations in the region. A wide variety of views were provided along with the background and status reports from the agencies.

The grizzly bear management program in this ecosystem has progressed since the population was classified as threatened to where two of three criteria that must be satisfied before delisting can be considered have been met. The numbers of sows with cubs that must be present (15) has been met or exceeded for the past six years. Mortality has been reduced to three bears or less for the past six years also. Occupation of 16 of the 18 bear management units by breeding sows has been documented. These 2 units are in Idaho. Testimony from experienced Fish & Game people indicates that bears have not been present in these two units in recent years, but subadult male was trapped in the Caldera Subunit of the plateau Bear Management Unit in 1994. Questions as to whether the two units without documented adult sows provide sufficient habitat to sustain resident bears or whether they should be included in other units have been raised and the management agencies are completing investigations into that issue, due for completion by year's end.

The Targhee National Forest provides most of the grizzly bear habitat in eastern Idaho, included within the Henry's Lake, Plateau, Madison, and Bechler Bear Management Units

SIX SCENARIOS ILLUSTRATING POPULATION INCREASES AFTER DIFFERENT NUMBERS OF BEARS ARE INTRODUCED



scenario 1 scenario 2 scenario 3

 - - - - -
 scenario 4 scenario 5 scenario 6
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 - - - - -

SCENARIO 1= INTRODUCE 4 BEARS FOR 5 YEARS THEN 2 BEARS FOR EACH OF NEXT 10 YEARS
 SCENARIO 2= INTRODUCE 10 BEARS FOR 5 YEARS THEN 1 BEAR FOR EACH OF NEXT 10 YEARS
 SCENARIO 3= INTRODUCE 6 BEARS FOR 5 YEARS ONLY, INCLUDING 1 MALE AND 5 FEMALES
 SCENARIO 4= INTRODUCE 2 BEARS EACH YEAR FOR 15 YEARS, INCLUDING 3 MALES AND 12 FEMALES
 SCENARIO 5= INTRODUCE 3 BEARS EACH YEAR FOR 15 YEARS, INCLUDING 3 MALES AND 42 FEMALES
 SCENARIO 6= INTRODUCE 15 BEARS DURING THE FIRST 5 YEARS, INCLUDING 5 MALES AND 10 FEMALES

ASSUMPTIONS
 NO MORTALITY
 FEMALES BREED FIRST AT 6 YEARS
 TWO CUBS PRODUCED EVERY THIRD YEAR

(BMU). The Henry's Lake and Plateau units have substantial area within the Targhee, while the Madison and Bechler units are primarily within Yellowstone National Park. The Two-Top grazing allotment from which grazing was removed is in the Madison unit, in situation 1 habitat (grizzlies designated for priority consideration). The Plateau unit includes the extensive logged lands that followed the pine beetle epizootic. High quality grizzly habitat consisting of forests dominated by Douglas fir occurs on the western portions of this unit while the lodgepole pine-dominated areas east on the Forest provide lower quality bear habitat, in terms of forage, cover and extensive human access. Management activities on the Forest include access management. The portions of the Plateau unit which extend into the Park are primarily lodgepole-pine dominated habitats on rhyolite-derived soils which are also not high quality bear habitat in terms of forage, but which have limited access. The Targhee is recommending adding part of the Madison BMU to the Henry's Lake BMU to make it sufficiently 1 to sustain a sow with cubs.

Eastern Idaho is experiencing increased human population growth. Concerns about managing that growth by restricting development were expressed at the hearing. Organizations in the Teton Valley and in Fremont County which include environmental and user interests have been formed to address the effects of population growth on the region and its resources. Environmental interests have increased activity in the region. Appeals of timber sales combined with the reduced timber harvest on the Targhee were noted. Administration of grazing on public lands is an important issue where great uncertainty occurs. High demand for elk hunting and other hunting and fishing opportunities continues. There is obviously a great deal of uncertainty among people within this region concerning its future.

The following recommendations are based on discussions at the hearing.

1. US Fish & Wildlife Service has not been sufficiently active with the public in southeastern Idaho concerning grizzly bear issues. Grizzly bears will not be recovered within the eastern Idaho portions of the Yellowstone Ecosystem without extensive consideration and involvement of the public. There is a need to move a scientist experienced with grizzly bears and who has an interest in learning and working with Idaho people to the Idaho office of the Fish & Wildlife Service to work more effectively with the public and the agencies based in Idaho.
2. Coordination of access management could be improved among the several agencies. Clear reasons for each specific management decision need to be provided to the public. There is a need to monitor and evaluate access management to refine actions and to appraise the public of progress. Effective access management is obviously the key to more effective resource management in this region.
3. Past decisions of the Targhee National Forest concerning timber management have affected the ability of some areas to support and retain resident bear populations. However, forest conditions are constantly changing and different habitats will occur in the future. From the standpoint of hunting opportunity, grizzly bear habitat, and timber production, there is a need to encourage development of the forest overstory in the Plateau Unit. The insect-blighted forests that were logged now provide unique opportunities to demonstrate that modern forest management practices can enhance tree growth in the context of ecosystem management and should be recognized as such and taken advantage of. Intensive management of lodgepole pine in this area is justified based upon the multiple values that are involved, as well as the highly positive public relations that can accrue. The proximity of these stands to Yellowstone National Park, and the national exposure of the problem, should provide incentive to practice and demonstrate a high

standard of silviculture and forest management. Such an effort will require sensitive leadership which can develop the funding, encourage creativity in developing action for specific areas, use of an adaptive management approach, and persistent and effective involvement of the associated agencies and the public.

4. There is extensive uncertainty among all users of public lands in the region. Plans to cope with this uncertainty may best involve an adaptive management approach which identifies goals, specifies actions, lists the assumptions and the unknowns, includes a monitoring program, and involves all affected public. The effects that activities on private lands, including residential development, have on grizzly bear occupation is not known, but obviously close coordination with those who use the areas occupied by grizzlies will have to occur. There is leadership in the region outside of the federal and state agencies that should be consulted and included in decision making relative to the public lands and resources, so the private lands are duly considered. Regional land use plans involving both public and private lands are possible in this portion of Idaho.

SELKIRK CABINET-YAAK RECOVERY AREA MEETING

The committee first met with the Selkirk Cabinet-Yaak Grizzly Bear Management Subcommittee in the Idaho Panhandle National Forest office in Coeur d'Alene. The purpose of the Idaho Oversight Committee was explained to these agency people, and the major outcome of that meeting was that we became acquainted with each other.

Approximately 75 people attended the hearing at Sandpoint the evening of 18 October with 23 individuals providing testimony. Organizations represented included the Boundary County Commission, Stream Segments of Concern Committee, Back Country Horsemen of Idaho, Idaho Conservation League, North Idaho Off-Road Vehicle Association, Border River Sportsmen. The following data from the Bonner's Ferry Ranger District show the land management situation:

Total Acres in District	404,880
Acres considered unsuitable for growing timber	71,659
Acres set aside for retention of Old Growth	51,000+
Acres available for timber production and management	277,513
Acres primarily for timber production	73,699
Acres for Big Game, Bear, Caribou, secondary for timber	183,634
Acres primary and secondary for timber	258,526
Acres unroaded (after West Moyie Timber Sale)(31% of District)	131,210
Acres roaded (After above sale, 69% of District)	273,670
Total miles of road in District	987
Total miles closed at any given time	495

The Bonner's Ferry Ranger District provided the following information: closed (actually, restricted) roads include 367 miles of seasonal restrictions (such as for grizzly bears, 15 March-15 Nov), and 128 miles of yearlong restrictions. This is approximately 50% of total road mileage, or

37% of restricted-for-seasonal-use-only. The number of miles of restricted road has increased in the last couple of years. However, many of the new gates have been internal to other gates and have not affected the majority of the public's access. The figures show that no acreage is reserved from timber production for bear habitat and that 63% of the road system is available for travel by motorized vehicle. Notes on access management (attached) illustrate the problems with attempting to minimize grizzly bear mortality by reducing human activity in their range.

The hearing resulted in a mix of support and criticism of the grizzly bear management program in the Selkirks. Two primary criticisms of the program centered on access restrictions and uncertainty over changes in management of human activities within bear habitat. Support for maintaining the bear in the area was equally as strong as the criticisms. In the course of the two days of discussion, including the hearing, sufficient commentary was presented to indicate that many interested people would be better served with a more effective information program. Additionally, opportunities exist for expansion of the access management program beyond simple exclusion or unrestricted access. The BackCountry Horsemen asked whether ten horses moving over a trail once a week was sufficient to disturb grizzly bears. Recreational use of one high-mountain lake may have to be modified to levels which do not cause damage and congestion. There may be several instances where the ever-increasing demand for access can be managed for a variety of purposes, one of which would be to minimize grizzly bear dislocation or mortality.

An additional problem lies with the way that US Fish & Wildlife Service provides input into the ongoing management programs in bear habitat. As an example, the Forest Service received a report of a field inspection at the same time a news release (Spokesman Review article, appended) was given out. There is a definite need for this agency to work more closely with local Forest Service and Fish & Game people in order to coordinate activities and minimize conflicts. Currently, FWS is the agency with primary responsibility for bear recovery. However, conflicts between agencies pose confusion for the public, and it needs to be recognized by all that a primary goal of working with people on this issue, both inside and outside of the agency is to minimize mortality and dislocation of bears, reduce human-bear conflicts, and create more understanding of how this may be accomplished.

During the meeting little commentary was available concerning results of available research, except from Fish & Game researchers, perhaps emphasizing the general lack of information available to the public and to the Forest Service. This grizzly population was designated for recovery in the initial grizzly bear recovery plan in 1982. The recovery area encompasses about 2000 square miles, which is considered a minimum size needed to support a minimum population of 90 bears (see map). Current criteria for delisting include occupation of all Bear Management Units within the recovery area by females with young, a total number of females with young-of-the-year of 6 for a six-year period, and a goal of reducing known human-caused mortalities to zero. These criteria are presented in the 1993 Selkirk portion of the Grizzly Bear Recovery Plan, and are modifications from the 1982 plan. The minimum population estimate for the area is 26-36 bears, published in the *Journal of Wildlife Management* 58: 266-271 by Canadian and US researchers, using mark-recapture methodology and assuming that all bears in the United States and most in Canada were accounted for. During the 1983-1993 period, known human-caused mortality is 8 individuals, of which 6 are attributed to illegal shootings in open-access areas during sport-hunting seasons. Adult female survival is high because collared

Notes on Access Management on Bonners Ferry Ranger District
February 17, 1993

- The Grizzly Bear is listed under the Endangered Species Act as threatened. The Woodland Caribou is listed as endangered. According to the best biological evidence, both species require a certain amount of "security" habitat, that is, habitat free from disturbance and the risk of mortality. The Forest Plan for the Idaho Panhandle National Forests specifies that each bear management unit (of approximately 100 square miles) should be managed for a minimum of 70 square miles of security habitat. Caribou do not have such a standard because all caribou units are contained within bear units and benefit from the bear guidelines.
- The best access management tool the Forest Service has to meet the intent and letter of the ESA is to gate roads. This allows for periodic access for fire control, winter timber harvesting, non-motorized recreational use, and administrative uses such as timber sale planning. This is an expensive program because many of the local publics do not agree with gating; vandalism cost taxpayers about \$5000 last year on the Bonners Ferry Ranger District. Far cheaper but less flexible are earthen barriers.
- Timber harvesting is the biggest "user" of security space on the Bonners Ferry RD. The second largest user is open roads for the primary purpose of pleasure driving, including huckleberry picking and trailhead access.
- Currently no buffers above the 70 square mile minimum are built in because of public pressure to keep the maximum number of roads open. This results in lost opportunities to salvage timber or to develop recreational sites. The environmental community tends to lack of buffer as evidence that the Forest Service is not seriously seeking the recovery of these species.
- Lack of security buffers above the minimum results in timber sales frequently occurring in the winter, when no security "deduction" is taken.
- Local people tend to favor more ungated access, although there is a sizable silent segment of the population that favors the benefits of road closures. These benefits include better hunting and fishing, and more opportunities for solitude.
- The district's timber sale appellants generally favor increased grizzly bear security and feel the Forest Service is doing an inadequate job of protecting the grizzly bear. Appellants are frequently non-local but often are still Idaho residents.
- The district will probably continue to close more roads as our analysis indicates greater need for closures to better comply with the ESA.
- Bear hunting, regulated by Idaho Dept of Fish and Game, favors a few users (bear hunters) over many other forest users. Most illegal mortalities occur during bear season on open roads. If bear season were closed in grizzly bear recovery units, there may be more opportunities for open roads or other activities.

PROVIDED BY BOUNDARY COUNTY COMMISSIONER
MERCY DELWING

Wildlife agency bears down on gate-crashers

Inspection finds lax security a threat to grizzly habitat

By Kevin Keating
Staff writer

SANDPOINT — They are shot at, run over, blown up and even blowtorched. People do almost anything to get their vehicles past Forest Service gates — the barrier meant to protect the Pushawald's grizzly bear recovery zone.

Now the U.S. Fish and Wildlife Service says it's time to do more to protect the grizzly bears. The agency is taking all terrain vehicles who zip around gates and over dirt berms, said Bob Hallock, a Fish and Wildlife Service biologist.

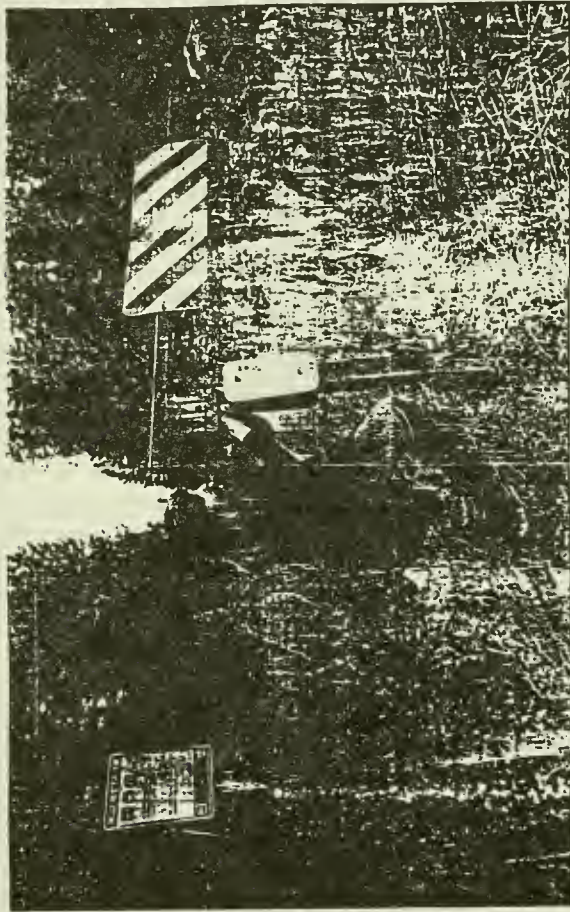
Hallock's office decided to find out just how effective the gates are in protecting the area's 25 grizzlies. The agency conducted an inspection of 10 gates in the Bonners Ferry and Priest Lake Ranger districts last month.

Hallock didn't like the results.

Neither did Forest Service and Idaho Fish and Game officials, who said the surprise survey was inaccurate. The survey checked them for being lax in patrolling about 1,000 square miles of grizzly bear country.

The survey found nearly 90 percent of the gates patrolled by motorcycle and 60 percent by ATV. ATVs

Patrol see 6/17/84, p. 4B



Forest Service biologist Sandy Jacobson checks a gate blocking access to grizzly bear habitat north of Bonners Ferry.

Saturday, October 13, 1984, Spokane, Wash.

CONTINUED FROM A1

Gates

Evidence of unauthorized vehicle access was also found behind many gates.

"I don't think you can make a gate that is foolproof, but we think some of them could be improved," Hallock said. "It's a clear signal in my mind that when you come to a gate, don't have a 5-foot gap around it that you aren't all that serious about it."

Priest Lake Ranger Kent Denstan said that's not true, that the survey exaggerated problems. The gates have been very effective, he said, and the public has started to accept them rather than destroy or drive around them.

"There were lots of errors in the survey and I wish the Fish and Wildlife Service would have worked with us on this," Denstan said. "Even places where you can get around a gate there is very little evidence that has happened. I just don't think it's a major issue up here."

Like Sandpoint and Bonners Ferry, Denstan said some of the "unauthorized access" noted in his district was actually approved entry by government personnel.

Many other closed areas were entered by firefighters trying to close this summer's forest fires.

Some tracks found behind gates were even several years old, said Forest Service wildlife biologist Sandy Jacobson in Bonners Ferry.

"They (the Fish and Wildlife Service) acted more like 'Hey we caught you' instead of making this a cooperative effort," she said. "We have a recommended gate monitoring system. We check and repair them immediately."

The Forest Service doesn't deny some gates are easy to pass on motorcycles or ATVs. But Forest Service budgets are tight and it's not reasonable to beef up barriers for a small number of violators, Jacobson said.

"When you are dealing with gates it's impossible to keep out motorcycles and ATVs. It's not realistic to assume we are going to keep all traffic out," said Sandpoint District biologist Dave Roberts. "We have an entire forest to manage. Grizzly bears are a prime goal, but there are other uses out there."

The Fish and Wildlife Service is concerned about people who drive behind gates with guns. If the gates can't be improved, patrols in closed areas should be, Hallock said.

Most of the grizzly bears found dead in the recovery zones the last 10 years have been shot. A grizzly bear named Sy was shot and killed behind a gate last fall.

"We are worried because we are still having bears shot," Hallock said.

"Grizzly bears are a prime goal, but there are other uses out there."

DAVE ROBERTS,
Sandpoint District biologist

"If you start making how many cows there were to the last 10 years," the Forest Service for (people) behind a closed gate, I would suspect it's not all that high."

"If enforcement is a priority the track record should show that," added.

Don Carr, senior conservation officer for Idaho Fish and Game, said only 11 or 12 bears have been shot since 1963. Of those killings, about 10 people were convicted.

"I think we have saved a lot because of the same fate" said Carr. He caught three people joy riding ATVs last Sunday near Priest Lake.

Those incidents are few, he said, because enforcement is lax, because people are beating the gate and know officers are checking them.

The real friction between the agencies is over how to measure effectiveness of the gates.

"More important than if a gate is passable, it's how much use is behind that gate," said Fish and Game biologist Wayne Walkinsie.

"The Wildlife Service is coming it saying to be effective it has to be something you can't physically go around, while the Forest Service feels the closures are adequate," he said. "We have the same bottom line but the philosophies are different."

The agencies do agree on one point: Vandalism has radically increased. Locks aren't being shot or pickup grills aren't found embedded in gates and posts aren't being pulled out of the ground by four-wheeled gate-haters.

Many people and hunters enter areas on horseback, mountain bikes or hike in. Carr spotted a group of hunters who packed along a wharf barrow to haul out game instead of trying to drive in.

"I think most people are honest, but we don't need any more gates. I know that," said Jim Bates, hunter and member of the Bonners Ferry Trap Club.

In some areas, the limited access has improved hunting, and hunters like the solitude behind gates.

"But do we have reasonable security for the bears? I think that question will up to the air," Hallock said. "There may be an element of success because we still have grizzly bears. We just think things could be tightened up a bit."

bears all resided within areas that were inaccessible due to road closures, and no data for uncollared females outside of protected areas were available. Researchers have concluded that illegal mortality is limiting population growth.

Several times, grizzly bears were mentioned as being compatible with ongoing timber management programs, the timing and execution of the actual logging and subsequent activity being subject to change. Information to logging contractors and employees should be readily available to ensure that conflicts are kept to a minimum.

The primary conclusion from the two-day meeting is that a more effective public relations program is essential within the region of the Recovery Area. Recognizing that local agency people responsible for ongoing management are busy, support is needed. The Fish and Game research project produces a small progress report with limited distribution every 3-4 months, and this should be expanded to include management actions taken by Forest Service in the area, regardless of whether they are specifically intended to benefit bears or not, plus information concerning recovery goals and where we are in this process. A two-agency newsletter put out at least twice a year with extensive distribution to all interested parties and organizations (including those presenting testimony at the Sandpoint hearing), produced at the Coeur d'Alene offices of both agencies by public relations personnel in conjunction with the biologists in the area, would be of high value.

Because a variety of maps and figures are bandied about in the region, a series of displays using maps which show what actually is happening with reasons keyed to each different color and hatching is also suggested. Information on the population status, recovery goals, mortality causes, and distribution of bear management units could also be displayed for the public. Handouts are also an alternative to or addition to the displays.

Fish & Wildlife Service people responsible for oversight of ongoing bear management programs within the recovery area need to be more accountable when dealing with the other agencies and the general public. Available research suggesting that illegal mortality limits population growth, which corroborates a variety of investigations elsewhere with other grizzly bear populations, illustrates combinations of intolerance, lack of experience in dealing with grizzlies, frustration with management, and other attitudes which do not foster integration of a recovered grizzly population into the other activities in this region. While access restrictions appear to be having a positive effect, rigid unilateral actions by one federal agency towards others appear to be arrogant to the point of vindictiveness, foster confusion, and support those inclined to be intolerant of the bear or the managers. Additionally, at least some do not distinguish between people representing different agencies, further confusing the issue. Idaho Fish & Game and US. Forest Service should be persistent in efforts to keep Fish & Wildlife Service people, who are spread very thin and have insufficient appreciation for the management situation, better informed.

Bear hunters cause illegal mortality of grizzlies, often unintentional. Efforts to educate the public which hunts bears, perhaps with a video which resembles that provided to bighorn hunters, may be useful. It is recognized that closing the black bear hunting season in the region will merely

transfer management of problem bears more to the Fish & Game than now occurs, will engender ill-will for grizzly conservation, and is thus unlikely to be a useful approach to the problem. This is a Fish & Game issue which needs to be more intensively managed.

Because access issues are highly controversial in the area, agencies are encouraged to develop a more flexible approach to access management than now occurs. While simple exclusion of motorized vehicles from areas is a useful tool, the long term resolution of access involves integrating a variety of approaches for multiple reasons involving ecosystem management. Restrictions in timing and efforts to reduce but not exclude some types of access appear to be possible, and in fact are in practice. Again, a broader evaluation of this problem with help from elsewhere seems appropriate.

The Oversight Committee recognizes that while there are divergent views on management of forests and wildlife in north Idaho, and that progress is being made in dealing with important problems. Cooperation needs to be fostered by those responsible for the land and the wildlife, so a more effective public relations program seems to be most pressing.

AUGUST MEETING AT POWELL WITH INTERAGENCY GRIZZLY BEAR COMMITTEE

The following is a brief summary of this meeting. Four committee members were able to attend. Recovery successes across the recovery areas include improved sanitation efforts, public education, and partnerships with the National Wildlife Federation, Defenders of Wildlife, Brown Bear Resources, Center for Wildlife Information and the IGBC. Efforts to improve public understanding and support, improve access management, to design silvicultural practices that minimize impacts on bears, and consideration of potential linkage zones between recovery areas are ongoing activities. A population viability analysis is underway, and long-term mortality is down but remains a concern.

Recovery challenges include the need for increased sanitation efforts in all ecosystems. Public land development and subdivision in some ecosystems continues to be a problem, and implementation of access management changes will be a challenge as an access task force report is implemented. The problem of obtaining support of local people for grizzly conservation must be addressed more effectively.

Conservation strategies for the Northern Continental Divide Ecosystem (NCDE) and the Yellowstone are being completed. A fourth bear was moved into the Cabinet-Yaak ecosystem in early July 1994 and is being monitored.

IGBC authorized an EIS for the Bitterroot recovery at this meeting, which will require \$250,000. Approximately \$125,000 will be needed per year to place 5 bears per year for 5 years into the ecosystem and monitor them. Source for these bears will be Canada and possibly the NCDE.

CONCLUSIONS AND RECOMMENDATIONS

1. All agencies do an inadequate job of informing the public in a timely and comprehensive manner about matters concerning grizzly bears and their habitat. Conflict between federal agencies promotes confusion and misinformation. A coordinated effort to inform the public should be made, with all agencies participating.
2. Grizzly bear management activities can be more effectively coordinated and carried out in a timely and equitable manner by the Idaho Department of Fish & Game than by the federal agencies. Conservation officers and others working for IDFG have extensive knowledge of people and local situations which needs to be emphasized more in grizzly bear management. The federal agencies tend to be far removed from local situations or preoccupied with a variety of issues which preclude taking the time to understand and work with the local public effectively on matters concerning the grizzly bear. Idaho Department of Fish & Game is, and should remain an integral partner in conservation and management of this species in the state.
3. There is evidence in all areas visited of a willingness to cooperate among the various user groups in order to resolve problems and make progress. The general consensus over how to recover grizzlies in the Selway-Bitterroot Wilderness Area is a prime example of this. This willingness can be capitalized upon if agencies can follow through on plans and retain and enhance credibility by keeping in close contact with the user groups.



THE PACIFIC RIVERS COUNCIL

PO Box 7011 • Bozeman, Montana • 59771 • (406) 585-3501

1995 JUN -2 PM 3:59

May 31, 1995

The Honorable Dirk Kempthorne
 Chairman, Subcommittee on Drinking Water
 Environment and Public Works Committee
 Senate Dirksen Building, Room 410
 Washington, D.C. 20510-6175

Dear Senator Kempthorne:

We are writing to submit the following testimony and attachments to be printed in the hearing record of the subcommittee on Drinking Water, Fisheries and Wildlife hearing on the Endangered Species Act to be held in Lewiston, Idaho on June 3, 1995. The attachments include a copy of the letter which we sent to President Clinton (dated 2/1/95), and a summary of the chronology of events surrounding the consultation that occurred in eastern Washington and Oregon under Section 7 of the Endangered Species Act.

The issue of Section 7 consultations over salmon on National Forest lands has received considerable attention. A close scrutiny of the facts will demonstrate that it was the lack of cooperation between the U.S. Forest Service and the National Marine Fisheries Service, and not the Endangered Species Act itself, which was the root of the problem. My attached testimony will elaborate on this point further.

We are submitting the attached testimony, chronology, and 2/1/95 letter to President Clinton, to be included as part of the official record for the hearing. We are prepared to meet with you or your staff at your convenience to discuss this issue in greater detail. Thank you.

Sincerely,

Ron Cooper
 Northern Rockies Coordinator

cc: Janet Cot and Steve Shimberg, Majority, EPW
 David Hoskins and Mike Evans, Minority, EPW
 Greg Daines
 Senator Reid

New Visions to Restore America's Rivers and Watersheds

offices also in Eugene, Oregon and Washington, D.C.



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Testimony Submitted to the U.S. Senate
 Committee on Environment and Public Works
 Subcommittee on Drinking Water, Fisheries and Wildlife
 Endangered Species Act Reauthorization Hearing
 June 3, 1995 Lewiston, Idaho

My name is Ron Cooper. I am the Northern Rockies Coordinator for the Pacific Rivers Council, the largest river conservation public interest group in the region. I am located in Bozeman, Montana where I focus exclusively on issues involving aquatic ecosystems and the health of lakes, rivers and streams in Idaho and Montana.

On behalf of the Pacific Rivers Council, one of the plaintiffs in a lawsuit seeking to force the Forest Service to complete consultation with the National Marine Fisheries Service as required by law, I would like to clarify for the record that this lawsuit resulted in virtually no impact to the economy in Idaho. It did, however, result in completed consultation benefiting the salmon of the region.

The lawsuit in fact did not even stop any activities in the National Forests. An injunction was issued, but a 45-day stay of the injunction immediately followed. It was during this stay that the consultation was completed. It is important to recognize that a draft biological opinion (the crucial step in consultation) had already been completed in December of 1994. The subsequent delays cannot be attributed to anything more than stalling by the Forest Service.

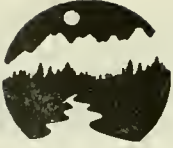
Our legal action was initiated out of concern that the agencies were more interested in a turf war than in saving the salmon. The impacts that confront salmon recovery efforts involve virtually every land use and development activity in the region. Section 7 consultations are the only way to ensure that all parties recognize the effect of their activities on the species of concern.

Consultation began as a result of the lawsuit on August 3, 1994 for Oregon and Washington forests and on September 18, 1995 for Idaho forests. The entire process was completed by March 1, 1995. It is our opinion that it is not the ESA that causes the lengthy and sometimes complicated process to ensure the livelihood of species such as the salmon--it is the agencies who hesitate to consult with the experts and modify their treatment of public lands. It worked for the salmon in Idaho, where no disruption of economic activity occurred.

Further elaboration of this issue is included in the attached letter to President Clinton and the chronology of events prepared by the staff of the Pacific Rivers Council.

New Visions to Restore America's Rivers and Watersheds

offices also in Eugene, Oregon and Washington, D.C.



THE PACIFIC RIVERS COUNCIL

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Background and Chronology for the Court Decisions Concerning Endangered Chinook Salmon and National Forests in Oregon and Idaho

The situation for the salmon is desperate.

The National Forests are home to some of the last productive habitats for the listed salmon. This year there are about 1,000 spring chinook over Lower Granite Dam -- down from a ten-year average of about 20,000. This year there are fewer than 800 summer chinook, down from a ten-year average of about 5,000 fish.

These cases do not represent an Endangered Species Act (ESA) problem, but rather a Forest Service problem.

Since 1976, the Forest Service has had an obligation under the NFMA to provide habitat sufficient to ensure the viability of well-distributed populations of salmon and other vertebrate species in the forest plans. In other words, if the forest plans had been done right in the first place, consultation would be a breeze. The problem here was that the Forest Service knew even before the Snake River salmon were listed that its forest plans weren't good enough, but failed to do anything about it (see attached chronology). Consultation on the forest plans themselves should actually facilitate the resumption/continuation of ongoing activities by allowing the agencies to develop suitable general guidelines for conduct of logging/grazing, etc., instead of reviewing each individual project from scratch.

These cases do not wipe out all the forest plans.

The decision will not result in reinitiation of consultation on forest plans every time a new species is listed. Many species will have such a limited distribution in the national forests that reinitiation of consultation will make no sense. Other species will not be affected by the decisions made in forest plans or the activities driven by the forest plans because their endangered status is caused by other factors (e.g., disease, over utilization, etc.). The salmon are a special (though not unique) case because they are widely distributed throughout the forests in question and are substantially affected by the where, when, and how of several major categories of forest management (e.g.; logging, road-building, grazing). Finally, if the U.S. Fish & Wildlife Service (USFWS) does start listing species on a grouped, or ecosystem, basis, consultation will also occur on such a basis and help the Forest Service move to ecosystem-oriented management.

New Visions to Restore America's Rivers and Watersheds

offices also in Eugene, Oregon and Washington, D.C.

These cases did not disrupt the forest plans for any significant time.

Even where reinitiation of consultation on the plans is required, it need not seriously disrupt ongoing forest management. Consultation could result in a concurrence from the National Marine Fisheries Service (NMFS) or the USFWS that the plans are not likely to adversely affect the newly listed species. (This is especially true if the Forest Service develops plans that comply with the law to begin with.) Or NMFS/FWS could determine that revisions of the plans must occur in some set period of time, but that ongoing management in the interim will not cause enough additional damage to cross the jeopardy threshold. The only time major disruption occurs is when the Forest Service engages in a prolonged effort to avoid complying with the law and the courts have to get involved.

Even where on-going activities are disrupted, that disruption is not permanent.

Once consultation is completed (which, under law, should only last 135 days), activities consistent with the ESA and the survival of the salmon can resume.

Harmful activities could have and should have been stopped regardless of the consultation on the forest plans.

To the extent that ongoing activities have to be stopped because of a new listing, this would occur whether or not consultation on the plans is required. Even the Forest Service admits that consultation on the activities themselves is required and, under the ESA, these activities should be halted until consultation is completed.

CHRONOLOGY:

April 23, 1990: Forest Service adopts Wallowa-Whitman Land and Resource Management Plan (LRMP).

June 7, 1990: Environmental groups and Oregon & Idaho chapters of American Fisheries Society petition for listing of Snake River spring, summer, and fall chinook.

June 11, 1990: Forest Service adopts Umatilla LRMP. Both the Wallowa-Whitman and the Umatilla LRMPs acknowledge the potential for land use activities, particularly timber and grazing, to adversely affect salmon habitat.

January 25, 1991: Forest Service publishes Columbia River Basin Anadromous Fish Habitat Management Policy and Implementation Guide (PIG) to provide guidance for Regions 1, 4, and 6 anadromous fish habitat management policy. The PIG is prompted by the potential listing of Snake River salmon, the discrepancy among forest plans in their treatment of anadromous fish and habitat, and the perceived inadequacy of forest plans to protect anadromous fish habitat.

The PIG calls on the forests to establish objectives for fish production capability, describe desired future conditions of riparian and aquatic habitat, etc. If existing forest plans are not consistent with the PIG, they must be amended; if plans are not amended, a rationale supporting the decision shall be documented. Each forest must submit an implementation schedule by May, 1991. To the best of our knowledge, no forest has amended its plans or documented consistency with the PIG to date.

June 27, 1991: NMFS proposes threatened status for Snake River spring/summer and fall chinook and identifies freshwater habitat degradation from logging, grazing, and mining as a primary factor in the decline.

August 20, 1991: Region 6 Fisheries Task Force reviews seven forest plans and concludes that "they do not contain the specificity needed to determine whether or not long term viability of selected fish stocks can be ensured." The seven forests reviewed are not identified.

October 8, 1991: Gang of Four estimates that existing westside forest plans, even as amended to protect the northern spotted owl, provide at best a 50-50 chance of maintaining viable salmon populations and would not satisfy NFMA viability requirements.

January, 1992: Upper Grande Ronde River Anadromous Fish Habitat Protection, Restoration and Monitoring Plan published. Plan responds to severe salmon habitat degradation in the Upper Grande Ronde watershed of the Wallowa-Whitman National Forest and is developed by a work group including scientists from the Forest and the Pacific Northwest Research Station. The work group recommends the plan "for inclusion by all management and regulatory agencies ... within their plans, policies and management guidance for activities within the ... watershed." To date, neither the plan nor any alternate plan has been adopted by the Forest Service for the watershed.

March 6, 1992: Forest Service and NMFS sign an Interagency Agreement in anticipation of Snake River salmon listings. Agreement calls for Forest Service to develop Conservation Strategies for major Snake River drainages and amend forest plans accordingly. First prototype conservation strategy is to be completed within one year. In litigation, Forest Service pointed to Upper Grande Ronde plan as this prototype. As noted, this plan has not been adopted, and the FS has now abandoned the Conservation Strategy approach and replaced it with PACFISH and the EISs.

April 2, 1992: Environmental groups petition Forest Service to amend Region 1, 4, 5, and 6 forest plans to protect salmon stocks. (Follow-up petition submitted **January 12, 1993**.)

April 22, 1992: NMFS lists Snake River spring/summer and fall chinook as threatened species.

June 16, 1992: A fish and wildlife work group convened by the Region 5 Forester issues draft internal report concluding that draft Klamath, Mendocino, Shasta-Trinity, and Six Rivers forest plans are inadequate to maintain and restore riparian habitat and aquatic and salmonid species. To the best of our knowledge, no final report was ever issued.

August 5, 1992: Plaintiffs send 60-day notice of intent to sue for failure to reinstate consultation on Wallowa-Whitman and Umatilla LRMPs.

September 28, 1992: Forest Service writes to NMFS and asks if NMFS wishes to informally consult on existing Wallowa-Whitman and Umatilla forest plans (no mention of or similar correspondence on Idaho plans).

October 26, 1992: Plaintiffs file suit.

December 8, 1992: NMFS declines consultation on the LRMPs "at this time" and notes that the "appropriate time for us to consult on LRMPs may be during the development of conservation strategies and on consequential amendments to the LRMPs."

March 19, 1993: Plaintiffs move for summary judgment and order compelling consultation on the forest plans. Plaintiffs do not request any injunctive relief at this time. In their responsive declarations and briefs, the Forest Service acknowledges that revision of the forest plans is warranted, but argues that, precisely because of this admission, consultation is not required until the revisions are adopted.

May 27, 1993: Plaintiffs move for an injunction of all ongoing and future logging, grazing, and road-building projects that may adversely affect the salmon after learning that the Forest Service is proceeding with virtually all of these projects without completing consultation with NMFS even at the project-level. We eventually learn that at least 20 timber sales and 10 new roads that the Forest Service admitted may adversely affect the salmon were completed just during the course of the litigation to date, without any completed consultation with NMFS.

October 6, 1993: District court holds for plaintiffs but refuses to enjoin ongoing and previously announced activities.

December 1993: PRC and Wilderness Society file 60-day notice of intent to sue for Idaho forest plan consultation.

April 1994: Forest Service refuses to submit plans. Idaho suit is filed.

July 7, 1994: Ninth Circuit court affirms district court decision on Wallowa-Whitman and Umatilla NF on the merits and reverses district court refusal to enjoin ongoing and announced activities until consultation is initiated. Ninth Circuit dissolves its injunction and remands case to district court.

July 29, 1994: Ninth Circuit court issues emergency injunction in Oregon stopping ongoing projects that may affect habitat. Forest Service finally submits forest plans for consultation.

August 18, 1994: Plaintiffs ask for injunction against on-going projects on Idaho forests, pending completion of consultation.

October 24, 1994: Oregon district court enjoining timber sales that may adversely affect the salmon until consultation on the Wallowa-Whitman/Umatilla plans is completed. Court allows grazing activities that may affect the salmon to proceed.

January 1995: District court issues preliminary injunction against all on-going projects on Idaho forests, pending completion of consultation. Order is stayed until March 15, by agreement of plaintiffs and the government.

February 3, 1995: Government appeals to Supreme Court over consultation in Wallowa-Whitman/Umatilla National Forests.

March 15, 1995: Per agreement, consultation on eight forest plans completed by NMFS and FS. Biological Opinion is issued, and injunctions are lifted.

April 24, 1995: The Supreme Court declines to hear the government's appeal over Wallowa-Whitman/Umatilla forest plans.



THE PACIFIC RIVERS COUNCIL

P.O. Box 10798 • Eugene, Oregon 97440
(503) 345-0119 • Fax (503) 345-0710

February 1, 1995

President William Jefferson Clinton
The White House
Washington, DC 20500

Dear Mr. President:

This letter is to clarify the issues regarding the Pacific Rivers Council lawsuits in Northeast Oregon and Idaho (The Pacific Rivers Council versus Jack Ward Thomas).

It seems increasingly clear that the issues surrounding these lawsuits have not yet been fully or honestly explained to you, the members of Congress or the public. The opponents of ecosystem management and sensible environmental measures have spread many inaccuracies and misperceptions about these cases. There are four misperceptions that I want to discuss briefly in this letter.

- There is a misperception that the Pacific Rivers Council lawsuits are radical environmental actions but, in fact, they are reasoned and necessary steps to protect severely degraded salmon and stream habitat in the Upper Columbia basin.
- There is a misperception that the Endangered Species Act is at fault in these cases when, in fact, it is the Forest Service that is the obstacle to common-sense solutions.
- There is a misperception that protecting salmon habitat pits the environment against jobs but, in fact, the issue is jobs versus jobs -- a few jobs today versus many more jobs tomorrow and in the future.
- There is a misperception that saving salmon habitat is just too complex when, in fact, there is no mystery or real scientific debate about what is needed to save salmon habitat in the Upper Columbia basin.

Finally, I want to reassure you that taking the steps needed to save salmon is good politics and will help the administration.

First and foremost is that these suits are about protecting dwindling critical habitat for endangered salmon. They are not radical or outrageous environmental actions. Many people have perpetuated the myth that the sole problem for anadromous salmon are the mainstem Columbia river dams. Nothing could be further from the truth. The forests of the Upper Columbia basin are severely degraded - many are in much worse shape than

New Visions to Restore America's Rivers and Watersheds

offices also in Portland and Washington, D.C.

west-side forests. Consequently, aquatic habitat for chinook salmon - and for many other anadromous and resident fish - is severely degraded and in decline in the forests of eastern Oregon and Washington, Idaho, and Montana. There is no guarantee that salmon will recover if mainstem passage is secured until and unless aquatic habitat in the Upper Columbia basin is protected and restored.

In fact, growing evidence indicates that poor habitat conditions increase salmon mortality to a level roughly equivalent to that caused by the entire downstream hydro gauntlet. Unfortunately, the effects of habitat loss and the dams are additive. Hence, the precipitous declines of salmon are especially steep in degraded streams, which are found throughout the Upper Columbia basin.

The problems go well beyond chinook and sockeye salmon in Idaho. Steelhead have pending petitions for listing under Endangered Species Act. Listing of bull trout has already been found to be warranted by US Fish and Wildlife Service. Work to petition redband cutthroat for endangered status is underway. West slope cutthroat will follow after that. The dams play no role in continued decline of these resident species with largely overlapping ranges. The fault lies squarely on the back of habitat decline. As on the west-side, the Forest Service has pursued a long-term program of over cutting and mismanagement and the Snake River salmon and many other aquatic species are now paying the price. The party must come to an end promptly even if most party-goers are still too hung over to know it or accept it.

I have attached a letter to the President signed by all eight of the Northwest Senators urging the adoption of the recommendations of the Snake River Salmon Recovery Team (the Bevan plan). Also attached are two paragraphs from that team's final report which calls for an immediate moratorium on resource exploitation on public and private lands which impose risks of degradation to endangered salmon habitat. The measures called for in this report indicate the seriousness of the situation. They are in fact stronger than the protections put in place by the court-ordered injunctions, and much stronger than what is proposed in PACFISH.

As FEMAT clearly states, it is not possible to protect the fish by merely doing project level consultation. The only way to achieve effective aquatic ecosystem protection is by doing watershed level assessment which means plan level consultation. Without this larger view, the cumulative effects of each individual action on stream systems over time cannot be assessed." It is not a single timber sale or mine that has brought the salmon to the verge of extinction, but the incremental injuries caused by the hundreds of projects proposed and directed over time by the Forest Plans. The Courts clearly agree with this: their decisions are unanimous on this point. The orders to stop the "may affect activities" is a common sense approach to temporarily stay those things which the Forest Service has said may harm the fish until a more comprehensive plan is developed.

Second, if there is a problem, it lies with the Forest Service, not the Endangered Species Act. The Endangered Species Act is not broken, and it doesn't need fixing. This is just another train wreck engineered by the very same Forest Service employees who shut down the spotted owl forests. We went to court because the Forest Service has willfully and blatantly continued to ignore the law and pursue projects that degrade salmon habitat. Rather than halting their over-cutting and damaging activities, the Forest Service has delayed, denied and put salmon and many other aquatic species at risk. Their actions have put rural communities in a vice. They have also put the credibility of the agency - and of the administration - on the line once again.

The Pacific River Council cases indicate that attempts to reform the Forest Service by and large may have failed so far. While other agencies began consultation once the salmon were listed, the Forest Service refused. Had the Forest Service started good faith consultation as required by law once the salmon were listed or proposed for listing, there would be little need for lawsuits or injunctions today. Instead, the Forest Service repeated the very same pattern that they exhibited on the west-side which created the spotted owl crisis.

Candidly, we have heard repeatedly from many inside the Forest Service that there are those at many levels of the Forest Service and their legal advisors who are using this case to create a "train wreck" for the Endangered Species Act.

The purported intent is to make the situation seem so caught up in paperwork and so intractable that the Republican Congress will have to take matters into their own hands, amending the Endangered Species Act. Said bluntly, we believe these people have systematically distorted facts, provided skewed and inaccurate information, and in many other ways undercut the administration as a whole. These people have put the Forest Service, the Administration, the laws, the communities, and the salmon at risk. They are apparently determined to create a legal train wreck, public outcry, and political backlash. In fact, an attorney at the Office of General Council once told me point blank, that "we don't think anyone supports this law."

As an example, we have been told that the Forest Service Office of General Council recently scuttled the interagency effort to develop a methodology to do plan level consultation - a process that could very well have helped lead to a successful resolution of the cases. Agency staff are very upset by this.

We urge you to use extreme caution in relying solely on the advice or information provided by the Forest Service or its attorneys to decide the Administration's course of action.

Third, this case is not about "jobs versus the environment" but, as on the west-side, actually about "jobs versus jobs." Neither this case nor protection for salmon will create regional economic collapse, nor will they create widespread administrative problems for the Forest Service. Public outcry and doomsday predictions are to be expected when

people feel blind-sided, and when the binge of overuse is forced to an end. Had northeast Oregon and Idaho residents been told years ago when the salmon were first listed that changes in federal land management were imminent, the changes could have been phased in. However, the Forest Service's delay and denial has been used by some to create fear and then backlash.

We are convinced that once the actual modifications required in land management are known, the economic impacts will not be anywhere close to those that some now claim. This is best indicated by the report done by the economic consulting firm EcoNorthwest about the impacts of the northeast Oregon lawsuit (sent under separate cover). This study found that, despite the claims, the injunctions would affect less than 1% of the cattle in the region. Even so, we urge the administration to begin thinking about developing an Upper Columbia Basin Economic Adjustment Initiative to address whatever economic impacts may occur. This positive step could go a long way to help the situation on the ground.

Further, we must remember that many other people region-wide, including commercial and recreational fishers, have already lost their jobs or been impacted economically by the loss of salmon, and habitat loss in Idaho is a key limiting factor in loss of the Columbia river stocks. The administration is providing disaster relief to many fisherman and coastal communities as a result. Further, protecting the salmon and forests will help support and stimulate long-term economic growth region-wide.

It seems ecologically unconscionable and economically hypocritical for the administration to provide disaster relief to some on the one hand, then continue the very types of actions that caused the crisis on the other.

Further, numerous recent studies have confirmed that rural poverty and distress in the Northwest are not caused by changes in resource extraction levels - they are caused by macro economic forces that cannot be affected by federal or private natural resource policies. For example, a recent study entitled *Forest Dependence and Community Well Being in the Pacific Northwest* by the Rural Sociology Department of the University of Wisconsin concluded that there was a zero effect relationship between harvesting strategy and (rural) well-being. All this is to say that great caution is urged about the claims of widespread regional economic impacts. Sound studies are needed to determine the real impacts, and a regional economic adjustment initiative is needed to address whatever impacts may occur.

The same is true for the administrative impacts. Despite the advice from Office of General Council and the Justice Department, this case will not require all forest plans to be rewritten each time a species is listed. The presence of endangered species should be a clear indication that something is wrong with the Forest Plans. However, plan level consultation will only be necessary for species that are wide ranging on national forest lands, which are a very small percentage of those potentially awaiting listing.

Fourth, the scientific needs and solutions are not mysterious. The Pacific Rivers Council has always relied on the best scientists and utilized the best scientific information to determine what was needed to conserve fish and watersheds. We believe that the recommendations of the scientists we rely on are beyond reproach.

The answers we find seem to be remarkably consistent across species and geographic regions. They are generally the recommendations contained in the Aquatic Conservation Strategy of FEMAT. We need to prevent further degradation by establishing Aquatic Diversity Areas (Key Watersheds) to protect the best remaining habitat refuges and riparian reserves forest wide, and then we need to initiate region-wide ecosystem based restoration. Above all, we must shift the burden of proof to ensure no further harm before projects are undertaken in critical habitats, as FEMAT first intended. Time and again this is what the best science says is needed. We urge all due haste to ensure that these steps are implemented in Idaho.

Finally, saving salmon is good politics. Numerous polls show that the public supports saving the salmon (and trout) and is willing to pay the costs. Yet, we know from numerous sources that extensive political pressure has now come to bear on the National Marine Fisheries Service to ignore their best science and write a watered down Biological Opinion on the Land Resource Management Plans. Unless the National Marine Fisheries Service is allowed to proceed without interference to write a biologically sound Biological Opinion, and unless the Forest Service consults in good faith and then faithfully enforces that Biological Opinion, we are certain to lose the species. If the Administration begins to let the Justice Department, the Forest Service, or any other agency tell the National Marine Fisheries Service how to write biological opinions, then the Endangered Species Act will be defacto undercut and the administration will have served up poached salmon. This will be an ecological, social, economic, cultural and political tragedy. The best way to minimize lawsuits against the Administration is to produce a good Biological Opinion.

Though some in the Republican Congress may now be laying the ground work to make extinction an acceptable choice, the chinook is still protected by law. More importantly, we do not believe the American public wants to let the chinook, bull trout, westslope cutthroat trout, or any other fish go extinct, and those who would gut the Endangered Species Act will soon learn this too.

We urge the administration to stand its ground and show strong leadership doing what is necessary to save the salmon. To do less is certain to lead to widespread public disappointment and a loss of faith in the administration's leadership.

Sincerely,



Bob Doppelt
Executive Director

United States Senate

WASHINGTON, DC 20510

December 20, 1994

The Honorable Bill Clinton
 President of the United States
 The White House
 Washington, D.C. 20500

Dear President Clinton:

We share a common belief that it is essential to maintain our region's environmental heritage and to have a healthy regional economy at the same time. The difficulty of achieving these dual objectives is nowhere more evident than in the effort to restore our declining wild salmon stocks.

In the last three years, the cost of recovering threatened and endangered salmon has increased substantially. So far, the bulk of this cost has been shouldered by the ratepayers of the Bonneville Power Administration (BPA). The National Marine Fisheries Service is now in the process of finalizing a five year Biological Opinion and the recovery plan for these species. In addition, there is active discussion by the Administration of additional emergency measures affecting this year's winter water storage. Any of these decisions could be highly controversial and further escalate the costs of recovery.

We ask your Administration to recognize that there is a limit to Northwest ratepayers' ability to pay for salmon recovery. This is most dramatically illustrated by the fact that several Northwest utilities are now pursuing alternative power supplies, thus reducing their reliance on the BPA as their supplier of choice. If BPA loses significant load due to increasing costs, its ability to make Treasury payments and pay for fish restoration programs will be marginalized.

Additionally, some analysts have indicated that significant increases in flows may cause a derating of the Federal Columbia River Power System to a degree that would result in electric reliability problems for the Northwest power system. This possibility calls into question EPA's ability to balance its basic statutory missions as provided in the Northwest Power Act of 1980 -- providing the Northwest with an "adequate, efficient, economical and reliable" power supply, and ensuring the "successful migration, survival, and propagation of anadromous fish." The fact that BPA's customers are leaving the system, that there is a possibility of load not being met, and that EPA may miss its 1995 Treasury payment makes it clear to us that the statutory standard is not being fulfilled.

We strongly urge that 1995 actions taken for salmon recovery are defined by reliable scientific data. We believe that the recommendations made by the Snake River Salmon Recovery Team to the National Marine Fisheries Service represent the only regional, scientifically peer reviewed measures currently available. Until such time as federal agencies adopt a recovery plan, we recommend that 1995 operations be consistent with those described by the Recovery Team.

Finally, it is essential that any action taken for salmon and other listed species be consistent with the Northwest Power Act's statutory requirement to assure an adequate, efficient, economical and reliable power supply. BPA's competitiveness is central to its ability to finance fish and wildlife mitigation efforts. To the extent adopted salmon restoration measures cost more than the region's ability to pay, we will expect the Administration to implement specific actions for mitigating the cost and reliability impacts to assure that the standard is met.

It is our intention to hold hearings when the Congress reconvenes to identify what steps your Administration will take to address these concerns.

Thank you for your attention to this very important matter.

Sincerely,

Max Baucus

[Signature]

Mike Tolar

Patty Murray

[Signature]

Bob Packwood

[Signature]

[Signature]

*ATTACHMENT:***BACKGROUND ON NORTHWEST SENATOR'S LETTER TO
PRESIDENT CLINTON AND THE BEVAN RECOVERY PLAN**

On December 20, 1994, in a letter to President Clinton co-signed by six other Senators, Senator Kempthorne and Craig wrote that the "...recommendation made by Snake River Salmon Recovery Team...represent the only regional, scientifically peer reviewed measures currently available." Those recommendations call for:

"...an immediate moratorium on all resource exploitation on federal lands which risks measurable degradation of spawning and rearing habitats. Risks of degradation and habitat loss should be evaluated in terms of the habitat protection standards developed by FEMAT, PACFISH and the Eastside Scientific Societies Panel, which includes maintenance of riparian buffer zones of specified dimension along salmon spawning and rearing streams...and elimination of increased sedimentation and water temperature impacts from road building, logging and grazing in critical watersheds." [Snake River Salmon Recovery Team, page V-7]

"...any further exploitation of resources on public lands should be precluded unless it can be shown that 'no further harm' will befall critical spawning and rearing habitats. [Snake River Salmon Recovery Team, page V-6]"

MICHAEL D. CRAPO
2D DISTRICT, IDAHO

**HOUSE REPUBLICAN
LEADERSHIP**
103D CLASS LEADER

DEPUTY WHIP
WESTERN UNITED STATES

REPUBLICAN POLICY COMMITTEE
BEEF CAUCUS, CO-CHAIRMAN
CONGRESSIONAL RURAL CAUCUS
CONGRESSIONAL SPORTSMEN'S CAUCUS
CONGRESSIONAL WATER CAUCUS

Congress of the United States

House of Representatives

Washington, DC 20515-1202

COMMERCE COMMITTEE

SUBCOMMITTEES
COMMERCE, TRADE, AND
HAZARDOUS MATERIALS
ENERGY AND POWER
OVERSIGHT AND INVESTIGATIONS

AGRICULTURE COMMITTEE

SUBCOMMITTEES
RESOURCE CONSERVATION, RESEARCH,
AND FORESTRY
DEPARTMENT OPERATIONS, NUTRITION,
AND FOREIGN AGRICULTURE

**THE HONORABLE MICHAEL D. CRAPO
TESTIMONY BEFORE THE SENATE SUBCOMMITTEE OF
DRINKING WATER, FISHERIES AND WILDLIFE
JUNE 3, 1995**

I thank Senator Kempthorne for holding this important hearing and for the tremendous job he has done in the area of Endangered Species Reform. Also, I commend Helen Chenoweth for her work on the House of Representative's Endangered Species Act Reform Task Force. Both of you have put a lot of time and effort into ESA reform and I want you both to know it is much appreciated.

The goals of the ESA, protection of threatened or endangered species, can be achieved without sacrificing jobs or unduly burdening our economy. Unfortunately, the ESA has not been successful in accomplishing any of these goals. In the twenty-two years since the ESA was enacted some 1,450 species and subspecies have been listed as either endangered or threatened. Almost 4,100 others are current candidates for listing. In these twenty-two years, only 19 species have been delisted. Eight of the twenty two were listed erroneously. Idaho's Bruneau Snail was the first species delisted by a federal court. Senior U.S. District Judge Harold Ryan ruled that the January 25, 1993 listing of the Bruneau Snail by the United States Fish and Wildlife Service (USFWS) was "arbitrary, capricious, and abuse of discretion, and otherwise not in accordance with the law." Seven species have become extinct, and only four have been recovered under the definitions set by the Department of Interior.

Not only have species suffered under the implementation of the Act, but jobs have also been lost, the economic livelihood of thousands of families have been jeopardized, private property rights have been eroded, and cities and states have been exposed to unnecessarily increased costs. Each endangered species listing can trigger millions of dollars of federal spending—and even a greater burden on local and private citizens. One recent study found that the recovery plans for just the 388 endangered species—25,000 pages of bureaucratise—will cost the U.S. government over \$880 million. Instead of fostering a process which brings interested and affected parties together to promote the well being and recovery of a species, the current system forces opposing opinions to take adversarial positions. It is time to change the implementation of the Act, to take it back to its original goal, that of species preservation.

Congress is scheduled to re-authorize the Endangered Species Act this year. We have an historic opportunity to craft a strong bill to protect and restore threatened and endangered species and preserve private property and water rights while sustaining strong resource-based economies. We must no longer approach the issue by pitting endangered species against jobs and families.

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□ 2539 CHANNING WAY
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□ FEDERAL BUILDING
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□ 628 BLUE LAKES BLVD., ROOM 101
TWIN FALLS, ID 83301
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The principles guiding the members of the House of Representatives Endangered Species Reform Act Coalition in reforming the Act are:

- (1) Make the ESA more compatible with private property rights and free market forces. It's time to end the unreasonable curtailment of private property rights. That includes protecting Idaho's sovereignty over its water. I have drafted and will shortly introduce legislation that will ensure state sovereignty over its water.
- (2) Refine the ESA's definition of species and eliminate the use of questionable science in endangered species classification. Current policy does not adequately define species and subspecies and listing decisions under the Act have at times reflected hasty and inadequate scientific assessments. Stronger data collection standards and requirements are needed to correct deficiencies in the listing data.
- (3) Improve and streamline the regulatory process and enhance state, local and citizen participation. The private citizen often feel that they have no voice in ESA regulations and policies. Congress needs to expand the opportunities for affected communities and individuals to comment on all recovery plans and actions. Additionally, ESA reform legislation must include an economic assessment of the impact of the recovery plan, including the effects on employment, costs to the public and its effect on the use and value of private property.

Again, I want to thank Senator Kempthorne and look forward to playing an active role in the passage of ESA reform legislation in the 104th Congress.

THOMAS L. WELSH

FISHERY CONSULTANT

419 E. HIGHLAND VIEW DR. . BOISE, IDAHO 83702 . 208-343-9752

Senator Kirk Kempthorne
304 North 8th St.
Boise, Idaho 83702
May 30, 1995

Re: Endangered Species Act (ESA).

Dear Senator Kempthorne:

Please allow me to introduce myself with a brief biological sketch. I have 36 years of field experience in fisheries research and management, primarily in Idaho but with some work on the Columbia River in Washington. I have authored over 100 fisheries reports during my career. I hold a Doctorate in Fisheries Science and my primary subject of inquiry is in salmonid behavior.

I subscribe to the original objectives of the ESA, that of saving species facing extinction because of the overwhelming intrusions of man into their ecosystems. However, we must face reality relative to survival and extinction of species. Millions of species have become extinct on this planet, many before hominids even existed. It was simply a matter of competition, adaptation, and evolution. While the expansion of our human population has resulted in an accelerated rate of species extinction, we must understand that modification of human behavior will not result in the preservation of all species now inhabiting earth. Many species are doomed, irrespective of the presence of humans in many ecosystems.

I am unconvinced that the ESA needs modification. The problem is in our government agencies interpretation of the ESA. In the following critique of the ESA, I confine my comments to examples in the preservation of fish stocks, since that is my area of expertise.

The first example I cite is the declaration of the Snake River sockeye salmon as endangered. Most sockeye salmon populations have two components, a residualized segment (kokanee) that resides in freshwater lakes and reservoirs during its entire life cycle. Another population component (sockets) displays a migratory instinct during the juvenile stage and emigrates from the lake to salt water. After several years of ocean residency, sockeye return to spawning areas in or near their nursery lakes. The two life-forms are more accurately described in common vernacular as sockeye/kokanee. Sockeye/kokanee are the same species and have common ancestors.

Recently, I was requested to explore the hypothesis that the endangered status for the Snake River sockeye salmon was out of compliance with the law in regard to the ESA. After an exhaustive literature review on the history of the fishery and the stocking of non-indigenous sockeye/kokanee, it was my conclusion that the declaration was invalid. The sockeye/kokanee stock that National Marine Fisheries Service (NMFS) declared "endangered" stock was a hatchery-influenced non-indigenous shoal-spawning sockeye (October-November spawners). The anadromous (sea-going) early-spawning sockeye described in 1894 in the Stanley Basin sockeye lakes were inlet stream spawners. Late shoal-spawning sockeye/kokanee salmon were not observed by early fishery observers in lakes in the Snake River Basin. The largely non-

anadromous form (residualized sockeye/kokanee) spawn in the inlet streams in August-September (as described in 1894) and are still present in large numbers. They are in little danger of extinction and can be used to rebuild the anadromous form when the migration mortality problems are corrected at the Federal Columbia River Power System dams on the lower Snake and Columbia rivers. Recently, the fisheries agencies have further endangered the endogenous sockeye/kokanee stock by trapping and removing fry from Fishhook Creek to reduce competition in Redfish Lake with the non-indigenous hatchery-influenced stock that was declared "endangered".

This is a brief summary of a fairly lengthy document. If you are interested in a review of the study, I suggest you contact Mr. Steve Mooney, Thompson Creek Mining Company, Clayton, Idaho.

The other example of non-compliance with the ESA is in regard to the NMFS demands for flow augmentation in the Snake River to protect Snake River fall chinook salmon. Under this plan, Idaho storage water is released during the summer months to "cool" the river and speed the rate of migration of young-of-the-year fall chinook salmon through the lower river reservoirs. However, the Snake River fall chinook are functionally extinct. Historically, this stock spawned in the Snake River below Shoshone Falls. After Swan Fall Dam was built in 1906, the stock was restricted to the spawning area from Swan Falls Dam to below Walters Ferry. Aerial spawning ground surveys in the 1950's prior to the construction of the three-dam Idaho Power Company complex in Hells Canyon, failed to reveal fall chinook spawning from above Weiser, Idaho, through Hells Canyon downstream to Lewiston, Idaho. Obviously, some important habitat component was absent in that river segment or fall chinook salmon would have colonized this area.

Following the damming of the lower Snake River, restoration efforts by the agencies included the introduction and propagation of Columbia River fall chinook at Lyons Ferry Hatchery on the lower Snake River. The major behavioral difference in the Snake River and Columbia River fall chinook stock is in the rate of downstream juvenile migration. Because the Snake River is warmer than the Columbia River, the native stock of Snake River fall chinook evolutionary ecology included a faster rate of downstream migration from the river spawning areas in order to reach the cooler Columbia River before summer water temperatures in the Snake River became intolerable for salmonids. With the introduction of Columbia River fall chinook into the Snake River, these fish have retained their slower rate of downstream migration. That has prompted the NMFS to demand flow augmentation to cool the river water and speed up the rate of juvenile fall chinook migration. Therefore, as in the case of the Snake River sockeye salmon, expensive and heroic efforts are being undertaken to prevent the extinction of a non-indigenous hatchery-influenced stock of salmonids.

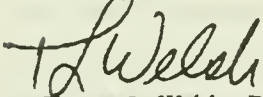
As I stated at the beginning of this letter, we do not need to "gut" the Endangered Species Act. But we do need to recognize two aspects of species survival:

1. Certain "stocks" of species should be able to be declared "functionally extinct" under the ESA because of loss of habitat. In the case of anadromous fish, if access to essential habitat is blocked (such as above impassable dams), that stock cannot be preserved. At sometime in the future, the stock may be reintroduced if we solve the passage problems anadromous fish face in migrating upstream and downstream through presently impassable dams

2. Non-indigenous species and non-indigenous stocks within species should not be protected under the Endangered Species Act.

I hope this letter will be helpful in your committee deliberations on the future of the Endangered Species Act. If I can be of further assistance or clarify any points I have addressed, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read 'T. Welsh'.

Thomas L. Welsh, Ph.D.

1223 E. Baldwin
Spokane, WA 99207
June 16, 1995

1995 JUN 19 PM 2:28

Senator Dirk Kempthorne, Chairman
Subcommittee on Fisheries, Drinking Water and Wildlife
U.S. Senate
Washington, D.C. 20510

Dear Senator Kempthorne:

I would like to add my comments to those you heard at the June 3 hearing about E.S.A. in Lewiston.

I teach high school biology, so I am well aware of the consequences of loss of biodiversity and I am very concerned about it. I fear that human greed and ignorance and overpopulation will continue to threaten wildlife species, both plants and animals. The main protection for wildlife is a strong, effective, scientifically-based Endangered Species Act.

This act needs to be strengthened, not weakened. More emphasis needs to be placed on preservation of habitat as soon as a species is designated as threatened or endangered. Wetlands are especially important. Recovery plans need to be in place faster and be based on scientific data.

I think we have a moral responsibility to protect wildlife species and wildlife habitat. Future generations will not forgive us for our selfishness if we do otherwise.

I request that your committee support renewal of the Endangered Species Act with stronger provisions for habitat protection.

Sincerely,

Mary Jean Porter
Mary Jean Porter

June 7, 1995

1995 JUN 12 PM 11 11

Sen. Dirk Kempthorne
Subcommittee on Drinking Water, Fisheries and Wildlife
367 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Kempthorne:

In 1973, the Endangered Species Act (ESA) was adopted by Congress in the belief that economic progress, increasing population, and changes to the American landscape were causing hardships for an increasing number of sensitive plants and animals. Unfortunately, members of Congress serving at that time failed to envision how broadly the Act would be interpreted, or how sweeping it would become.

Did Congress originally intend for the ESA to cause such far reaching social and economic impacts? NO! The ESA is probably the most restrictive environmental statute because it assigns highest priority to wild plants and animals, human considerations are below those of species in question. Human and economic factors are not considered in its implementation. It was never intended to be applied over vast regions, as in the case of the Northern Spotted Owl or Coho Salmon. The Act is totally out of control, it needs severe modification(s) to ensure it performs the tasks it initially was intended to do.

One anomaly of the ESA is it affords the same protection to every geographical area within a species range as it does the entire specie. For example, the Marbled Murrelet is common on the coasts of Alaska numbering over 250,000. The US Fish & Wildlife Service (FWS) has stated there is no evidence that the Marbled Murrelets in Washington, Oregon and California are geographically separated from the 250,000 Marbled Murrelets in Alaska and British Columbia. If no murrelets lived outside of Alaska, the specie as a whole would continue to thrive!

There are many problems with the ESA. Among them is the consultation process. Section 7 of the ESA specifies the action agency must consult with the agency in charge (FWS or National Marine Fisheries Service (NMFS)) of managing the listed specie to ensure the action agencies proposed project will not jeopardize the continued existence of the specie or lead to the adverse modification of critical habitat. In the case of the spotted owl and marbled murrelet, FWS manages the process, in the case of salmon species the NMFS does. The ESA does not give any guidance as to what constitutes adverse modification of critical habitat or jeopardy to a species. The ESA must be clarified in its definition of jeopardy, adverse modification and the time allowed for consultation.

Because of these lack of standards to measure jeopardy and adverse modifications, FWS and NMFS have significant freedom in making extremely critical decisions on these matters. Both agencies have made decisions which appear inconsistent and arbitrary. FWS has continually violated the ESA concerning the time limit on consultation. The ESA specifically states that

Senator Dirk Kempthorne

ESA Reauthorization Recommendations

Page 2

consultation, ". . . shall be concluded within the 90-day period beginning on the date on which initiated." In most cases, FWS has taken much longer than specified. Instead of using the date they initially receive the consultation request, they are using the date they feel they have all the information to make the decision. This has extended time projects up to 18 months or longer. **Establishment of strict guidelines on length of the consultation period for government agencies to make listing decisions must be vehemently adhered to.**

Another problem with the ESA is listing of critical habitat. The ESA mandates critical habitat be designated at the time of listing "to the maximum extent prudent and determinable." This portion of the law has not been strictly adhered to by the FWS and NMFS, with only a fraction of the listed species having critical habitat designated for them. Economic considerations can be used to determine if an area should be designated but only if excluding an area will not jeopardize the existence of the specie. Economics, human needs, sociogeographic considerations **must be considered** when determining the extent and location of critical habitat. Since when does a society put the needs of plants and animals over human beings - through the use of the ESA, of course. The main problem with critical habitat designation is that of agency latitude. The ESA states only lands which are occupied by the specie and are necessary for their conservation can be designated. Also, a clear, concise criterion for designating and overseeing critical habitat by all government agencies is crucial.

Although the list goes on and on with the problems plaguing the ESA, I would like to conclude that a legislative amendment is necessary to the current Act to ensure the quality of life of those humans adversely impacted by the Act is first and foremost dealt with in a rational, dignified manner. Also, the amendment should protect biological diversity while mitigating the harmful effects on jobs, resource dependent communities and a quality of life that is guaranteed under the Constitution of the United States.

Thank you.

Sincerely,
Larry N. Oatney

June 3, 1995

Rodger Small
3695 Nicklaus Drive
Clarkston, WA 99403-1772

1995 JUN -6 Pii 2:24

Senator Dirk Kempthorne
SD 367
Washington, D.C. 20510-4704

Dear Senator Kempthorne,
I understand the Endangered Species Act of 1989 is up for reauthorization and I would like to express my opinion.

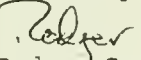
I will vote for legislators who understand laws must be written to focus on the way the real world works. Isn't the logical conclusion of the ESA as presently written to have Buffalo in Kansas City or Red Wolves in Atlanta or Atlantic Salmon in New York City? I personally feel that the bureaucracies enforcing the ESA will try to make these things happen when they think they can stand the political pressure.

I want you to work towards modifying the ESA to require economic costs of saving snail darters or even California condors. I would like legislation to modify the ESA, I sit here thinking about the ESA, what good has it accomplished? A lot of confusion, a lot of lies by all sides, a lot of very poor science especially around the spotted owl and of course we cannot ever admit our mistakes and modify the plans of what is being done which were based on poor science. I sit here thinking, should the government be involved in this sort of thing at all. I think not, what would happen if we got rid of the ESA completely? I don't think the volume of government 'justifies' what is being done in the name of saving endangered species.

Lets back up, extinction of species is nothing new, how many dollars should have been spent to save passenger pigeons? How many dollars should be spent to save dodo birds? How many dollars to save 84 sub species of fish? The problem is that good intentions have gone too far and at a minimum we need to look at the social cost of saving species and I support legislation to modify the ESA to require this analysis.

Please understand that we as a society do not have the resources to do everything. We don't try to face the tough questions, we just put them off. Well I think the ESA is costing too much for us right now and I would like you to change the regulation to estimate the total cost for saving each species. Then we can look at the choice of saving each rationally. Thanks.

Sincerely,


Rodger Small

June 9, 1995

Senator Dirk Kempthorne, Chairman
Fisheries, Drinking Water & Wildlife Subcommittee
U. S. Senate
Washington, D.C. 20510

Dear Senator Kempthorne,

Thank you for holding hearings on the Endangered Species Act. I wish I could say that I feel like the ESA is being given a fair shake, but in my opinion, the testimony at the hearing in Lewiston, ID was totally unbalanced in favor of industry. Pro-industry sentiment was also obvious in the opening comments of members of the subcommittee.

The Endangered Species Act is quite possibly the most important piece of environmental legislation ever enacted. I agree with the comments of Rick Johnson, Idaho Conservation League, when he said that if other environmental protection laws were adhered to, we would not need to utilize the ESA as often as we do. There has been a lot of lip service given to the importance of biodiversity and ecosystem management with regards to public lands. Unfortunately, without a strong ESA I do not see those crucial concepts becoming reality. We simply must have strong protective legislation.

We do not know what the implications of intensive use of our natural resources will be, but we can certainly get an idea by paying attention to the results of past overuse by other countries whose natural resources are seriously depleted or nonexistent, i.e., China, Germany, England, Ireland and Africa, to name a few. One has only to fly over the northwest forests to see that our past actions have fragmented valuable wildlife habitat and seriously impacted watersheds.

The ESA has been blamed for job losses in the timber industry, but there are a number of overlooked circumstances, including automation by the industry, overcutting, and export of raw logs. Whatever the causes for unemployment, the human species has a far greater ability to adapt to changing times than numerous species of wildlife whose habitat is destroyed by our actions. We have only begun to explore ways to improve employment in timber-dependent communities. Some of the more obvious solutions are manufacture of value-added products, rehabilitation of logged areas, and a variety of cottage industries that are made possible by technology. It seems we would be far better off to explore alternatives than to continue opening up public lands for further exploitation. Human ingenuity is an incredible thing and we sell ourselves short when we are willing to give up our forests, wildlife, and clean water in pursuit of the dollar. Surely it is more logical to protect species and their habitat before their numbers dwindle and we are faced with a crisis situation. By monitoring the impact of human activities on the natural world, we save taxpayer dollars and give land management agencies a greater chance to maintain a viable, well-balanced natural world. I agree that the human economic condition should be included in land management decisions, but it is supreme arrogance to think that we have the right to live at the expense of other species on the planet.

Thank you for including my comments in the hearing record.

Sincerely,



Susan Westervelt
P.O. Box 223
Deary, ID 83823

TO: THE HONORABLE JOHN H. CHAFEE, CHAIRMAN
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

FROM: WILLIAM A. WARREN, RT. 1 BOX 34C, PALOUSE, WA 99161

DATE: 2 JUNE 1995

SUBJECT: SENATE HEARING ON ESA IN LEWISTON IDAHO (6/3/95)

I AM UNABLE TO ATTEND THE SENATE HEARING ON ESA IN LEWISTON, IDAHO ON SATURDAY JUNE 3RD. THEREFORE, I WOULD LIKE TO SUBMIT MY COMMENTS FOR THE HEARING RECORD IN WRITING.

I AM A RURAL RESIDENT, AND A PROPERTY OWNER, AND I AM A STRONG SUPPORTER FOR THE PRESERVATION OF ENDANGERED SPECIES, AND THE ESA. THE ESA IS PROBABLY THE MOST IMPORTANT LEGAL INSTRUMENT FOR PROTECTING OUR NATION'S GREAT NATURAL HERITAGE. IF ANY CHANGES ARE TO BE MADE IN THE ESA, THEY SHOULD BE TO STRENGTHEN THE ACT AND REDOUBLE THE NATIONS COMMITMENT TO PRESERVING BIODIVERSITY.

IF CHANGES TO THE ACT WHICH MAKE IT MORE FLEXIBLE IN DEALING WITH PRIVATE LAND OWNERS SO THAT UNIQUE, SITE SPECIFIC, SOLUTIONS CAN BE FOUND FOR HABITAT PRESERVATION, AS WELL AS POSITIVE INCENTIVES FOR LAND OWNERS TO PRESERVE HABITAT, THAT IS FINE, SO LONG AS THE ULTIMATE OUTCOME IS BETTER, NOT LESS, PROTECTION FOR ENDANGERED SPECIES.

PROBABLY MOST IMPORTANT, IS BUILDING PREVENTIVE MECHANISMS INTO THE ACT BY ALLOWING THE EARLY IDENTIFICATION OF PROBLEM SPECIES AND A FOCUS ON THE PROTECTION OF THE ECOSYSTEMS AND HABITATS SPECIES DEPEND ON SO THAT FUTURE ESA LISTINGS ARE AVOIDED. IN OTHER WORDS, LET'S MAKE THE ACT PROACTIVE IN AVOIDING LISTINGS IN THE FIRST PLACE AND WORKING WITH COMMUNITIES AND LANDOWNERS LONG BEFORE CRISIS CONDITIONS EXIST FOR PARTICULAR SPECIES. THIS WILL ALLOW FOR A VARIETY OF OPTIONS TO PROTECT SPECIES AND ECOSYSTEMS THAT AVOID SUDDEN DISRUPTION OF JOBS AND COMMUNITIES.

AS CITIZENS OF THE UNITED STATES WE HAVE AN OBLIGATION TO PROMOTE THE LONG TERM PUBLIC GOOD. WE HAVE RESPONSIBILITIES AS CITIZENS AS WELL AS RIGHTS. IF ANY CHANGES ARE MADE TO THE ESA THEY MUST BE TO STRENGTHEN ITS EFFECTIVENESS IN PRESERVING SPECIES.

CC: SEN. MAX BAUCUS
SEN. SLADE GORTON
SEN. PATTY MURRAY
SEN. DIRK KEMPTHORNE
REP. GEORGE NETHERCUTT

STATEMENT OF
THE HONORABLE GEORGE ENNEKING
COMMISSIONER, IDAHO COUNTY, IDAHO

ON BEHALF OF
IDAHO ASSOCIATION OF COUNTIES
AND
IDAHO COUNTY

FOR THE
ESA FIELD HEARING

JUNE 3, 1995
LEWISTON, IDAHO 83530

Mr. Chairman and Members of the Committee:

My name is George Enneking and I am currently Chairman of the Board of the Idaho County Commissioners. I currently chair the Idaho Association of Counties Public Lands Committee, am the Idaho board member of the Western Interstate Region of Counties, member of the National Association of Counties Natural Resource Payments sub-committee.

We, as Idahoans are often accused of not caring about the land or the species that inhabit the land. Those that do the accusing forget that we have chosen our way of life and our way of making a living for a reason--we have a close affinity to the land and the species that live there and enjoy how we have chosen to make a living. We have always struck a balance between making a living and protecting our resources. Because of the Endangered Species Act, this balance has been upset and those that have made their living off and have protected the land are at risk of being pushed out of their communities and homes. This type of law is

not good public policy and the balance that individuals in the West have always upheld needs to be reflected in revisions to the Endangered Species Act.

The Public Lands Committee of the Idaho Association of Counties strongly supports amendments to the ESA which would require fiscal accountability, protection of private property rights, and provide for detailed social and economic impacts on counties and communities prior to any listing. Before a listing goes forward, state and local governments must have a voice in that decision. We want these revisions for good reasons. If the Pacific Rivers Lawsuit Injunction had gone forward to protect salmon habitat, it would have caused enormous financial hardship for individuals whose livelihoods are connected to federal lands. For example, payment of grazing fees for cattle on the anadromous drainages affected by the Pacific Rivers Lawsuit would have been \$1,188,258 for five months. Feeding hay to the same number of livestock for the five month period would have cost \$21,419,029--a sum

that ranchers would not have been able shoulder and thus, would have been driven out of business.

Several counties projected severe impacts from an injunction. The clerk of Valley County estimated that the county would have faced a long-range loss of \$12.2 million in payrolls and an additional \$10.1 million in economic revenues as a direct result of the injunction. Valley County could potentially have lost \$3.8 million in timber receipts that go to pay for schools, roads and bridges. The result would have been a dramatic increase in property taxes. Custer County Commissioners projected a loss of over 684 jobs, a decrease of 34.6 percent in employment within the county. and the economy would have lost 54.6% or a decrease of \$84,359,100.00. These figures represent direct losses, however, the loss would have been extended to other industries because of a loss of spending on groceries, parts, equipment, clothes and virtually every service and product offered by wholesale and retail merchants. The state would have

been impacted because there would have been a loss of sales tax revenue. Of course then the counties would have lost the sales tax dollars that the state shares. The ridiculous part was not that the counties were doing anything that damaged species but that two federal agencies had failed to consult with each other as mandated by the ESA. The question arises that if federal agencies do not even want to follow the current law, how can counties, states, tribes and private property owners be expected to abide by it?

Trying to save the salmon is costing taxpayers an enormous sum of money. Bonneville Power is trying to buy water from Idaho at a cost of \$294 million to augment flows for the salmon. Dr. Daryll Olsen who conducted a study for Benton County, Washington Commissioners projected that \$500 million to \$1 billion dollars could be spent annually on recovery plans for the salmon and in most cases the results would be negligible for the salmon. This does not appear to be a legitimate expenditure of public funds when the cost

far outweighs any benefits.

Another curious aspect of the ESA is reintroducing wolves at the cost of \$7 million dollars when it has been established that the animals are moving in to Idaho on their own. Many people wonder how an animal can be listed as endangered when large populations can be found elsewhere. The revisions to the ESA should exclude reintroduction of species. F&W needs to recognize that we live in a dynamic area that may not adjust to reintroductions.

As well as the economic issues surrounding the ESA, there are other problems that need to be addressed. Many people question the basis on which species are listed. In the era of hiring a scientist to support your interest, it is difficult to sort out who to believe. It is difficult to gain cooperation from the public when the basis of decision making is questionable. The ESA needs to provide parameters for making sound decisions so that a listing is not used as a way to address other land management grievances.

Another problem is that when Fish and Wildlife lists a species, it is more often than not unclear about what the rules are--and they change often. It is frustrating for someone to learn to live with one species and then have the rules changed with the listing of another.

The uncertainty that surrounds what will happen to communities when a species is listed is not a happy, nor productive way to live. We oppose the listing of individual species and the repercussions that are piled on top of one another as they are listed. It seems that a better approach would be for our land managers to manage our resources in a balanced and sustainable way so that humans and other species can live together in the harmonious way that once existed in the West.

May 30, 1995

Dear Mr. Kempthorne,

I'm writing on behalf of Little River Committee, a citizen group of about 100 local residents. We remind you that the Endangered Species Act is a law that's working!

1995 JUN -5 AMT

- It has successfully stabilized 41% of all species listed in the US.

- It's flexible, and balances conservation needs with economic growth

- It has blocked less than 2% of federal projects, and only 69 out of 5000 private ones

- It provides "taking" permits, requires minor mitigation

- Private landowners have NO restrictions on endangered plants, and very few about animals listed; permits are easy to obtain

- The ESA is vital in maintaining riparian & coastal habitats

- Example: both the fishing and pharmaceutical industries— that's \$80 billion annually— rely on animal & plant species.

We need a stronger ESA. The reasons are economic, agricultural, medicinal, recreational, and spiritual.

Simone Grissette
for Little River Committee
Box 332
Glide, OR 97443

Written comment for the record—

Endangered Species Act Reauthorization
Testimony of Kristine R. Hickcox
(In response to ESA hearings of Thursday, June 1, 1995 in Roseburg, Oregon)

My name is Kristine R. Hickcox and I offer the following testimony concerning the reauthorization of the Endangered Species Act:

I am writing to you in response to the hearings. This was an upsetting day as I felt both outnumbered and outraged with the majority of people who pointed fingers and glared at those of us represented there who have chosen to stand up for what we feel in our hearts and know in our minds is right. I would like to give you the point of view of a person who is from neither legal or scientific background, nor from a timber family, but from a person who feels very much a part of my surroundings and only wishes the best for all.

I believe that man has been blessed with an ability that no other animal has, and as that chosen species we've also been give the freedom of choice to go with our abilities. This choice involves the potential to cause great harm or to bring an abundance of good. For so long we have chosen to do harm. Why is it that man is so obsessed with a need to control? Why do we insist on taking what was never meant to be owned? We've been given the ability (some would say duty) to take care of our home and each other so that our future generations may prosper as well. We have an opportunity to continue learning and growing, to evolve into something better. We all do, but our so called advancement has come purely in the form of the materialistic and not in the spirit or soul. Still we chose to squander our resources for such short term gain for so few and to turn our shoulders on so many, man and animal alike. And many of these same people believe themselves to be spiritual.

Let me suggest this. Would you be willing to knowingly condemn your children to a world of disease and famine? Would you leave them to a futureless world of disease, famine, and pollution? Would you leave them a desolate home that can barely sustain life? If you knew that you were doing this, I think you would start working today to reverse what has been done and help bring our home back to the healthy state in which it belongs. There's much work to be done, and many economic gains to be made in doing this. A healthy environment means a strong economy. Please open your eyes and do what we all know will benefit all—not some. Please work to strengthen the ESA and help people to understand that we all have something to gain by doing this. Stop feeding people nonsense about the environmentalist wanting to take away their jobs and starve their families. We are all sacrificing. There are no simple solutions which fix our problems, yet the sooner they are fixed the quicker things will improve. And the longer we avoid the reality of what we are doing, the worse things will become. We are *all* closely linked in this world and you can't expect things to remain the same if you keep pulling out links. And if you must base your decision on a purely economic incentive, please consider these simple words I heard at the hearing. "There are no jobs on a dead planet."

It's true.



Thank you for listening,
Kristine R. Hickcox
June 3, 1995

WASHINGTON
STATE
GRANGE



924 Capitol Way S #300 • PO Box 1186 • Olympia WA 98507-1186
(360) 943-9911 • FAX 357-3548 • 1-800-854-1635

June 5, 1995

Janelle

Steven Shimberg, Staff Director
Senate Environment & Public Works Committee
Attn: Subcommittee on Drinking Water, Fisheries, & Wildlife
Senate Dirksen Office Building 410
Washington, DC 20510

Dear Mr. Shimberg:

SUPPORTING ENDANGERED SPECIES ACT REFORM

We were recently informed of Senate Subcommittee Hearings on the Endangered Species Act to be held in Oregon and Idaho. Because we were unable to attend, I am enclosing written testimony to be submitted into the record.

Thank you for your time and consideration of our views.

Sincerely,

Janelle M. Keller
Legislative Liaison

Enclosure

WASHINGTON
STATE
GRANGE



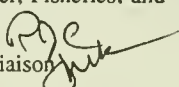
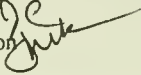
924 Capitol Way S #300 • PO Box 1186 • Olympia WA 98507-1186
(360) 943-9911 • FAX 357-3548 • 1-800-854-1635

Endangered Species Act Reform

MEMORANDUM

DATE: June 1, 1995

TO: Members of the United States Senate Environment and Public Works Committee
Subcommittee on Drinking Water, Fisheries, and Wildlife

FROM: Robert J. Clark, State Master 
Janelle M. Keller, Legislative Liaison 

RE: Testimony of the Washington State Grange at Endangered Species Act Hearing

On behalf of the more than 62,000 members of the Washington State Grange, we would like to voice our concerns about the Endangered Species Act and encourage your efforts at reform. The time has come to revisit the Endangered Species Act, to take another look at the intent of this legislation and the means by which our government has attempted to follow this intent.

Under Section 2 (a) FINDINGS, you will read that "The Congress finds and declares that...(4) the United States has pledged itself as a sovereign state in the international community to **conserve to the extent practicable** the various species of fish or wildlife and plants facing extinction..." Unfortunately, implementation of the Endangered Species Act has not been practicable and has not adequately limited itself to the protection of those species of fish or wildlife and plants faced with extinction. Further, upon studying the success of the Act in "conserving" listing species, we find that, despite the incredible economic burdens imposed upon the citizens and private landowners in our state, the Act has, for the most part, failed to recover a significant number of listed species or remove many from the list.

According to a report by the National Center for Public Policy Research's Environmental Policy Task Force, roughly 900 plants and animals are currently listed as either "endangered" or "threatened" under the Endangered Species Act with another 4,000 species either candidates for future listings or in the process of being listed. However, in the 21 years the ESA has been in effect, only 27 species have been removed from the Endangered Species list. Seven of these were due to extinction and the remaining 20 were due to data error, court orders or species improvements completely unrelated to the Endangered Species Act.

Although plenty of action has been taken in attempt to achieve the intent of the Endangered Species Act, we see that this action is having no real effect on the recovery or delisting of a species. On the contrary, we see the government imposing tremendous economic hardship on citizens, industries, and communities for the sole purpose of appearing to solve a problem. What is needed is meaningful reform that places policy over politics and encourages landowners to continue to employ good stewardship practices instead of forcing them off their land and out of business.

To follow are a few recommendations for sensible reform of the Endangered Species Act:

Encourage the Use of Sound Scientific Data

Under the heading "Determination of Endangered Species and Threatened Species," in the Endangered Species Act, you will read that the Secretary of the Interior may determine a species endangered or threatened due to "the present or **threatened** destruction, **modification**, or **curtailment of its habitat or range.**" This requirement is far too broad to adequately protect the landowner or farmer from environmentalist groups seeking to put an end to all land use as we know it. For hundreds of years, farmers have been peacefully coexisting with nature, employing good stewardship practices, and protecting the health of their land by second nature. The small farmer gains nothing by destroying his land for that land is the very heart of his business. Yet in our attempt to protect certain species from "modification or curtailment" of their range, we force the farmer from his land and declare the land untouchable.

The Endangered Species Act mandates that listings and designations of critical habitat be based on "the best scientific and commercial data available." The Act offers no definition of "best scientific data" and does not require multiple reports or independent studies.

- *The Washington State Grange believes that the determination of species to be listed and development of conservation plans should be based on sound science and subject to peer review.*
- *We further support different priorities between endangered species, threatened species, subspecies, and distinct populations with the greatest priority granted to truly endangered species.*
- *We believe that when listing a species as endangered or threatened, careful consideration should be given to the species range and available habitat on the entire North American continent.*

Reduce Regulatory Red Tape

The Washington State Grange has long advocated the responsibility of landowners to demonstrate good stewardship. Farmers and other natural resource dependent landowners must exhibit the greatest level of care in stewarding their land to ensure a healthy environment for the future. These landowners have long demonstrated their ability to manage their land in an environmentally safe manner. Somehow, this message has failed to reach those who continually impose unrealistic and burdensome regulations beyond those needed to protect the land. The tremendous number of constantly changing regulations places unnecessary hardships upon small farmers and loggers, forcing them out of business and affecting the economy of their entire region. Because of the lack of consideration for existing, voluntary environmental protection programs and because of the need for a better understanding of the communities affected by environmental regulations imposed in the name of the Endangered Species Act, the Washington State Grange support a change in our government's policy on the establishment of habitat conservation plans.

Specifically, the Washington State Grange supports:

- *Granting incentives for non-federal species protection efforts practiced at the local level instead of forcing "one-size-fits-all" federal management upon landowners;*
- *Requiring an assessment of a species' viability, economic impact studies of proposed conservation plans, and increased public involvement in a locally-driven decision-making process;*
- *Protecting private property rights from unnecessary regulations which render part or all of a landowner's property unusable or subject the landowner to harm or bodily damage.*

Enact Sensible Reform

Since our establishment as a national organization in 1867, the Grange has supported the ability of our government to regulate destructive business practices. We believe, however, that the best government is the government closest to the people. We do not ask that the Federal Government relinquish its ability to guide the management and protection of our environment. We simply ask that government return some common sense to the Endangered Species Act. By employing sound scientific data and avoiding politically-driven agendas, we can all work together to establish a plan to protect this beautiful country while maintaining a strong and independent economic base.

Thank you for your time and consideration of our views!

P.O. Box 1153
Orofino, ID 83544
June 3, 1995

Senator John Chaffee
Chairman, Committee on the Environment
United States Senate
Washington, D.C. 20510

Dear Senator Chaffee,

I would like to thank you for coming to northern Idaho to discuss the Endangered Species Act on June 3rd. I would like to submit written testimony for the record. I received a B.S. in wildlife resources from the University of Idaho and a M.S. in wildlife biology from the University of Montana. I have lived in eastern Washington and northern Idaho my entire life and specifically in Orofino (40 miles from Lewiston) for the last ten years. My family raises wheat and used to raise cattle. I am a non-federal wildlife biologist.

I was pleased to hear reasonable dialogue coming from you. I do not believe substantial weakening of the ESA is prudent, necessary, or politically wise. The majority of the public favors strong environmental protection and President Clinton is politically astute and aware of this. A substantial weakening would not have popular or presidential support. I do believe there is room for improvement in the act, particularly its implementation.

A major problem with the process is the lack of effort in past actions and the slow reaction to avoid population reductions. A case in point is the listing of the Snake River sockeye after the population plummeted to four individuals. The listing of the spotted owl occurred after ninety percent of the old growth in the western Cascades was cut. The spotted owl is being used as a club by environmentalists. This is occurring mainly because the intent of the NFMA and the NEPA were not followed for many years, and are being avoided now, and now we have a crisis. One only needs to fly over the Olympic Peninsula of Washington State to see drastic overcutting and poor forest practices. They have caught up with us. They point out the need for foresight including good forest stewardship and pro-active responses to habitat and species declines. To pretend as though we don't have biological problems is to stick our heads in the proverbial sand.

To be pro-active we need to include public and state participation from the beginning of the process. There are good examples of this in Idaho with the grizzly bear recovery in the Selway- Bitterroot area, despite what was said at the hearing. The state agency has taken the lead and held many meetings and used public input. Not everyone is pleased but everyone has input and is aware of the process. If the local meetings were a

referendum on species recovery there would be none. People need to realize it is a national goal and law. The point is there was communication and openness but even this could be improved and enforced. Federal agencies cannot afford to be secretive and arrogant as they sometimes are if they want public support. I have witnessed this attitude. It should not be legal for them to be so detracted from the public as this breeds contempt and lack of support. Dr. Peek called this adaptive management but it seems like common sense.

Section nine and the takings provision is highly controversial. We need to use tax incentives and easements for conservation purposes on private land. The incentive now is to kill desert tortoises in Utah and spotted owls in Oregon if they are on your property. We should encourage conservation through incentives, and education as well.

There are a host of other things we can do. A major reason for the unemployment in the wood products industry is mechanization and unfair international trade. The meeting in Lewiston was less than a mile from one of the most mechanized mills in the country, which I believe never has been profitable. Canada has subsidized their wood products industry. We ship logs which have only been canted to Japan and call this a processed wood product. We are exporting jobs and precious resources. We need to add value on at home. Tax incentives could also be used to encourage this and other more labor intensive harvesting methods. We could encourage the present growth of the light-on-the-land horse logging industry and discourage the use of the feller-buncher, a machine which cuts and stacks trees with one person operating it and has harsh effects on soil and vegetation. The disincentive to use people and ecologically sensitive methods can be turned around for the benefit of the land and the worker.

The ESA is not the nightmare it has been made out to be. There are problems with it but it has served us well as a wake up call to broad ecological problems caused by rampant and thoughtless development and exploitation of the land. No matter what political boundaries we put around the land we must realize we don't own this land. We are simply stewards for future generations of all species. Improve the act in its ability to be implemented thoughtfully and fairly, but do not make it our legacy to be the purveyors of the destruction of the integrity of the land.

Sincerely,

Jay Shepherd

CHALLIS AREA CHAMBER OF COMMERCE

Post Office Box 1130 * Challis, Idaho 83226
(208) 879-2771

June 5, 1995

Senator John Chaffee
Senate Subcommittee on Drinking Water,
Fisheries & Wildlife
SD-506 Dirksen Senate Office Building
Washington, D.C. 20510-3902

Dear Senator Chaffee,

Thank you for conducting a hearing on the Endangered Species Act in Lewiston, Idaho on June 3, 1995.

I submitted a written testimony to the Committee's aides at the hearing, as well as give an oral testimony through the Oregon Lands Coalition on behalf of the Challis Area Chamber of Commerce. The document, however, was handwritten in haste and may prove difficult to read. For your convenience, I have enclosed a typed copy of the testimony

Thank you.

Sincerely,



Gynii Abracosa Gilliam
President

cc:

Senator Dirk Kempthorne
Senator Slade Gorton
Senaor Craig Thomas

LOCAL ECONOMIC IMPACTS & CONCERNS

Testimony before the Senate Subcommittee on Drinking Water,
Fisheries & Wildlife regarding the Endangered Species Act
Lewiston, Idaho - June 3, 1995

There is a crisis waiting to happen in rural Idaho and throughout the Northwest. Resource-based communities are upset with the uncertainties caused by the legal challenges to the ESA and other environmental laws. Rising emotions range from frustration, confusion, and fear to anger.

We, in rural communities like Challis, are concerned that we will be denied access to resources on public lands. Our economies *were, are, and will always be* resource based -- whether it is dependence on agriculture, mining, timber or recreation. We are surrounded by public lands and we rely on their resources for our sustenance. For most of us in rural Idaho, the political division of the land does not leave enough private lands to sustain our economy, no matter how diverse we become. We are heavily and directly impacted by the decisions and challenges facing these environmental laws.

We are deeply concerned because these challenges create uncertainties that disrupt our lives and result in personal financial losses, increases in physical abuses, as well as other social and cultural upheavals. The uncertainty makes

local economies sluggish, depressed, or virtually non-existent. During times of uncertainty, retail spending goes down, business is slow, owners are reluctant to expand, hire or build, and at times are forced to cut back hours or lay off employees.

Unfortunately the numbers do not seem to reflect the damage and devastation we can suffer. A 200 job loss from one employer is insignificant to someone from an urbanized area, but for a community of 1,000 it is devastating. It can translate to a 40% loss in direct and indirect employment, a 30% drop in retail spending, and a 35% loss in enrollment -- losing 200 employees and their families can mean losing a community.

We are concerned not only with these very imminent and very real problems, but also with procedures and management practices. Although there are provisions and rules mandating our involvement and addressing our economic, social and cultural concerns, resource-based communities and private land owners are not true partners in the problem solving process. We are ordered to comply, not asked to cooperate. The challenges are happening in our backyards, and affect adjacent private lands, and yet we are not heard, understood, consulted or included. We feel it is necessary to work with us to develop *successful* economic and community strategies that adjust to the new uses of public lands.

Furthermore, if trends continue, we will all remain in a no-win situation. There is no common ground, nor any effort to arrive at one. Everything is solved by litigation. The priority is not on the scientific or economic importance of an issue, but whether or not it was on the docket first. We are ruled by the legal process, not by the real issues.

We are frustrated because as small communities we do not have the financial nor the human resources to combat the barrage of legal and political issues being fired upon us. We are confused by the constant changes in the rules and regulations. We are overwhelmed by the enormity of what's facing us.

We are torn because we feel we are making the necessary changes and adjustments from historic ways of conducting business on public lands to new methods, but our lifestyles continue to be challenged. We are frustrated, because without dialogue we cannot understand the mentality of an organization that would wreak havoc and chaos on our small communities. We are confused by the environmental community's desire to restrict access to communities that produce raw materials for cars, bicycles, computers, food, clothing, shelter, and other necessities of daily life.

We are upset because the necessary dialogue between the environmental community, resource-based industries and

communities caught in the cross fire does not exist. This lack of communication breeds distrust and misperceptions. The national environmental community is perceived as wanting total obstruction in the use of resources on public lands or raising issues simply to make jobs for themselves. Rural communities, on the other hand, are mistakenly perceived as wanting to rape the land.

We need to end these speculations and misunderstandings by starting face-to-face dialogue between the factions and those who can mediate. We need to work towards a common ground because simply reworking sections of the ESA will not solve our long term problems. Without a collaborative planning process, the pedulum will continue to swing back and forth, putting us all in perpetual crises. We must focus resources on finding solutions, not on launching offensives and counter-offensives. We must end polarization that creates misunderstandings and distracts us from our objectives.

The Challis Area Chamber of Commerce & other Southeast Idaho Chambers applaud the intent of the ESA and other environmental regulatory laws, but we strongly object to the excesses and abuses used under their cover. We understand the need for stringent environmental regulations to prevent *the few* who would abuse the land. We must, however, reiterate that much more than just the majority are a new generation that knows that resources are limited, and that

they must be used wisely. These new ranchers, miners and loggers care about the land and the legacy that they leave future generations.

We extend our hand to the environmental community in an effort to start a dialogue. We need to reach an understanding in order to reach our true objectives -- preservation of endangered species, rural communities, and resource-based industries.

We need to address these issues in the new ESA, because the fact is we are all here and all here to stay, and we must find a way to balance our concerns and co-exist.

Submitted By:

Gynii Abracosa Gilliam
President, Challis Area Chamber of Commerce
(Masters in Urban and Regional Planning
University of Michigan, Ann Arbor)

THE TESTIMONY OF
PHILLIP C NISBET
BEFORE THE
SENATE ENERGY AND ENVIRONMENT COMMITTEE
ENDANGERED SPECIES ACT HEARING
JUNE 3RD, 1995
LEWISTON, IDAHO

Senator Kempthorne and members of the Committee, I would like to thank you for allowing me to submit my testimony. My name is Phillip Clark Nisbet and I am a geologist residing in the town of Salmon in Lemhi County, Idaho. I work in a volunteer capacity for our Commissioners in the Lemhi County Land Use Plan.

The majority of the speakers here today will be focusing on areas of the Endangered Species Act which have been either gross failures in need of total overhaul or have been unprecedented success stories in need of saving. I intend to speak of neither. The area of concern to many of Lemhi County's residents is a little used section of the bill, section 6, which deals with Conservation Agreements. It is a section of the law we hope you will amend so that it can be used more often and to even better effect.

The people of Lemhi County, Idaho, are a hardy breed. Rather than wait for any actions to overtake us, the people of the Salmon River area will always press forward to meet a challenge. Our Lemhi River ranchers set up the first ever ecosystems management plan, the Lemhi Model Watershed, to improve habitat for fisheries. Our local miners developed new Best Management Practices to improve riparian zones for our fisheries. When an ignorant outsider damaged 8 acres in an area sensitive for salmon, local companies and people pitched in and cleaned up the mess, at a cost of their own time and \$9,832.00. The list of all that local residents do for our areas fisheries habitat is a long one. We work hard to see that our land, fish and game are well protected.

You may imagine our rage when several environmental groups, who have not so much as visited our area, filed suit to stop all activities in our home in order to protect our fisheries from us. The Pacific Rivers Council wanted us to quit what we were doing, logging, mining and grazing, and shut down over 50% of our area's economy. 20% of our area is pristine wilderness. 80% of our streams and rivers are in either pristine or excellent condition. Yet our salmon runs are gone, both in wilderness areas and in those we inhabit. For all that we had done for our fish, we were kicked in the teeth by the ESA.

The Endangered Species Act has become the legal tool of preference for attempting to press the cause of biodiversity. It has operated on the principle that certain species are key indicators of ecological health and that their protection will result in positive environmental gains for species across a wide range of habitat. In order to ensure

success, it contains sections which require the use of big stick command and control measures, such as sections 7 and 9. It also contains a section 6, which acts as a carrot, by allowing localized control through conservation agreements.

Unfortunately, somewhere along the way, we lost all the carrot approaches. Lawsuits filed by various groups have turned the ESA into a shouting match with endless paperwork and little effort devoted to on the ground management. The USDA Forest Service, the Bureau of Land Management, National Marine Fisheries Service and the US Fish and Wildlife Service are trapped in a maze of section 7 consultations, Biological Assessments, Biological Evaluations and Biological Opinions. A federal fisheries biologist is luck to see a stream a few times a year for all the office time spent writing reports. Cooperation has broken down and every agency at every level of government, as well as local landowners, are fighting with each other. How does this help our salmon?

Wouldn't it be better to use the Conservation Agreement approach specified by section 6 of the Act? If federal agencies can work together with state, tribal and local governments across the whole spectrum of land ownership's, we can do wonders for species. With every agency working together with local land owners, we will have less conflict and more on ground work being done to improve the conditions of our native creatures. The only way out is to strengthen section 6 of the ESA, to end the feuding and endless paperwork for the sake of both jobs and the environment.

Lemhi County has been working for the past year to develop a new type of Conservation Agreement under the ESA, in cooperation with a variety of state and federal agencies. Our concern has been that the continued single species listing of various floras and faunas associated with single habitats has acted as a giant paperwork chase with little on ground improvements or management allowed before the listing of each new species. Lemhi County wanted to develop a method for more direct habitat related strategies to improve the lot of all species sharing our land with us.

The listing of various salmon stocks and the potential listing of char like salvelinus confluentes (Bull Trout) established for our community a need to get rapidly involved in riparian area management. The bulk of this habitat type is contained on private lands in both Lemhi County and the State of Idaho, yet most of the restriction being applied were in areas with little or no habitat. It stands to reason to residents of our county, that if we have viable populations of a stock of riparian dwelling creatures, restrictions on less viable areas would be either relaxed or removed. The problem has been in achieving a means of coordinating recovery on mixed land ownership's with varying degrees of authority. We needed to protect habitat, but the ESA had no provisions for local government involvement beyond simple comments in the process and only then for each individual species.

We need section 6 to be amended to give equal opportunity to local communities and governments, an equal footing in the process of conservation strategies. By adding 'local and tribal governments' to all locations in this section where state occurs, we would

be given a larger and a better role in establishing on ground work by local residents. This is important in these times of reduced budgets, as local residents and managers can more economically get results in areas they know well.

A new clause should be added to the section which would allow for habitat conservation, rather than only individual species. This kind of local ecosystems approach has the best opportunity of acceptance by local land owners, who can be empowered to act without the tons of red tape associated with other sections of the act. It should read, 'Habitat Conservation Agreements (HCA's) may be implemented to protect a number of listed or candidate species which share similar habitats. The listing of additional species inhabiting a habitat covered by an HCA shall be considered protected by that agreement.'

We need to give further strength to the act by allowing plans under a Conservation Agreement to offer people and projects the ability to mitigate rather than halt all activity. Currently, all actions with an ESA related impact are called to a halt until huge amounts of paperwork and all potential court cases are completed. Large sums of money are therefore expended in order to have absolutely no impacts. This is a waste of resources. Rather than spend hundreds of thousands of dollars on catching the last thimble full of sediment from a project site, we should be directing those funds to areas where we get the best return in habitat our money can buy. We have termed this a 'net beneficial' approach and it is not allowed under the current act.

The act should be amended to state, 'Conservation Agreements shall be formulated in a manner which utilizes prioritization of resources to develop net beneficial improvements for habitat through mitigation.'

As all the agencies involved in the ESA can tell you, there is a need for positive local involvement in the process. By strengthening section 6, in preference to using the sticks in sections 4, 7 and 9, an empowered local populace can vastly improve conditions for species. We think the following amendments will supply a carrot to the sticks of other sections;

1. Conservation Agreements shall serve as recovery plans in areas for which they have been implemented for the purposes of this act.
2. Conservation Agreements shall act in place of consultations required in section 7 of this act.
3. Fines, penalties and other actions contemplated by this act shall be superseded by compensation specified by Conservation Agreements developed under section 6 of this Act.
4. The US Fish and Wildlife Service or the National Marine Fisheries Service shall enter into Conservation Agreements under section 6 of this act upon the request of state, tribal or local governments.

5. All conservation agreements under section 6 of this act shall include provisions for mitigation banking.

To further improve local cooperation and lower administrative costs, the act should add, 'Local governments shall act as the lead agency for the implementation of Conservation Agreements, where ever possible. The listing agencies shall provide technical assistance to the lead agency of the CA.' This will also solve problems associated with the Federal Advisory Committees Act.

Funding of this major unfunded mandate could be carried out by adding 100% funding for Conservation Agreements in the clauses dealing with this area in section 6. Specifically, local and tribal governments should be added in addition to the state funding provisions of section 6 and they should receive full funding for carrying out its provisions.

To protect Conservation Agreements from constant revision and add a level of certainty to local planning, the act should include the following, 'Section 7 consultation shall only be reinitiated if a Conservation Agreement entered into under section 6 of this Act shall have been proven to fail to conserve the listed species or habitat by a preponderance of scientific evidence.' A clause stating that 'Federally controlled and administered lands covered by a Conservation Agreement shall be exempt from section 7 consultation for the agreement's duration. Amendments to agency planning documents, Forest Plans and Resource Management Plans, may defer amendments for new species listings if a Habitat Conservation Agreement (HCA) for the habitat they occupy has been implemented.'

As Lemhi County has demonstrated, with the Lemhi River Model Watershed project, given the tools and some cooperation we can accomplish great things for our environment. Just as the Model Watershed is acting as a test case for Ecosystems Management, our current Riparian Habitat Conservation Agreement can act as a means of gaining local support and on the ground action for species under the ESA. If you give us the tools to work with under the act, we will not disappoint you.

I thank you for allowing me to present these comments to you.

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SALMON, ID 83467
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AMERICAN POLICY CENTER
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OREGONIANS IN ACTION
PUTTING PEOPLE FIRST
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RIVERSIDE COUNTY FARM BUREAU (CA)
STEWARDS OF THE RANGE
TEXAS WILDLIFE ASSOC
US TAXPAYERS ALLIANCE
UNITED 4 WD ASSOC
WESTERN STATES COALITION
WOMEN'S MINING COALITION
WYOMING FARM BUREAU FEDERATION
(Continued on next page)

Statement of the Grassroots ESA
Coalition as presented to the House
Endangered Species Act Task Force.

For inclusion in the record of
proceedings of the field hearings of the
Senate Subcommittee on Drinking
Water, Fisheries, and Wildlife.

June 3, 1995
Lewiston, Idaho

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WESTERN STATES COALITION
WOMEN'S MINING ASSOC
(Continued on back)

Statement of Dennis Hollingsworth
Representing the Grassroots ESA Coalition
Before the United States House of
Representatives
Committee on Resources
Endangered Species Act Task Force
Honorable Richard Pombo, Chairman
May 18, 1995

WYOMING FARM BUREAU FEDERATION
 ADIRONDACK SOLIDARITY ALLIANCE (NY)
 ALLIANCE FOR CONSTITUTIONAL DEFENCE, INC (FL)
 AMERICAN LEGISLATIVE EXCHANGE
 AMERICAN LOGGERS SOLIDARITY
 AMERICAN RIGHTS COALITION
 AMERICAN TRAPPERS ASSOC
 ANIMAL OWNER & KAREGIVER ASSOC
 ARIZONA TRAIL RIDERS
 ARIZONA MINING DISTRICT
 BEVERAGE MINING DISTRICT (CA)
 BURNET COUNTY PROPERTY OWNER RIGHTS (TX)
 CALIFORNIA ASSOC 4 WD CLUBS
 CALIFORNIA ASSOC OF BUSINESS PROPERTY
 CALIFORNIA DESERT COALITION
 CALIFORNIA OUTDOOR RECREATION LEAGUE
 CALIFORNIA WOMEN FOR AGRICULTURE
 CATRON COUNTY CONCERNED CITIZENS (NM)
 CITIZENS EQUAL RIGHTS ALLIANCE
 CITIZENS FOR PRIVATE PROPERTY RIGHTS (MO)
 CITIZENS FOR RESPONSIBLE ZONING
 CITIZENS FOR CONSTITUTIONAL PROP RIGHTS (FL)
 CONCERNED CITIZENS FOR PROPERTY RIGHTS (CA)
 CONCH COALITION (FL)
 CREEKSIDE PROPERTY OWNERS (AZ)
 EAST MOJAVE PROPERTY OWNERS ASSOC
 EASTERN OREGON MINING ASSOC
 EAST MOJAVE PROPERTY OWNERS (CA)
 ENVIRONMENTAL CONSERVATION ORGANIZATION
 ENVIRONMENTAL STEWARDSHIP FOUNDATION
 FAMILY WATER ALLIANCE (CA)

FARWELL IRRIGATION DISTRICT (NE)
 GEORGIA PUBLIC POLICY FOUNDATION
 GOLD HILL RESOURCE COALITION (ID)
 GRASSROOTS FOR MULTIPLE USE (ID/MO)
 HIGH DESERT MULTIPLE-USE COALITION (CA)
 IDAHO COUNTY FARM BUREAU
 INDEPENDENT MINERS
 LEAGUE OF PRIVATE PROPERTY VOTERS
 LINCOLN COUNTY PUBLIC LANDS COMMITTEE (NV)
 MALHEUR TIMBER OPERATORS (OR)
 MCCULLOCH COUNTY PROP OWNERS ASSOC (TX)
 MINNESOTA CORN GROWERS
 MONTANANS FOR MULTIPLE USE
 MULTIPLE USE ASSOC (ME/NH)
 NATIONAL ASSOC OF MINING DISTRICTS
 NATIONAL NATURAL RESOURCES COALITION
 NATIONAL OUTDOOR COALITION
 NATIONAL TRAPPERS ASSOC
 NEBRASKA LANDOWNERS & SPORTSMAN ASSOC
 NEBRASKA LANDOWNERS ALLIANCE INC
 NEW MEXICO PUBLIC LANDS COUNCIL
 NEW MEXICO WOOLGROWERS ACTION COMMITTEE
 NEW MEXICO WOOLGROWERS ASSOC
 NIobrARA RIVER BASIN DEVELOPMENT ASSOC
 NORTHERN CATRON COUNTY RANCHERS (NM)
 NEVADA OUTDOOR ALLIANCE
 OREGON INDEPENDENT MINERS
 PENNSYLVANIA LANDOWNERS' ASSOC
 PEOPLE FOR THE CONSTITUTION (NV)
 PEOPLE FOR THE WEST (BRAWLEY, CA)
 PEOPLE FOR THE WEST (RENO, NV)

PEOPLE FOR THE WEST (ACCORD, AZ)
 PEOPLE FOR THE WEST (LUCERNE, CA)
 PEOPLE FOR THE WEST (RNO VALLEY, AZ)
 PIMA COUNTY RURAL PROPERTY OWNERS (AZ)
 PLOW (PRIVATE LANDOWNERS OF WISCONSIN)
 PROPERTY OWNERS COALITION (CA)
 PROPERTY RIGHTS ALLIANCE (WA)
 PROPERTY RIGHTS FOUNDATION OF AMERICA
 PUBLIC LANDS FOR THE PEOPLE (CA)
 RESOURCE PROTECTION INSTITUTE (CA)
 RIVERSIDE & LANDOWNERS COALITION (TX)
 SAN DIEGO OFF-ROAD COALITION (CA)
 SIERRA FOREST FOUNDATION (CA)
 SIERRA VALLEY WOMEN IN TIMBER (CA)
 SOUTHWEST MEAT ASSOC (TX)
 STAND UP! (AL)
 SUGAR CANE GROWERS COOP OF FLORIDA
 TAKE BACK TEXAS
 TREASURE COAST COALITION (FL)
 TREES - COASTAL CHAPTER (OR)
 TULELAKE GROWERS ASSOC (CA)
 WASHINGTON FRIENDS OF FARMS & FORESTS
 WASHINGTON LANDS COALITION
 WASHINGTON LOG TRUCKERS CONFERENCE
 WE CAN! (CA)
 WESTERN MINING COUNCIL
 WINNING AMERICAN RIGHTS (NY)
 WISCONSIN WOMEN FOR AGRICULTURE
 WISE USE SOLIDARITY (WA)
 WYOMING WOOL GROWERS

Mr. Chairman, members of the Task Force, I am Dennis Hollingsworth and I am from Riverside County, California. I'm here today representing the Riverside County Farm Bureau as a member of a new coalition entering the Endangered Species Act debate, the Grassroots ESA Coalition.

The Grassroots ESA Coalition was formed about a month and a half ago. Yet already the broad base of the Coalition comprises over 135 groups nationwide. We have members ranging from county Farm Bureaus like us, and state Farm Bureau organizations, to property rights groups, tree growers, recreationists, miners, loggers, cattle ranchers, local governments, wildlife groups, water users, private conservation groups, and other landowners and natural resources users from across the country. The Coalition even spreads beyond the heartland and includes some Washington, D.C. public policy groups, such as the Competitive Enterprise Institute and the National Wilderness Institute. We estimate the Grassroots ESA Coalition represents over 2 million people, and it is growing daily.

There is a complete listing of our present membership with my written testimony. You will see this is truly a "bottom up," grassroots group of people.

Mr. Chairman, in my experience the Endangered Species Act as implemented in Riverside County is a disaster. It is a disaster not only for the people who have lost their homes and the use of their land, but also for the species themselves. The experiences of the farmers and landowners that I work with serve as examples of the reasons why the Riverside County Farm Bureau, and the other members of the Coalition, support the wholesale reform and fundamental restructuring of the Endangered Species Act.

Here are just some the disasters caused by the Act in Riverside County:

- * Thousands of property owners have been held hostage by the imposition of a Stephens' kangaroo rat "preserve study area" status on their property since 1990. The designation has caused their land values to plummet and made it nearly impossible for people to build their own homes or make reasonable use of their land. This was done as part of a "short term" regional habitat conservation plan for the species that was originally to last only two years, but it is still not finished after five and a half years.

- * When you were in Riverside last month you heard from Cindy Domenigoni. Her family lost over \$400,000 when part of their ranch was declared off limits to farming because of the presence of the federally listed Stephens' K-rat, and the implementation of a regional habitat conservation plan.

- * The regulations prohibiting harm to the K-rat were so strict that the discing of fire breaks was not allowed. This practice, which is required by state law and county ordinance, is essential in Southern California's rural areas to protect people's lives and property from the threat of fire.

- * When a fire broke out in October of 1993, 29 homes were lost along with 107 other structures. Over 25,000 acres of crops, rangelands and habitats were burned, with damage in the millions of dollars.

- * The prohibition of discing fire breaks, and the forced stoppage of farming activity on the Domenigoni's 800 acre field upwind of where many of the homes were burned, helped create an overgrowth of brush and fuel that led to a fire that was hotter, faster moving, and more catastrophic than any the local residents had seen in over 100 years.

- * The negative publicity about the ESA that ensued from the fire resulted in a General Accounting Office investigation that tried to whitewash the truth of what happened. The GAO asked the wrong questions in order to support a preconceived conclusion, ignored evidence presented to them, and misquoted victims and fire officials.

- * At the hearing in Riverside, Mike Harris, Chief of Riverside County Fire Department, stated that he did not agree with the conclusion of the GAO report, and that he could not understand how they had come to the conclusion they did.

- * The conclusions of the GAO investigation are salt in the wounds of the people of Riverside County. I would like to take this opportunity to ask you, the members of the Task Force to seek a new, complete and honest investigation of what really happened in the events leading up to the California Fire of October 1993, and what effect the prohibitions preventing people from protecting themselves from the threat of fire actually caused.

The Endangered Species Act in Riverside County has been a disaster for wildlife as well. The consequences of allowing habitats and species on your property are clear: you will lose your property, and maybe even your livelihood. Since the listing of the Stephens'

kangaroo rat and other species in our county, people have been doing whatever it takes to make their land unattractive for species.

For example, for five generations and over 100 years, the Domenigoni family, like most landowners, was happy to provide for species and habitat on their ranch. Yet when they practiced good conservation techniques by fallowing their fields, the kangaroo rats moved in, and the Domenigonis were forced to stop farming the land. It did not matter that they had been co-existing with the k-rats in this manner for all those years. The listing of the species, for intents and purposes, took their property away from them.

Now, the Domenigonis leave no fields fallow if they can help it. They also disc from fenceline to fenceline, several times a year, leaving nothing that might entice some other, as yet undiscovered sensitive species to take up residence on their ranch.

Thousands of other landowners, just in my county, are taking similar, and sometimes, more severe, "scorched earth" measures to protect themselves. These kinds of unfortunate actions are the result of the perverse incentives inherent in the Endangered Species Act.

As a spokesman for the Coalition, I have concentrated on my first hand knowledge of the problems in my county; however, from my conversations with the Coalition's members, I can assure you that similar problems are occurring all over the country.

They are happening in the Texas hill country because of the golden-cheeked warbler. In the Southeast, tree growers fear the red-cockaded woodpecker. And in the Northwest, trees that look like they might be appealing to spotted owls don't stay around very long before they are cut down.

Do we really want this to be the legacy of the Endangered Species Act, where people continue to sterilize their land and destroy wildlife habitat for no other reason than the existence of this law?

The experiences of the people in Riverside County are indicative of the problems with the Act going on across the country, they are also indicative of the need for major rethinking of the way we protect wildlife.

That is why the Grassroots ESA Coalition advocates replacing the regulatory scheme of the current Act with a wholly voluntary, incentive based program for private lands. We have successful models that have worked in a truly cooperative manner with landowners to look to such as the Soil Conservation Service.

A fundamentally reformed ESA should also be simple. Small landowners aren't able to negotiate the complicated permitting morass of regional habitat conservation plans, or afford the legal help to do so. Nor should they be forced to.

We support the calls others have made for increased scrutiny of the science used in the listings and regulations promulgated to protect species. Poor science and politicized science have been used to shut recreationists and resource users out of federal lands, without credible evidence that simply locking the gates will even help the species, or that the economic disruption to local communities is justified.

Further, a fundamentally reformed Endangered Species Act will bring wildlife management back to the state level. State resource agencies are better equipped to manage and promote the species within their borders. They are also better equipped to develop the relationships working with landowners and resource users that we seek.

The fundamental, Constitutionally protected rights of free people don't have to be trampled to conserve our nation's wildlife; in fact, the promotion of private property rights

and people's needs are not only compatible with wildlife conservation, they are essential to it.

Mr. Chairman, our Coalition wants to see fundamental reform of the Endangered Species Act. That is because our goal is to see an Endangered Species Act that works for the people of this country and for the wildlife it is designed to protect. We will be seeing to it that the debate over the next few months looks toward new directions and new ideas about how to protect our country's wildlife.

We think the fundamental changes we advocate will result in an Endangered Species Act that is successful in promoting species and habitats beyond today's brightest hopes. We also believe such a law will protect the rights of our citizens, revitalize their conservation ethic, and restore their confidence in the fairness of their government. Thank you for the opportunity to speak to you today.

THE GRASSROOTS ESA COALITION

A diverse and large coalition of organizations representing everything from environmental groups and property owners to ranchers, miners, loggers and outdoor recreationists has publicly unveiled principles for establishing a new way to conserve our nation's endangered species.

The Grassroots ESA Coalition organizations united to promote these principles so that the old Endangered Species Act could be reformed in a way that benefits both wildlife and people, something the old law has failed to do.

The old law has been a failure for endangered species and for people. It has not led to the legitimate recovery of a single endangered species while costing billions of dollars and tremendous harm. The old way destroyed trust between people and our wildlife officials. We need to reestablish trust so we can conserve wildlife - no program will succeed without the support of our farmers, our ranchers, our citizens.

The old law failed because it is based on flawed ideas. It is founded on regulation and punishment. If you look at the actual law by section you see it is all about bureaucracy - consultation, permits, law enforcement . . . there isn't even a section of the law called "conservation", "saving" or "recovery".

It is a bureaucratic machine and its fruits are paperwork and court cases and fines - not conserved and recovered endangered species. What the Grassroots ESA Coalition and all Americans want to see is a law that works for wildlife, not one that works against people.

The future of conservation lies in establishing an entirely new foundation for the conservation of endangered species - one based on the truism that if you want more of something you reward people for it, not punish them. The debate that will unfold before the public is one between methods of conservation.

The old way is shackled to the idea that Washington bureaucrats can come up with a government solution through national land use control. Its supporters do not want to acknowledge that the law has failed because doing so would mean an end to the influence and power they have under the old system.

The Coalition sees a new way that can actually help endangered species because it stops punishing people for providing habitat and encourages them to do so. It creates an opportunity for our officials - for government - to reestablish trust and work with and earn the support of citizens. The Grassroots ESA Coalition is working to promote this new way.

If you think that government bureaucracy works, that welfare stops poverty and does not need reform or that the DMV and Post Office operate the way they should, then the old endangered species program is for you. If you do not, and you want to conserve endangered species without wasting money, intruding on people's lives and causing more pain and problems, then the Grassroots ESA Coalition is for you.

GRASSROOTS ESA COALITION (Revised 5/8/95)

STATEMENT OF PRINCIPLES FOR REFORM OF THE ENDANGERED SPECIES ACT

The Endangered Species Act has:

- <> failed to conserve endangered and threatened animals and plants:
- <> discouraged, hindered, and prohibited effective conservation and habitat stewardship:
- <> created perverse incentives, thus promoting the destruction of privately owned endangered species habitat: and
- <> wasted scarce conservation resources.

The Endangered Species Act has failed in large part because it has engendered a regulatory regime that has:

- <> violated the rights of individuals, particularly property rights:
- <> destroyed jobs, devalued property, and depressed human enterprise on private and public lands:
- <> hidden the full cost of conserving endangered species by foisting those costs on private individuals; and
- <> imposed significant burdens on State, county, and local governments.

We therefore support repealing current law and replacing it with an Endangered Species Act based upon these principles:

- Animals and plants should be responsibly conserved for the benefit and enjoyment of mankind.
- The primary responsibility for conservation of animals and plants shall be reserved to the States.
- Federal conservation efforts shall rely entirely on voluntary, incentive-based programs to enlist the cooperation of America's landowners and invigorate their conservation ethic.
- Federal conservation efforts shall encourage conservation through commerce, including the private propagation of animals and plants.
- Specific safeguards shall ensure that this Act cannot be used to prevent the wise use of the vast federal estate.
- Federal conservation decisions shall incur the lowest cost possible to citizens and taxpayers.
- Federal conservation efforts shall be based on sound science and give priority to more taxonomically unique, genetically complex and more economically and ecologically valuable animals and plants.
- Federal conservation prohibitions should be limited to forbidding actions intended to kill or physically injure a listed vertebrate species with the exception of uses that create incentives and funding for an animal's conservation.

Frish Newton
HC 62 Box 1180
Ellis, Idaho 83235

June 3, 1995

Subject: Endangered Species Act field hearing Lewiston, Idaho.

I currently ranch with my husband and two daughters near the confluence of the Salmon and Pahsimeroi Rivers in Central Idaho. We currently lease 1000 AUMs (animal unit months) of USFS grazing permits on the upper East Fork allotment in the headwaters of the East Fork of the Salmon River. These areas are designated critical habitat for Chinook and Sockeye salmon, currently on the endangered species list.

I would like to comment on how the Endangered Species Act (ESA) has affected our livelihood as ranchers and offer some thoughts for consideration in the reauthorization of the ESA.

In 1992, the Challis Experimental Stewardship Association held its annual range ride on our upper East Fork allotment. There were many positive comments on that ride from then Sawtooth National Recreation Area (SNRA) district ranger, Carl Pence and others, about the excellent condition of the fish habitat in the allotment. Idaho Fish and Game (IDFG) biologist, Jim Lukens has described the habitat in the East Fork as "near pristine". However, the very next season, 1993, we were forced to comply with 30 percent utilization standards in the riparian zones on this allotment in the name of habitat improvement for the salmon. The 30 percent utilization means that we can only use 30 percent of the available forage in the riparian areas. Our allotment management plan remains unchanged from 1993. We do not feel like these stringent guidelines are justified since there is no scientific data to support such a reduction. Furthermore, according to (IDFG) data, there has not been a single redd above the weir on the East Fork since 1988. The weir is a good 10 miles below the allotment boundary. It is estimated that the anadromous fish utilize approximately 0.3 percent of the available habitat in the entire East Fork River.

We estimate that our operating costs on the East Fork allotment have increased by \$6.00 per AUM directly attributable to the listings of the Chinook and Sockeye salmon on the Endangered Species list. We feel that this additional cost, absorbed by us, is unjustified based on the current data. It currently costs us nearly \$20 per AUM to graze cattle in the East Fork, which is much more than the lease price for privately owned irrigated pasture.

I have read the draft copy of the proposed changes to the ESA of 1995. I will say that the draft is much improved from the ESA of 1973 in that it attempts to recognize the economic impacts of communities and respects private property rights.

We must make certain that the economics of affected communities and private property rights remain a part of the final reauthorization. We must realize that people are important too. We cannot allow the listing and recovery of single species to devastate entire economies and regions. I believe that this is the most important issue that needs to be included in the ESA. We would like to give our children the opportunity to work on the same land as we have and our families have since the early 1930's.

The reauthorization of the ESA must choose wisely which species are most important to save. If a species is "endangered" in only certain parts of the United States, not in danger of extinction as a whole, it should not be given as much priority as a truly endangered species. An example of this would be the recent reintroduction of the wolf. Wolves in general are not endangered in Minnesota or Canada, yet we have spent \$7 million to "reintroduce" them to our area in Central Idaho and to Yellowstone against the better judgement of the people who live there and in surrounding areas.

The new ESA must realize that not all activities are equally detrimental to a listed species. Recovery plans should initially focus on the most detrimental problem, dams for example. After a solution has been found to allow safe passage of the salmon through the dams, then the focus should turn to less detrimental problems, habitat for example. Attempts at recovery using this method would be more beneficial to the affected species and be less disruptive to the lives of people who are not directly affected by the major problem facing the existence of the species.

After reading the draft proposal, I believe that too much authority rests on the Secretary of the Interior. The ESA and how it is managed would be better served by a committee of people to allow for a wider view of which species to list and spend recovery funds. One suggestion may be to have a seven member committee consisting of three members from each House and Senate subcommittee plus the Secretary of Interior.

In conclusion, the ESA of 1995 must realize that all species cannot be saved. Extinction is a natural process. We must carefully examine the costs versus benefits of saving a species. The idea that all species be saved regardless of cost must be abolished. Some species will never be able to be saved, no matter how much we spend on them. Other species may not be worth saving, the Bruneau Hot Springs Snail for example. We must place more emphasis on ecosystem conservation and less on single species.

Thank you for inviting comment.

Sincerely,

Trish A. Dowton

Trish A. Dowton

Endangered Species Act Hearing
Lewiston, Idaho
June 3, 1995

Testimony of Thomas Pettit, Challis, Idaho

Senator Chafee, Senator Kempthorne, and distinguished Members of the Committee:

Thank you for holding this hearing and providing an opportunity for citizens to provide inputs on this very important issue.

I'm Tom Pettit from Challis, Idaho. I'm a miner, a horse breeder, and a sportsman. After a twenty-three year career in the U.S. Navy, I moved to Challis because of the beauty of the area, the quality of life and the recreational opportunities. I recall reading two signs or bumper stickers when I first arrived. One said "Welcome to Idaho, set your clock back 100 years." The other read, "Idaho is what America was." I've experienced the other side of life. Crowded highways, rude people always in a hurry, and drug and crime problems.

Custer and Lemhi Counties are strictly resource based. There is little manufacturing and few service based jobs.

This spring should have been the best of times for mining. Thompson Creek was back up and running, after a 14 month shut down. Molybdenum prices were at a 15 year high. Grouse Creek was in operation and Beartrack was preparing for start up after a long environmental permitting process.

Suddenly, we find that our jobs are at risk because two federal agencies differ in their interpretations on how provisions of the Endangered Species Act should be implemented.

Thompson Creek was forced to hire two law firms and a consultant to represent our interests. Our Environmental Department spent virtually all of their time reproducing documents, and preparing reports for government agencies. Production declined and safety became a concern due to the high employee stress level. All three mines had difficulty hiring qualified employees because our future was so uncertain.

I urge you to rewrite a badly broken Endangered Species Act. Require consideration of the economic impact to communities and individuals. Place spending limits on protection and recovery efforts. Clearly define the regulations to eliminate confusion. Prevent agencies from requiring permittees to modify their operating plans each time there is another species declared threatened or endangered.

Thomas Pettit



COMMENTS REGARDING
REAUTHORIZATION OF THE
ENDANGERED SPECIES ACT
1995

SENATORS, CONGRESSMEN, LADIES & GENTLEMEN:

Thank you for this opportunity to speak to you about the re-authorization of the "Endangered Species Act".

My name is Denny Hawley. I am the Chairman of the Board of County Commissioners, Lemhi County, State of Idaho.

I am here because of the concerns of the citizens of my county. We feel that those in charge of the public lands in Washington, D. C. do not care about the welfare, livelihood and occupations of the people in Lemhi County.

We are small in population, approximately 7,200 people. Our county has a total area of 2,920,915 acres (approximately the size of the State of Connecticut) and of this total only 228,202 acres or 7.8% is in private ownership.

Lemhi County was created by the Legislature of the Territory of Idaho in 1869, 21 years before Idaho became a state.

In all those years, we - **THE PEOPLE** - of Lemhi County have been stewards of these lands.

If you would take time to come to our area, you would see that we have done an excellent job of protecting our heritage.

The habitat for salmon in Lemhi County is between 85 and 90% good to excellent. Ninety percent of the habitat in Lemhi County is located within the 7.8% private land.

We have been diligent in taking care of the lands in our area, but we cannot live with the blanket policy laid down by the Secretary of the Interior, Mr. Babbitt.

The Endangered Species Act needs to have the involvement of local government and private citizens to do the job that needs to be done.

It is also absolutely essential that the land professionals of the various agencies and the owners of private land be allowed to make those decisions without interference from agencies that have no idea what is happening on the ground in the areas in question.

Good sound management decisions can be made when the professional people like the BLM, Forest Service, Local Government and the most professional of all, the private landowner work together.

In Lemhi County, we are working with the several agencies to have a habitat conservation agreement. This agreement is designed to cover a complete watershed as well as a single drainage.

We have worked long and hard on this project but we cannot do the job that needs to be done when decisions made at the local level are overturned by Bureaucratic Political wrangling that is done in Washington, D.C.

In the new Endangered Species Act, we need to be able to take care of problems on a site specific basis, not with a blanket coverage for all areas.

What happens in the state of Oregon does not apply to Lemhi County.

We need cooperation of states, local government and private property owners with the federal government to be able to work with and maintain our economic base.

THE ECONOMICS OF AND FOR THE PEOPLE MUST BE CONSIDERED AT ALL TIMES.

We need the regulations written so that the professionals may act as professionals. Let the biologist, hydrologists, land and resource managers and the best professional of all, the private land owner make the decisions to maintain and preserve our renewable resources, and to be sure all natural resources and handled property.

We ask that when you return to Washington D.C. that you remember what we have asked of you.

That the Endangered Species Act of 1995 needs to place the state, local government and the private land owner back into the picture.

That the economies of the affected areas must be addressed.

Finally, each decision must be made on the ground on a site specific basis.

Thank you for your time.

Wenny E. Hawley

COMMENTS ON RE-AUTHORIZATION OF THE ENDANGERED SPECIES ACT
Prepared for the Senate Sub-committee Hearing at Lewiston,
Idaho June 3, 1995

I am Bob Loucks from Salmon, Idaho. My address is RR1 Box 67, Salmon, Idaho. My academic training is in animal science and economics. I am a Professional Animal Scientist and have worked in agriculture and resource economics for over 30 years.

At this point in time, although I hate to admit it, I was a supporter of the Endangered Species Act of 1973. It seemed logical that the Federal Government should examine its activities to insure that it was not contributing to the extermination of species of plants and animals. I too wanted my children to be able to see Bald Eagles and Grizzly Bears, and wolves, and black-footed ferrets, and the myriad of other animals that had been pushed to the brink of extinction.

Who would have believed, however, that the recovery plan for a minnow or a snail would threaten the economic viability of entire communities? Who would have imagined that the Federal government would attempt to establish populations of Grizzly bears in areas where none existed in recorded history? Who thought that we would have to live with wolves in our back yards? Who could have comprehended the millions of dollars of direct and indirect costs which have been foisted on the citizens of this country and the threats to our very livelihoods and ways of life?

The Endangered Species Act has become a symbol of all that is wrong with Federal environmental policy. The ESA's mandatory near-indifference to economic effects of listing and recovery plans has so intimidated citizens affected by listed species that the entire Federal environmental effort is jeopardized. The ESA is usually invoked to frustrate economic development, or for primary purposes other than species conservation. The ESA does not address issues of equity and property rights. The ESA implies that all species are of "incalculable value" and that both technical and economic resources are available to conserve them. The choice of species to save has been made on the basis of popular appeal and not on the basis of biological importance, likelihood of success, or economic effect.

I, frankly, do not understand the current hysteria by the preservationist organizations over re-authorization of the ESA. On the one hand, they argue that the Endangered Species Act is "writ large by the hand of God" and that any

attempt to change it should be rejected. On the other hand, they argue that what we really need is "ecosystem" management. Now, I'm not very smart, but I don't see how one can espouse both single species management and ecosystem management. The two concepts are diametrically opposed.

One of the real problems with environmental policy is the failure by many to recognize that ecosystems are dynamic. They are not static. Any change in an ecosystem, whether human induced or natural, causes a change in the composition and abundance of the biota associated with the ecosystem. Natural ecological systems are always changing, always subject to change, adapted to change, and require change. These changes are neither good nor bad. They are simply changes. As long as the basic resources (soil, water, air) associated with the ecosystem are not significantly impaired, the ecosystem is functional. If as a result of human activity the ecosystem can no longer support some of the biota of the original ecosystem, it is not necessarily an environmental disaster. There may well be other species which will be naturally introduced or can be introduced by man which both fill the ecological niche occupied by the displaced species and make life richer for the humans which also are part of the ecosystem. The idea that nature, undisturbed by human influence, will achieve some constant steady state Nirvana and that this is its most desirable state is absolutely wrong. Federal environmental policy should not be directed toward achieving an impossible dream fostered by the preservationists among us.

In summary, the Endangered Species Act needs to be comprehensively re-written with an ecosystem approach instead of a single species focus. The provisions of the act requiring protection for species, subspecies, and geographically distinct stocks have proven immensely costly, biologically indefensible, and counterproductive. The requirement to conserve all species at all costs, even if it is almost certain that they cannot be saved and even if it is evident that as a result of unsuccessful efforts to save them other species, including humans, will be harmed should be eliminated from the law. All species should not be viewed as equal. The costs and benefits of saving each individual species should be examined. The ESA should be rewritten to eliminate its insensitivity to the inequitable distributions of costs and its potential for encroachment on private property rights.

Thank you for inviting comment and for the work of the sub-committee. I am sure that whatever you do to the

Endangered Species Act will be an improvement. It is unworkable in its current form.

TESTIMONY AND SUPPORTING DOCUMENTS

for

LENORE HARDY BARRETT

ENDANGERED SPECIES ACT HEARING

LEWISTON, IDAHO

JUNE 3, 1995

ENDANGERED SPECIES ACT HEARING

Lewiston, Idaho

June 3, 1995

Testimony by Lenore Barrett

I. INTRODUCTION

I am Idaho State Representative Lenore Hardy Barrett, District 26: Custer, Lemhi, Clark and Jefferson Counties.

To familiarize you with District 26, I quote from Randy Stapilus' Political Almanac.

"There is no bigger legislative district in Idaho than District 26... this is an area lashing together an economy out of string and baling wire. Many people do not have just one job; they'll do several jobs to make a living wage.

This is a very independent country, where people live in small clusters and are deeply distrustful of large ones--and of government...When people think about what they want from government, they want to be left alone."

II. BACKGROUND

On Saturday January 14, 1995, after the state legislature had convened, I read in the Boise Statesman of a ruling by Judge Ezra that, to protect salmon, (Attachment-A) resource activity in central Idaho would cease.

I recalled over 20 years of proliferating environmental legislation with injuries and usurpations continuing unabated, "all having in direct object the establishment of an absolute tyranny over these states." Now, this has happened in the Sovereign State of Idaho.

Subsequent to the threatened closure, the Idaho Legislature accomplished 3 important goals:

1. We adopted a resolution to convene The Conference of the States for the purpose of restoring balance in the federal system (Attachment B);
2. We adopted a Tenth Amendment Resolution reaffirming State

Lenore Barrett, testimony
page 2 of 4

Sovereignty;

3. We created and funded a Constitutional Defense Fund to protect Idaho Sovereignty.

III. EPA AUTHORIZATION COMMENT

The Endangered Species Act references "cooperation " with states.. to the maximum extent practicable. Additionally, the Act allows agreements with any state for the administration and management of any area established for the conservation.. and the Secretary is authorized to enter into a cooperative agreement... with any state which establishes and maintains an adequate and active program for the conservation of endangered species...the Act addresses conflict between state and federal law, with the state being placed in supersedural position.

So, why isn't this cooperation happening?

Consider just a few of many incidents that occurred over the past two years.

1. In 1993, I became aware that it had been more than one year since application was submitted to the Army Corps of Engineers for the provision of a bridge to the Cutler property across Meadow Creek in Stanley, Idaho (Attachment C).

The original, and preferred, plan carried a construction cost estimated at \$14,000-\$15,000.

National Marine Fisheries was considering a second design. Cost of Construction? \$65,000.

The Idaho Fish & Game, Idaho Department of Water Resources and the Idaho Department of Environmental Quality had already agreed to issuing a permit based on the first, more cost-effective design. In the meantime, the Cutlers were land-locked.

Lenore Barrett, testimony
page 3 of 4

The cause of delay and exorbitant cost was the result of a tiered bureaucracy turf battle between the Corps and National Marine Fisheries Service.

Recently, the Custer County Commissioners learned that National Marine Fisheries were proposing to kill kokanee in Redfish Lake. No one in Custer County thought killing kokanee would do anything more than kill kokanee. Idaho Fish & Game commented that state fisheries science did not agree with NMFS fisheries science in this matter. Which science will prevail? Even if it's wrong? NMFS. (Attachment D)

My favorite example of so-called cooperation between state and federal interests is the ignominious Idaho Wolf Plan. No plan was better than a poor plan! The only plan U.S. Fish & Wildlife would accept was one they authored. Intimidation by U.S. Fish & Wildlife to adopt their plan was vigorously applied - and just as vigorously rejected. (Attachment E)

For the federals, "cooperation" is a game of "Simon Sez" ---and they're Simon! Idaho is relegated to an administrative unit.

IV. SUMMARY/CONCLUSION

The Endangered Species Act should be completely rewritten (Attachment F).

Absent re-write, it should be, at a minimum, ~~be~~ re-authored to include:

1. Peer reviewed scientific data.
2. Equal consideration to potential human suffering caused by restriction or elimination of basic human needs such as jobs, energy and overall quality of life.

Lenore Barrett, testimony
page 4 of 4

3. Federal and state measures to re-establish the primacy of state government for implementation ~~of implementation~~ of all environmental policy.

Further, the Act should recognize Idaho's right to appropriate and manage water within its own borders without interference or usurpation by the federal government. Idaho's water, including drawdowns, should not be the solution for restoring listed species. Plans in progress to control Idaho water should be immediately discarded (Bevan Plan).

The federal government has been trying to micromanage state governments for decades and it is time to change direction.

The Endangered Species Act is a good place to start.

Post Register

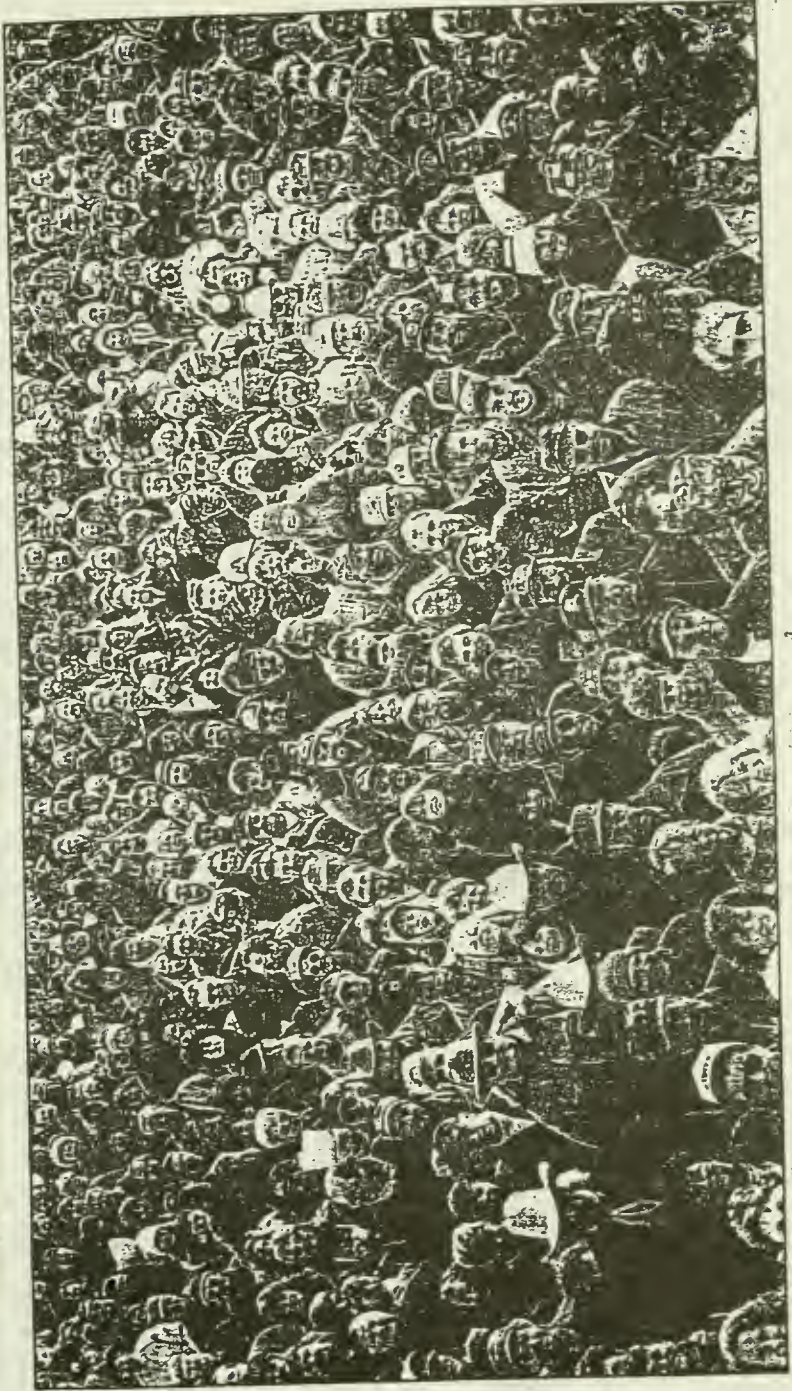
Sunday

JANUARY 29, 1991

Injunction that could shut down logging, mining, grazing and road-building in central Idaho.

Candace Burns
Post Register

SALMON — Residents of Salmon and Lemhi County gathered Jan. 22 for a mass portrait, which they plan to mail to anyone who has a say over an



Rep. Barrett

The Idaho Statesman

Tension builds as mine closures near

The Associated Press

SALMON — A Forest Service plan to temporarily close mines and idle 800 Central Idaho workers in response to a federal court order has residents increasingly anxious, and talking about violence.

"I'll tell you, this thing is getting very dangerous to my mind," Custer County Commissioner Ted Strickler said Thursday. "When these people have some days off and sit around talking, they're going to get angry."

The situation was so volatile that Custer County commissioners assigned county workers to rumor control. Lemhi County commissioners ordered 5,000

buttons and bumper stickers reading, "Idaho's Endangered Species: The Working Person, Lemhi and Custer Counties."

Plans to close mines were being developed in response to U.S. District Judge David Ezra's Jan. 9 decision that long-range forest management plans were adopted without consulting the agency charged with protecting endangered salmon.

Ezra placed logging, mining, grazing and road building in limbo on the Challis-Salmon, Sawtooth, Nez Perce, Boise and Payette national forests until consultations are completed with the National Marine Fisheries Service.

The Central Idaho communi-

ties of Challis, Salmon and Stanley face an economic crisis if mines are closed. The Thompson Creek molybdenum mine, the Hecla Grouse Creek gold mine, the Yellowjacket Mine and the Beartrack Mine, which is still under construction, are the among the affected operations.

Mining companies are working to have the injunction lifted or at least clearance for their individual projects to continue. Closure plans are in the works, but Forest Service officials were unsure when they would be finalized.

"The reason we didn't set an exact date is because it's going to take a while to close some of these things down," said Bob Swinford, a spokesman for the

Forest Service's regional office in Ogden, Utah.

Twenty-seven smaller mines, three timber sales and 69 grazing allotments on the Salmon-Challis forest also could be affected by the ruling that some residents fear could lead to a confrontation.

Gary Barrett, owner of The Lantern Bar in Salmon, questioned whether anyone had thought about how 800 people suddenly threatened by prolonged unemployment might react.

"Do they want to see just how violent we can become?" Barrett said. "They don't know how seriously this can explode. You can only push people so far."

offensive



IDAHO FISH & GAME

Phil Batt/Governor
Jerry M. Conley/Director

COMMISSION OPPOSES ENVIRONMENTAL LAWSUIT ON FORESTS

Since the listing of Idaho salmon was first proposed, the position of Idaho Department of Fish and Game, from field biologist to the Fish and Game Commission, has been that Idaho production habitat is not a major limiting factor for Idaho salmon.

If salmon were limited by logging, grazing, and mining, what we would see is few in impacted habitat and far more in the wilderness. The fact that wild salmon in pristine habitat are declining at the same rate as those along the road at Stanley is proof that spawning and rearing habitat is not limiting recovery.

Clean water and healthy habitat are important to Idaho fish and Idaho citizens. But locking up Idaho's forests will not save Idaho salmon. Habitat protection is a long-term issue.

As we have said for the last five years, the only way to recover Idaho salmon is to fix the migration corridor between Lewiston and Portland. We are in court trying to make that happen.

The Commission wishes the environmentalists who filed this disruptive lawsuit would join our staff in solving the mainstem problems rather than further polarizing this complex issue with legal actions.

Saturday, January 21, 1995

Magic Valley

Judge backtracks amid miners' warnings

The Associated Press

A federal judge in Hawaii late Friday stayed his order halting mining, logging and grazing in six Idaho national forests so it can be reviewed by an appellate court.

The decision by U.S. District Judge David Ezra headed off the immediate lay-off of central Idaho miners.

The stay is in effect until 12:01 a.m. next Saturday while the 9th U.S. Circuit Court of Appeals in San Francisco considers appeals by resource industries and the Justice Department.

The judge originally ordered resource activity halted in the forests on Jan. 9 after determining that the Forest Service failed to consult with the National Marine Fisheries Service on salmon recovery efforts in developing its long-range forest management plans for Idaho.

"This is a classic case where one federal agency failed to perform its duty with another agency," Gov. Phil Batt declared. "We're going to fight it with every means at our command."

Ezra's latest ruling appeared to end, at least for now, several days of tumult in Custer and Lemhi counties, which will be hit hard economically if the judge's original order is ulti-

Craig blasts fish-saving efforts

By Meredith Cohn
States News Service

WASHINGTON — Before the judge recanted Friday night, Sen. Larry Craig Friday blasted his Jan. 12 decision, saying it would put salmon's rights before "humans' rights."

The fish are nearing extinction in Idaho, with the Idaho sockeye species all but killed off and chinook numbers rapidly declining.

A federal circuit court judge placed an injunction Jan. 12 on operations in six Idaho forests until their impact on endangered chinook salmon can be determined by the National Marine



Craig

Fisheries Service — a move Craig and the other Idaho delegation members say threatens "thousands" of jobs.

"A federal judge Thursday with the stroke of a pen closed 14 million acres in the state of Idaho," Craig said angrily during a Senate session. "That area is the size of Connecticut, Massachusetts and Maryland combined — under the aus-

Please see CRAIG/B2

said Carmelita Trowbridge. "A lot of people are worried about losing their homes."

Republican Larry Craig, Idaho's senior senator and new chairman of the Agriculture Committee's forestry subcommittee, meet with officials from all the involved federal agencies over the final days of the week. He National Marine

Fisheries Service Director Rollie Schmitt can reach an agreement that will likely satisfy Ezra's objections by Jan. 31.

"I challenge the administration to be as kind to people as they want to be to plants and animals," Craig declared, saying Ezra's order highlighted the need for dramatic changes in the Endangered Species Act — changes he believes will be enacted this year.

Even the environmental community was split over the court order. Craig Gehrk of The Wilderness Society acknowledged the order was somewhat extreme but necessary to assure salmon habitat remains viable while Wendy Wilson of Save Our Wild Salmon contended the Columbia and lower Snake River dams are to blame for the salmon's demise and Ezra's order only draws attention away from them.

The Fish and Game Commission issued a statement late Friday agreeing with Wilson. "As we have said for the last five years, the only way to recover Idaho salmon is to fix the migration corridor between Lewiston and Portland," the statement said. "The commission wishes the environmentalists who filed this disruptive lawsuit would join our staff in solving the mainstem problems rather than further polarizing this complex issue with legal actions."

Small towns find it difficult to recover from environmental lawsuits



Lenore Barrett

The effect of the recent court injunction threatening a shut-down of mining, logging and grazing activities in our local national forests continues to have an economic impact on my hometown of Challis. Once I returned from the legislative session, I had an opportunity to do personal research in late March on the lingering effects of the recent frivolous lawsuit.

Several businesses were having trouble recovering their losses. Since our economy has been irreparably damaged, I felt that this information must get out to the general public.

Bob and Geri Dize, of Twin Peaks Sporting Goods, said that while their business is a seasonal one, what they see now creates a great concern for the future. There was a good market for them up until the injunction. One thing Bob felt about the future of his store was a lack of desire to restock his inventory to the normal depth and variety.

Across the street at the House of Bargains, Richard and Donna Glenn used their personal savings to keep the doors open and pay their overhead costs. According to their records, they are back to about 65 percent of their normal business. They have a real concern as to whether they will ever recover their savings.

Their business was actually better when Thompson Creek was shut down and Grouse Creek didn't exist. This is because the injunction also affected timber and ranching, the whole spectrum of natural resource business in this valley. This is quite a regression in business, which they felt would be extremely difficult, if ever, to recover from.

Charlotte Bradshaw, of McPherson's, said, "The return to business as usual hasn't happened." While there is always a slowing down of business after the first of the year, this is definitely more noticeable. The miners and ranchers aren't buying the quantity of work clothes and equipment that they normally would. There is a more of a wait-and-see attitude. While this particular issue is over, there will be something else coming up, and we'll have to go through this all over again, Charlotte said.

Connie Sugden, of Allied Builder's Supply, felt that people were holding off on a lot of work they might have done if this injunction hadn't happened. Normally this time of year, people are starting to do the projects around the home and ranch that they put off last fall. However, with the uncertain future, people aren't willing to spend their money. Not only is the lumberyard seeing the slow-down, but contractors aren't getting the work they usually would. "We're operating at about 65 percent of our normal business," Connie said.

Everyone I talked with feels that something else will be coming up, and all share a concern for the future. It seemed pretty consistent, that businesses were operating at about 65 percent of normal. In a town of mom-and-pop businesses, this is tough to live with. We all live here because we like the lifestyle, and make a lot of sacrifices for that. But this can go on for only so long, and then there is nothing left to sacrifice.

The natural resource companies work very hard to satisfy the requirements of environmental regulations. Hecla Mining's Grouse Creek is an example, creating fish habitat where

it didn't previously exist and restoring habitat in impacted areas. They have been officially commended for their past work and yet are constantly annoyed by environmental extremists and government bureaucrats.

Here we have an excellent example of why the culture and customs of a small town must be taken into consideration in decision-making. Many people elsewhere may think that this frivolous lawsuit has been dissolved and everything is back to normal. That is not the truth.

Little communities continue to feel the impact. No one can predict the future. In Challis, we've stopped trying.

Lenore Hardy Barrett of Challis is serving her second term as a Republican member of the Idaho House of Representatives.

The IDAHO STATESMAN

■ ALEC SPOTLIGHT

Harold J. Brubaker:

From the Silent Minority to Speaker of the House

by Kerry Jackson, Editor

The foundation of the November revolution at the polls was not something that took root only recently. It was grounded in men and women who have been steadfastly dedicated to their agenda for years.

Harold Brubaker, ALEC's 1994 National Chairman, is one of those rocks who make up the solid base of what has become a true political uprising. When Brubaker was first elected to the North Carolina House of Representatives in 1976, he was one of six Republicans in the 120-member assembly. But on January 25, Brubaker, a real estate appraiser from Asheboro, represented on the state level what ripped through the nation like a cyclone: he was sworn in as Speaker of the North Carolina House riding the crest of a 67-member Republican majority wave.

"The message of the 1994 elections," Brubaker was quoted in the Raleigh News & Observer, "was simply this: that the people must be empowered, that the control of government must be returned to the people."

Just as so many Republicans successfully ran congressional races under the standard of the "Contract With America," Brubaker did the same in his state. He pushed an eight-point plan that promised a \$200 million tax cut, local control of schools, a crackdown on crime

and a fundamental reform of welfare. Brubaker also ran on a platform full of policies researched and written by ALEC.

"ALEC gives legislators an opportunity to hear different points of view, what is working in other states and cutting-edge policies on a wide variety of issues," Brubaker said in an ALEC Profile last May. "The power of ALEC is that every member, from the National Chairman to our newest members, helps create a dynamic and positive force of like-minded lawmakers."

From the Speaker's chair, Brubaker is seeing things from a much different perspective than when he was relegated to the back row. Though his line of sight has changed, his views are the same as they were when he was elected for the first time almost two decades earlier.

"My convictions haven't changed significantly in the last 20 years," Brubaker said. "I'm proud that I'm still fighting for the things I thought were right in 1976. Basic truths are not affected by time."

For at least the next two years, Brubaker will be busy implementing those truths that ALEC members share in common: free markets, limited government and individual liberty. The Durham Herald-Sun reported Brubaker forged a new attitude in the House in a 14-minute speech to open the 1995 session. Individuals' earnings and property belongs to them, not government, he said, and citizens should be given the opportunity to place potential laws on initiatives for votes.

"It's the dawn of a new day," Brubaker told the state House. "It is the end of business as usual." ■

■ ALEC MEETINGS

State Sovereignty: The Next American Revolution

ALEC's 1995 National Leadership Summit

by Noel Card, Managing Editor

On May 18-21, the historic Commonwealth of Virginia will be the setting for ALEC's 1995 *National Leadership Summit on State Sovereignty*. ALEC will be extending invitations to key state legislative leaders to participate in this high-level conference. (For further information on attending the Summit, contact your ALEC State Chair.)

The Summit's theme, *The Next American Revolution*, captures the spirit of the rapidly growing movement to devolve power from Washington, D.C., and move it closer to the people. Issue sessions will cover the philosophical underpinnings and practical benefits of enacting policies to reestablish the proper balance between the states and the national government, as originally intended in the 10th Amendment of the Constitution. Issues and topics to be covered include:

- ❖ State Sovereignty and Free Market Health Care Reform
- ❖ Rational State Environmental Policies Under State Sovereignty
- ❖ State Sovereignty and Regulatory Reform
- ❖ State Innovations in Tort Reform
- ❖ Telecommunications Policy: Building the Information Highway
- ❖ The Imperative for Local Control of Education
- ❖ Economic Growth through Labor Reform

FYI



Federal Mandates: Funded or Unfunded, They are a Threat to the States and the Nation

Also, in cooperation with U.S. Senator Paul Coverdell (R-Ga.), ALEC has formed a "Repeal Initiative." The purpose of the initiative is to identify and repeal regulatory burdens that federal and state governments place on families, businesses and local communities. In announcing the program, Senator Coverdell said, "The Repeal Initiative will be a voluntary effort in each state and Congress to seek

The "one-size-fits-all" approach of the federal government is creating spectacular and expensive problems where none before existed.

out and identify obstacles to the management of our states, communities, families, and businesses, and eliminate them. Our goal is simple — change the way we measure success. For too long success has been based on a legislator's ability to make more and bigger government. Now the challenge must be to make less government and more efficient government."

Washington has set spending priorities for the states by mandating how to clean our air, preserve our water, reform our health care, police our highways, manage our lands and even run our prisons. The burden of these unfunded federal mandates requires states to fund the federal requirements with diminishing state revenues or jeopardize their eligibility for certain federal funds. I encourage all of you to join ALEC's efforts to combat this very important issue.

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■ STATE SOVEREIGNTY

Arizona Leads As States Push For Devolution

By Karen O'Brien, Task Force Director

From Alaska to Wyoming, states are reasserting their rights under the Tenth Amendment in an effort to balance the shared powers of the states and the federal government. This focus on state sovereignty is being driven by the dissatisfaction with federal government programs that are unfunded, inefficient and ineffective.

The states are calling for the federal government to put an end to the oppressive mandates that are pouring out of the federal bureaucracies, and to devolve certain powers and responsibilities back to the states. The movement is picking up momentum and has even attracted the attention of the new Congress, as well as Senate Majority Leader and Republican presidential hopeful Bob Dole, who launched his campaign for the Republican presidential nomination by reciting the Tenth Amendment. He said his mandate would be to "rein in" government and devolve power back to the states and the people.

One of the first fulfillments of the House Republican's "Contract with America" was passage of legislation to control unfunded mandates. President Clinton signed this bill which limits the practice of requiring states and localities to comply with federal programs without providing federal funds. The president, Congress and the Republican presidential candidates are responding to the overwhelming move-

ment in the state legislatures to curb the federal government's encroachment on state sovereignty.

A forerunner in the pursuit to restore the proper balance of power between the states and the federal government is Arizona, which has enacted more legislation relating to mandate relief and state sovereignty than any other state. Senator Brenda Burns, an ALEC National Director, State Chair, and Chair of the State Sovereignty committee of the Board of Directors, and ALEC member Senator Tom Patterson, have been instrumental in bringing this issue into the mainstream of political debate. Arizona has also created a joint House and Senate Committee with jurisdiction over federal mandates and states' rights issues.

Legislators in several states, including Ariz., Colo., Calif., Hawaii, Mo., Mont. and Utah have adopted ALEC's *Restatement of State Sovereignty Resolution* that declares sovereignty under the Tenth Amendment and instructs the federal government to "cease and desist mandates that are beyond the scope of its constitutionally delegated powers."

In order to make the federal government more responsive to the states, a proposal has been made for a "Conference of the States," (COS) or a meeting of officials and legislators from each state to discuss returning certain powers back to the states. The COS is being organized by a national steering committee comprised of state elected leaders appointed by the Council of State Governments, the National Conference of State Legislators, and the National Governors' Association. Recently, ALEC accepted an invitation to be on the

steering committee and further lend its support. In order for the COS to convene, 26 states must pass a *Resolution for Participation*. Currently, 14 states have passed a COS resolution. Opponents fear that the gathering could turn into a runaway constitutional convention, but the COS is not, nor is it intended to turn into, a constitutional convention. It will be a forum for states to express their frustration with federal mandates and discuss proposals that would restore the appropriate balance of power. The COS is the best way for states to express their wishes to Congress through a unified voice. The participants will draft a petition that will be presented to the Congress and the White House, but it will have no binding authority or force of law. ■

Types of State Sovereignty Legislation

- **Declaration of State Sovereignty:** A resolution reaffirming state sovereignty.
- **Government of the People:** A resolution petitioning Congress to propose a Constitutional amendment that would allow states to nullify federal laws that exceed Constitutional authority.
- **Restatement of State Sovereignty Resolution:** A resolution restating the powers reserved to the states under the Tenth Amendment.
- **Constitutional Defense Council:** A resolution designed to restore, maintain and advance state sovereignty. A key component is the establishment of a defense council to examine federal mandates and court rulings.
- **Federal Mandate/Encroachment Act:** Legislation intended to serve as an alternative to the Joint Committee Act, which is written to demonstrate the effects federal mandates have at the state legislative level.
- **Joint Committee Act:** Legislation written to demonstrate the effects federal mandates have at the state legislative level.
- **Congressional Delegation:** Requires all members of a state's Congressional delegation to annually appear before a joint legislative session to discuss problems related to unfunded mandates.
- **Conference of the States:** A resolution to attend the Conference of the States.

STATE SOVEREIGNTY ACTIVITY UPDATE

State	Declaration of State Sovereignty Resolution	Government of the People Resolution	Restatement of State Sovereignty Resolution	Constitutional Defense Council	Federal Mandate/Encroachment on State Sovereignty Audit Act	Joint Committee Act	Congressional Delegation	Conference of the States
Ala.							E	I
Alaska								I-PI
Ariz.	E	I	E	E		E	E	E
Ark.			I					E
Calif.			E				E	I
Colo.			E			I		I-PI
Conn.			I					Pending
Del.							E	E
Fla.			I					I-PI
Ga.			I			I	I	I
Hawaii			E					I
Idaho			I enacted	I enacted				E
Ill.	I	E	I	I	I			I
Ind.			I					I
Iowa			I		E		I	E
Kan.			I					I
Ky.								E
La.			I	I				I
Maine								Pending
Md.								I
Mass.								Pending
Mich.								I
Minn.			I				I	I
Miss.			I		I			I
Mo.			E					E
Mont.			E					I
Neb.			I				E	E
Nev.			I					I
N.H.			I-PI					I
N.J.			I					I
N.M.			I				I	I
N.Y.								I
N.C.								I
N.D.								I
Ohio	I-PI			I				E
Okla.				I-PI				I
Ore.					E			I
Pa.				I-PI		I	E	I-PI
R.I.	I							I
S.C.			I			I	I	I
S.D.			I				E	E
Tenn.			I					E
Texas			I				I	I-PI
Utah			E					E
Vt.							I	I-PI
Va.			I		E		E	E
Wash.								I
W.V.			I-PI					I
Wisc.			I					I
Wyo.			I-PI					E
TOTAL	4	2	33	8	3	5	15	-

Key: E: Enacted I: Introduced I-PI: Passed in one chamber

As of April 25, 1995

States Must Be Resolved to Reverse Federal Expansion

New ALEC Publication To be Released at 1995 Nat'l Leadership Summit

By Kerry Jackson, Editor

Every four years, at both major parties' presidential conventions, all 50 states announce their nominations by beginning with these famous but never seriously regarded words:

"The *sovereign* state of ..."

Even in those charged and giddy surroundings, the statements always seem to be curious contradictions of reality. Because the obscured truth is: the states are *not* sovereign entities.

"Through the years, the sovereignty of the states and of the people has been eroded by illegitimate federal expansion," write ALEC Director of Legislation and State Policy Wendell Cox and co-author Samuel A. Brunelli, ALEC's Executive Director, in a new publication, *Sovereignty of the People and Devolution*. "The federal government has treated the states as subordinate units of government, which they are not."

In what is essentially a handbook on state sovereignty and devolution, which will be released as part of ALEC's National Leadership Summit, Cox and Brunelli explore the concept of state sovereignty from an historical perspective and

a constitutional viewpoint. Using a wide variety of works, speeches and studies from which they draw their conclusion, the authors show that the state-federal relationship that many recognize today as the traditional alliance has strayed far from its intended purpose. Run-away federal debt, burdensome mandates, centralized power and a Supreme Court that has too often sided with Congress and the executive branch have all contributed to the dilution of state sovereignty. The authors argue that "federal usurpation of popular sovereignty has generated a serious crisis in American governance."

Cox and Brunelli contend that the three branches of the federal government could reverse their wrongful expansion of power by:

- Congressional repeal of the laws under which it has illegitimately expanded federal power;
- Executive orders to rescind directives and regulations that have wrongly intruded into areas of state responsibility;
- Supreme Court rulings that invalidate laws, regulations, and executive orders that have usurped the sovereignty of the states and of the people.

"There are encouraging indications that federal initiatives will begin to devolve power to states. But it would be overly optimistic to rely upon the federal government to willingly devolve all of the powers that it has wrested from the states," they write. "Restoration of the sovereignty of the states and the people will primarily depend upon the resolve of the states and the people." To that end, Cox and Brunelli ad-

vocate two mechanisms for rendering constitutional decisions" since the amendment process is "difficult and cumbersome." One is the *Government of the People Amendment*. It allows two-thirds of the states to nullify sections of federal law or regulation where they find such federal action to have violated the sovereignty of the states.

The other is the *States Initiative Amendment*. In this method, the Constitution would be amended if three-fourths of the states proposed an amendment and Congress failed to block the proposal by a two-thirds vote in both chambers within two years.

"The people, through the states, retain the right to reclaim their sovereignty through constitutional amendments," Cox and Brunelli explain.

In their work, the authors include models for the constitutional amendments, as well as ALEC model resolutions, model proposals and model legislation.

"The cornerstone of the ALEC sovereignty and devolution agenda is the 'Declaration of Sovereignty,'" they write, "which recalls the institution of the federal government under the Constitution, outlines the extent to which the federal government has illegitimately assumed sovereignty, affirms the importance of fundamental law, proposes principles by which popular sovereignty should be restored, and outlines strategies by which such restoration might occur."

This in-depth and cogent analysis is prescribed reading for all proponents of state sovereignty and devolution. ■

■ ALEC EVENTS

National Leadership Summit on State Sovereignty

Four Governors and Nearly 200 State Legislators to Attend Summit in Richmond

by Noel R. Card, Managing Editor

More than 300 state and national leaders will be meeting at the Marriott Hotel in Richmond on May 18-20, to discuss the relationship between the states and the federal government.



Governor George Allen is scheduled to address the leaders during lunch on Friday, May 19. On the same day Summit attendees will hear from ALEC alum U.S. Senator Paul Coverdell (Ga.), John Goodman from the National Center for Policy Analysis, and former Reagan OMB Director Jim Miller. On Saturday,



Utah Governor Michael Leavitt and Nebraska Governor Ben Nelson, who are the leaders of the movement for a "Conference of the States," will discuss their efforts. Also on Saturday, Arizona Governor Fife Symington, who has been at the forefront of the state sovereignty movement, will speak, as will Alabama Governor Fob James and former U.S. Attorney General Griffin Bell.

Other invited speakers include: U.S. Senate Majority Leader Bob Dole (Kan.), U.S. House Majority Leader Dick Armey (Texas), and Illinois Governor Jim Edgar.

"We will be bringing to Richmond some of the nation's foremost leaders on the issue of the state-federal relationship," said ALEC Executive Director Samuel A. Brunelli. Brunelli cited the Tenth Amendment as the cornerstone of the state-federal relationship. "There is no more important issue than re-establishing the proper balance between the states and the federal government. Today, we have a federal government that often acts as if the states are mere administrative units to a huge bureaucracy on the Potomac. The new leaders in the Congress and in the states are interested in forging a relationship between the states and the federal government. And we are particularly heartened that on the eve of the Summit, the Supreme Court has begun the important process of limiting federal intrusion under the commerce clause of the Constitution, which has long been abused by Congress." (See page 8)

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Issue sessions are planned on the fundamentals of state sovereignty and devolution; environmental deregulation; health care reform in the states; tort reform at the state and federal levels; and returning the responsibility for education and welfare back to the states.

More than 40 state House Speakers and Senate Presidents, and more than 100 state legislators in leadership positions, will attend the Summit. As of this date, 40 states will be represented in Richmond.

"This meeting will set the philosophical underpinnings of future discussions on state sovereignty," said Virginia State Senator Steve Martin, ALEC's State Chair and Chairman of the Host Committee. The Virginia Host Committee has arranged an excellent series of special events and spouse tours for the Summit (see box). "This is a great opportunity for us to showcase Richmond to leaders from around the country, and we've pulled out all the stops to make this an outstanding meeting," Martin added.

For more information, contact Jennifer Whittier at (202) 466-3800. ■

Special Events and Spouse Tours

Thursday, May 18th

- Golf at the Highlands Golfers' Club
- The Summit Opening Reception
- Spouse Tour: Mansions of Richmond

Friday, May 19th

- Virginia Slims Legends Reception
- Virginia Slims Legends Concert
- Spouse Tour: Arts and Garden Tour

Saturday, May 20th

- "Living American History," St. John's Church
- Spouse Tour: Steeplechase Races

■ THE CONSTITUTION

U.S. Supreme Court Draws a New Line Between the States and the Feds

Close Ruling on *Gun-Free Schools Act* Signifies High Court Taking New Approach to Commerce Clause

By Michael Hotra,
Assistant Editor

In an historic decision announced April 26, the Supreme Court sharply limited the scope of Congressional lawmaking authority as it is constitutionally defined under the interstate commerce clause. For the first time since 1936, the justices placed a limit on Congressional authority to impose legislation upon the states.

The decision represents a victory for proponents of state sovereignty, who see this ruling as a strong first

step toward repealing burdensome and unconstitutional federal mandates. "This decision is long overdue," said ALEC National Chairman Senator Ray Powers (Colo.) "In delivering this decision, the Court has finally recognized that the federal government has overstepped its constitutional authority."

In *United States vs. Lopez*, the Supreme Court ruled by a 5-4 margin to affirm the decision of the Fifth Circuit Court of Appeals and strike down the federal *Gun-Free Schools Act of 1990*. In 1992 Alfonso Lopez, then a high school senior in San Antonio, Texas, was arrested and indicted under the *Gun-Free Schools Act* which forbids, "any individual knowingly to possess a firearm in a place [he] knows is a school zone." At the time of his arrest, Lopez was carrying a .38 revolver. He was initially sentenced to six months in jail, and two years probation.

In overturning Lopez's conviction, the Court ruled that Congress exceeded its constitutional authority when it passed the *Gun-Free Schools Act*. Writing for the majority, Chief Justice William Rehnquist said of this inappropriate law, "neither the statute nor its legislative history contain[s] ex-

press congressional findings regarding the effects upon interstate commerce of gun possession in a school zone. Indeed [the law] plows thoroughly new ground and represents a sharp break with the long-standing pattern of federal firearms legislation."

In his opinion, Rehnquist narrowly defined the scope of federal legislation that is appropriate under the commerce clause. "We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce." The court's determination -- that federal legislation must "substantially affect" interstate commerce -- calls into question the legitimacy of federal regulations on issues like crop regulation, and social policy legislation such, as the *Americans with Disabilities Act*.

Justice Clarence Thomas alluded to these implications in his concurring opinion. "Our [present] construction of the scope of congressional authority has the additional problem of coming close to turning the Tenth Amendment on its head. Our case law could be read to reserve to the United States all powers not expressly *prohibited* by the Constitution."

The Conclusion of Chief Justice William Rehnquist's Majority Opinion:



To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action.

The broad language of these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, and that there never will be a distinction between what is truly national and what is truly local.

This we are unwilling to do.

Perhaps more importantly, the decision draws a line in the proverbial sand. It limits the expansion of federal lawmaking authority in the states, which has grown virtually unchecked since the New Deal. For advocates of states' sovereignty, that's good news. "We are extremely pleased with the Supreme Court's decision to reaffirm state sovereignty," said Samuel A. Brunelli, ALEC's Executive Director. "With its decision, the Court has sent a clear message to Congress and the executive branch that the commerce clause cannot serve as a convenient excuse for Congress to impose their will upon the states."

Justice Stephen Breyer authored the dissenting opinion, with which Justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg concurred. In his brief, Breyer asserted that the *Gun-Free Schools*



Breyer

Act was a proper exercise of congressional authority. He argued that guns in the classroom create an environment in which teachers cannot teach,

and students cannot learn. Poorly educated students, the workforce of the future, undermine the ability of businesses to compete -- to engage in interstate commerce. Breyer says that by controlling guns in our nation's schools, our nation's business climate improves. "Upholding this legislation would do no more than simply recognize that Congress had a 'rational basis' for finding a significant connection between guns in or near schools and (through their effect on education) the interstate and foreign commerce they threaten."

From Justice Thomas' Concurring Opinion:



...it seems to me that the power to regulate "commerce" can by no means encompass authority over mere gun possession, any more than it empowers the Federal Government to regulate marriage, littering, or cruelty to animals, throughout the 50 states. Our Constitution quite properly leaves such matters to the individual States, notwithstanding these activities' effects on interstate commerce. Any interpretation that even suggests that Congress could regulate such matters is in need of reexamination.

As Rehnquist duly notes, the implications of Breyer's argument, which supports the government's contentions, are expansive. "Under the theories that the government presents in support of [this law] it is difficult to perceive any limitation on federal power; even in areas such as criminal law enforcement or education where States historically have been sovereign. Congress could regulate any activity that it found was related to the productivity of individual citizens: family law (including marriage, divorce, and child custody) for example."

Constitutional scholars are in agreement that this is a key decision. "This is good constitutional law. To stretch [the commerce clause] to cover this law is, in my opinion, stretching it way too far," said Syracuse University Professor of Political Science Ralph Ketcham. "In a way, I was proud of the court for keeping the commerce clause in line." Harvard law professor Laurence Tribe said, "If ever there was an act that exceeded Congress' commerce power, this was it."

U.S. Senator Herb Kohl (D-Wis.), the author of the *Gun-Free Schools Act*, expressed his dismay on the Senate floor. "In my judgment, this is a classic example of judicial activism, and it ignores the safety of America's children." However,

Kohl fails to recognize that 40 states *already* have some form of legislation outlawing firearms in school-zones. Therefore, Kohl's legislation, in 80 percent of the states, is not only intrusive, it is also redundant. Kohl remarked that he plans to add a technical amendment to the more recent version of the *Gun-Free Schools Act* included within the *1994 Crime Bill*. He says he wants to ensure that this newer version of the bill remains constitutional.

At this early juncture, the future of the *Lopez* decision is unclear. Liberals, such as *New York Times* columnist Anthony Lewis, discount this decision, saying that the court has substituted its judgment for the judgment of legislators. He paints the ruling as the defeat of well-intentioned, beneficial legislation. Maybe so, but the court has chosen to act strongly because, for decades, the Congress has acted *wrongly*.

This case could be the benchmark upon which onerous federal mandates are repealed, and further intrusive laws are struck down. At the very least, this decision serves notice to Congress that it can no longer enact with impunity legislation using the commerce clause as the basis. The rights of the states must be respected. The Constitution requires nothing less. ■

THE AMERICAN WATER RESOURCES COMPANY

May 11, 1993

Rep. Lenore Barrett
District 26
Idaho State Legislature
Boise, Idaho 83720

Re: Driveway Access

Dear Rep. Barrett:

This is being written on behalf of Mr. and Mrs. Don Cutler of Stanley, Idaho.

It has been over one year since the application was submitted to the Army Corps of Engineers for the provision of a residential/commercial driveway to the Cutler property across Meadow Creek.

The original, and preferred, plan is to construct two span bridges crossing over the creek's two active channels and a culvert that protects a smaller channel that tends to dry up during the summer. Construction includes span bridges, culvert, appropriate fill material, and intensive revegetation to prevent erosion and production of sediment in the stream. Cost of construction is estimated at \$14,000-\$15,000.

National Marine Fisheries is considering a second design constituting one long 3-span bridge over the three channels, appropriate fill material, and intensive revegetation, for the same reasons cited above. Cost of construction is approximately \$65,000.

As you can see, the first driveway construction to access the Cutler property is substantially more cost efficient. The design has taken into consideration the sensitive issue of Endangered Fisheries (chinook) and is also sensitive to hydrology and wetlands. The Idaho Dept. of Fish and Game, the Idaho Dept. of Water Resources, and the Dept. of Environmental Quality have already agreed to issuing a permit based on the first design, reconfirming the validity of this plan.

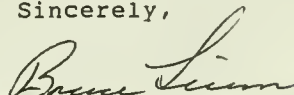
POST OFFICE BOX 1979 • HAILEY, IDAHO 83333
(208) 788-2860

It is understood that the permitting process can be lengthy, but Don Cutler's residence and business (excavation/heavy equipment) are land-locked. At present, the Cutler's are able to access their property only through the neighbor's motel and trailer park access. You can imagine the conflict of heavy machinery and guest accommodations on the same driveway. Consequently, their agreement for the Cutler's to use the motel's driveway access terminates May 31, 1993.

We strive to bring this issue to your attention and request your assistance as soon as possible to assure that this situation is resolved quickly, before the Cutler property is sealed off from access.

Thank you for your time and consideration.

Sincerely,



Bruce Lium

Memorandum

To: Mr. Steve Mooney

From: Dr. Tom Welsh

Date: April 18, 1995

Subject: Summary and update on my sockeye/kokanee report and critique of Idaho Fish and Game plans to kill kokanee in Fishhook Creek and my recommendations for restoration of Snake River anadromous fish runs.

Mr. Steve Glass of EnviroNet has requested a summary in laymen terms of my Snake River status report dated January 1995. He also gave me a copy of the news article in the 4/13/95 issue of the Challis Messenger regarding the sockeye recover program administered by the Idaho Department of Fish and Game.

Sockeye/kokanee salmon are the same genus and species. As such, they interbreed and produce fertile offspring. The only difference between sockeye and kokanee is in their life history. Sockeye salmon produce largely migratory progeny that undergo smolt transformation (physiological and anatomical changes) that adapt them for living in salt water. Stanley Basin sockeye salmon return from the ocean to their natal lakes after two or more years and range in length from about 10-24 inches. Kokanee are largely non-migratory and remain in the nursery lake for four-five years, maturing at sizes ranging from 6-20 inches, depending on lake productivity. Both sockeye and kokanee salmon produce migratory and non-migratory offspring. Differences in the proportions of migratory and non-migratory offspring is dictated by the evolutionary ecology of the sockeye/kokanee stocks.

In the sockeye/kokanee status report referenced above, I examined the validity of the National Marine Fishery Service (NMFS) declaration of "endangered" for the late spawning sockeye salmon under the Endangered Species Act (ESA). I reviewed the literature back to 1890's when the Stanley Basin sockeye salmon were first described by Evermann (1895). He and other early settlers and miners mentioned only August/September sockeye spawning in the inlet streams of Redfish and Alturas lakes. No account of October/November shoal spawning was discovered until after Sunbeam Dam was removed in 1934.

The Stanley Basin sockeye salmon lakes (6) have a long history of stocking of non-indigenous sockeye/kokanee, beginning in 1921. Both anadromous as well as non-anadromous forms of sockeye/kokanee were stocked from known and unknown sources in

the Pacific Northwest. The late spawning (October-November) stock was obtained from lakes in Northern Idaho. Due to differences in water temperatures of the lake inlet (colder) and outlet (warmer) streams, the early spawning (August-September) sockeye/kokanee spawn in the inlets and the late spawners spawn in spring-fed inlet streams or on gravelly wave-swept shoals within the lake.

The Endangered Species Act of 1973 (ESA) defines a "population" as: "any distinct population segment which interbreeds when mature." The declaration of "endangered" applies to the late spawning sockeye in Redfish Lake that was introduced through the translocation of non-indigenous sockeye/kokanee stocks. NMFS has made a ruling that in order to qualify as a distinct population segment, a Pacific salmon population must be reproductively isolated and also represent an important component in the evolutionary legacy of the species, termed an Evolutionary Significant Unit (ESU). An ESU for Pacific salmon is specified on the existence of natural populations. Protection under the ESA for hatchery-influenced Pacific salmon stocks would be determined by the two criteria that define an ESU, (1) the reproductive isolation of the stock, (2) the hatchery stocks contribution to the biological species evolutionary legacy.

The late spawning sockeye/kokanee in Redfish Lake is a hatchery-influenced stock. While it meets the requirement of being reproductively isolated from the indigenous early spawning stock in Fishhook Creek, it has not only failed to contribute to the evolutionary legacy of the late spawning stock, it competes for food and space with the indigenous stock.

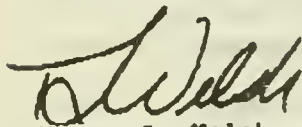
The solution for the preservation of the Stanley Basin sockeye/kokanee should be undertaken in two programs:

1. Major modifications need to be made in the configuration and operation of the Federal Columbia River Power System dams on the Lower Snake and Columbia rivers. Mortality of juvenile salmonids during their sea-ward migration and to returning adults accounts for 90+ of the loss of Snake River anadromous fish.

2. The indigenous early spawning sockeye/kokanee stock in Fishhook Creek needs to be "reanadromized". This is a process whereby kokanee stocks are influenced to migrate to the ocean. It is being done successfully in Japan and New Zealand. One way of reanadromizing kokanee may be by fertilization of kokanee eggs with sockeye sperm. Other methods may also be available and should be pursued.

The literature are well documented with a long legacy of mismanagement of the Snake River sockeye salmon stocks. The recent proposal to kill 80% of the indigenous sockeye/kokanee stock in Fishhook is the continuation of past mismanagement. That early spawning stock contains the evolutionary legacy of sockeye salmon in the Stanley Basin. The anadromous form is

still present in the Fishhook Creek kokanee stock and can be used to rebuild the runs as soon as the migration mortalities are reduced in the Lower Snake and Columbia rivers.



Thomas L. Welsh, PhD.

Thomas L. Welsh Bioconsultants



OFFICE OF THE GOVERNOR

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FOR IMMEDIATE RELEASE
MARCH 9, 1995FOR MORE INFORMATION
AMY KLEINER 334-2100

BATT QUESTIONS ACTIONS OF FISH AND WILDLIFE

Governor Phil Batt today called the actions taken by U.S. Fish and Wildlife Service officers "totally unreasonable and overreaching."

Attorney General Alan Lance is investigating an incident in which armed U.S. Fish and Wildlife officers attempted to serve a search warrant on a Mr. Hussey of Lemhi County regarding the wolf shooting on Hussey's property.

U.S. Rep. Mike Crapo has scheduled hearings before the House Natural Resources committee to question the U.S. Fish and Wildlife Service about the incident.

"My office has also contacted Fish and Wildlife in an attempt to get to the bottom of this matter. I had been assured by federal authorities that they would coordinate all law enforcement activities in Idaho with local authorities. I want to know why that procedure was not followed in this case," Batt said.

OFFICE OF THE COUNTY COMMISSIONERS
LEMHI COUNTY
206 COURTHOUSE DRIVE
SALMON, IDAHO 83467

DENNY HAWLEY, CHAIRMAN
HEBER STOKES
TOM CHAFFIN

PHONE: 208-756-2815
FAX: 208-756-4673

March 8, 1995

Honorable Alan Lance
Statehouse
Boise, Id. 83720

STATEMENT OF SHERIFF BRETT BARSALOU.

At approximately 2:30 p.m., March 8, 1995, I was called to the Gene Hussey Ranch at Iron Creek. When I arrived at the Hussey property, Mr. Hussey was with three agents of the U.S. Fish & Wildlife Service. They were attempting to serve a search warrant on Mr. Hussey in reference to the wolf shooting on Mr. Hussey's property in January, 1995. Mr. Hussey is a 74 year old man who has limited knowledge of the working of Federal Officers and search warrants. Mr. Hussey had requested my presence at the scene.

My impression on arrival was that Mr. Hussey was definitely intimidated by the presence of the armed agents. Conversation between myself and the agents involved were not fruitful to say the least. I had offered in the past to coordinate interviews and activities relating to this case with U.S. Fish & Wildlife. I believe the situation was handled poorly, in that sending three armed agents to serve a search warrant on a 74 year old man was inappropriate, heavy handed and dangerously close to excessive force.

Activities such as these are the reason that volatile situations evolve from situations that could have been managed through communication and common sense and assistance from local authorities.

I have been involved in law enforcement for 23 years and have always cooperated with Federal Agencies. From this point on, I consider U.S. Fish & Wildlife personnel and their tactics unacceptable for my further cooperation and have concerns for the citizens of my county being treated with due respect.


Brett S. Barsalou

STATEMENT OF LEMHI COUNTY COMMISSIONERS

We received a phone call at approximately 4:00 p.m. and were asked to come to the courthouse. At that time we were informed by Sheriff Barsalou of a situation that had occurred at Mr. Hussey's ranch. We are concerned that a citizen of our county should be treated in such a manner. We also believe that the Sheriff is the Chief Law Enforcement officer of Lemhi County and that any outside law enforcement should coordinate activities through the Sheriff's office. We protest the U.S. Fish & Wildlife Service high handed actions and would like the problem corrected and a letter of apology written to Mr. Hussey and the Sheriff.

Denny Hawley
Denny Hawley

Heber Stukas
Heber Stukas

THE ANCHORAGE AGE TIMES

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first"

Editors: DENNIS FRASLEY, PAUL JENKINS, WILLIAM I. TOBIN

The Anchorage Times Commentaries in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times in the interests of preserving a diversity of viewpoints in the community.

Wily wolves

A JOKE MAKING the rounds on Capitol Hill last week: "What's the difference between Canada gray wolves and the U.S. Department of Interior?"

The answer: "The wolves know when they're not wanted and go home."

Whether one thinks that's funny, the fact is the U.S. Department of Interior spent millions of dollars to capture 29 timber wolves in Canada and transplant them into Yellowstone National Park. Now the wolves are high-tailing it back to Canada.

According to testimony provided last week before Rep. Don Young's House Resources Committee, not too long after the first batch of wolves were released in Idaho, a pair was spotted well into Montana on a direct route home.

Maybe they saw the newspaper clippings with pictures of angry ranchers with their rifles ready. A wolf that didn't was found shot earlier this week alongside the body of a dead newborn calf.

The whole wolf transplant episode serves as a prime example of just how loony the federal bureaucracy has become. Secretary Babbitt decreed Wyoming, Montana and Idaho must accept the wolves from Canada, whether the states liked it or not. The program will cost up to \$12 million. What about states' rights to manage wildlife? Secretary Babbitt apparently doesn't care.

His justification for the program is that the National Park Service needs the wolves to help bring balance to wildlife populations within parks. Couldn't hunters help keep down overpopulations of elk and other animals? Of course not, says Babbitt. Hunting by humans, for gosh sakes, is prohibited in parks.

But hunting by wolves is not. So U.S. Fish and Wildlife biologists were dispatched to Canada to drug, cage and bring back the wolves. To Babbitt's disappointment, the shanghaied Canadians haven't shown an interest in their elk-thinning assignment.

Neighboring ranchers worry that if the wolves do decide to stick around, they'd quickly figure out that cattle and sheep grazing outside the park are more convenient munchies than fleet-footed elk. Apparently that's what the one wolf was doing when it got shot.

As Babbitt is finding out, rebuilding the Garden of Eden with a balance of original species is not easy. Not only do the wolves run off, Congress makes you account for the money spent. The secretary faces another grilling in the Senate like the one he got from Young's committee. Good.

Perhaps there is another Walt Disney movie in the making about the wolves' adventure. The Longest Journey, Part II, or something.

If so, one would hope the account might be accompanied by an exposé of the absurd and wasteful policies of the federal bureaucracy.

After all, that \$12 million could be funding more midnight basketball games.

The Challis Messenger

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CHALLIS, CUSTER COUNTY, IDAHO 83226
VOLUME 113, NUMBER 49

Wolves released at Corn Creek campground

by TODD ADAMS

Four wolves were released into Idaho at the Corn Creek campground on the Salmon-Challis National Forest Saturday, to the whirring sound of motor drives from dozens of media photographers, wolf howls from wolf activists, and mutterings and grumbings from locals opposed to the reintroduction.

The U.S. Fish and Wildlife Service (USFWS) originally planned to release five wolves at the Indian Creek Guard Station along the Middle Fork of the Salmon River, but court and weather delays prevented helicopter and airplane flights. So USFWS, Forest Service and Idaho Fish and Game officials, local residents and Lemhi County officials, and dozens of media representatives from around the nation made the long drive down the Salmon River road (Forest Service Road No. 30) from North Fork to the Corn Creek campground at the end of the road.

A convoy of about 20 vehicles with 50-60 people took the approximately 40-mile trip on an icy road made more slippery by a steady drizzle. A Forest Service road grader bladed down the rut ahead of the convoy.

Locals surprised

Zane and Denise Hollingshead of Challis were surprised to see the convoy converge at their fishing spot by Stoddard Bridge, the first site in the Frank Church-River of No Return Wilderness Area across the Lemhi County line where officials considered releasing the

wolves. That site proved to be too steep and narrow, so the convoy moved on down to Corn Creek.

Officials wanted to avoid controversy and make sure they didn't release the wolves in Lemhi County. The Lemhi County Sheriff's Department received numerous calls Friday night from irate citizens opposed to the release. Lemhi County Commission Chairman Denny Hawley asked officials not to release wolves in Lemhi County. Some Idaho legislators asked Governor Phil Batt to have the National Guard stop the wolf release by turning back the feds at the Idaho border. Many legislators don't want the state to manage or monitor the wolves.

"We thought we'd be alone down here today, with the (bad) weather and all," Zane Hollingshead said. The Hollingsheads packed up and joined the convoy, and got to see the wolves released from their metal cages.

By the time the doors and bars were taken off the cages after 2:00 p.m. Saturday, the wolves had spent 74 hours cooped up.

Media management

Biologists herded the media around the Corn Creek campground at least three times, changing the specific spot where the cages would be placed when the wolves were released. Several photographers fell on the icy road, shielding their expensive camera gear with their bodies as they hit the ice.

Continued on Page 13

Wolves released at Corn Creek campground

Continued from Page 1

There were no serious injuries to wolves or humans. Once the wolves were finally out of their cages in the open air, they took one look at the pack of journalists and other people and high-tailed it for the trees along the Salmon River, running to a steady, ground-eating lope.

Dave Hunter, Idaho wildlife veterinarian, set up the ground rules that no photographers would be allowed in front of the cages, so shots (by cameras, not guns) were taken from the side and behind. "I found our first wolf sign," joked Hunter, picking up a spent 30.06 cartridge from the road. He said biologists didn't know how the wolves would react after being cooped up so long, and told everyone to be quiet so the wolves could be coaxed out.

"Don't worry, they won't bite," Hunter said. "They are not vicious animals."

The release

The first wolf out was Moon Star Shadow, a 90-pound black male who ran stiffly down the hill to the partially frozen Salmon River, then got his hind legs back and loped off into the wilderness. Next came Chat Chaah, a 76-pound gray male, who was the first wolf captured in Canada for transplant to Idaho. He dogged the heels of the first wolf, Akiata, a dark female, was the third wolf out, but she had to be prodded from her cage, snapping at a noose pole held by veterinarian Hunter.

The last wolf out was Kelly, another female less reluctant to leave her cage. She first ran up the Salmon River, in the opposite direction the others had taken, but according to Biologist John Weaver, probably joined the others later in the wilderness.

The wolves were named by Idaho school children as part of the Wolf Education and Research Center's Track-a-Wolf program.

USFWS Biologist Ed Bangs, the project leader in charge of the wolf reintroduction, said the greatest danger for the wolves was accidents in the unfamiliar, steep, icy terrain, and possible predation by mountain lions. "Some may not make it," he said.

Future releases planned

Success will mean the first wolf pups born to the wild, Bangs said. The plan is to release 15 wolves into Idaho this year, and 15 each year thereafter until 10 breeding packs are established and reproduce for three consecutive years. Bangs said USFWS plans to ship 15 more wolves to Idaho in the next

week or so, probably in two separate trips.

On the drive out, Salmon-Challis Forest Supervisor Chuck Wildes spoke with Laird Robinson, a Forest Service spokesman with the regional office in Missoula, and discussed the Loon Creek drainage or Indian Creek as possible locations for the next releases.

Robinson said snowcaving the wolves over Loon Creek summit was a good alternative to trying to fly into Indian Creek, due to Idaho's unpredictable winter weather. Flying costs a lot of time and money if weather dictates a "hurry up and wait" situation, he said.

Bangs said wolves have excellent natural dispersal instincts and are good at finding each other in the wild, so the wolves released at Corn Creek have a good chance of hooking up with wolves released later at Indian or Loon creeks.

Biologists learned a lot about winter-time wolf transplanting logistics with this first release, said Bangs, adding that a helicopter should be kept waiting for weather to clear. With this first reintroduction of an experimental, non-essential population of wolves, "We're going to learn a lot," Bangs said.

All four wolves are radio-collared, and their movements will be monitored daily for a while, said Bangs. Forest Service spokesman Laird Robinson said a law enforcement specialist would patrol the release site for a time.

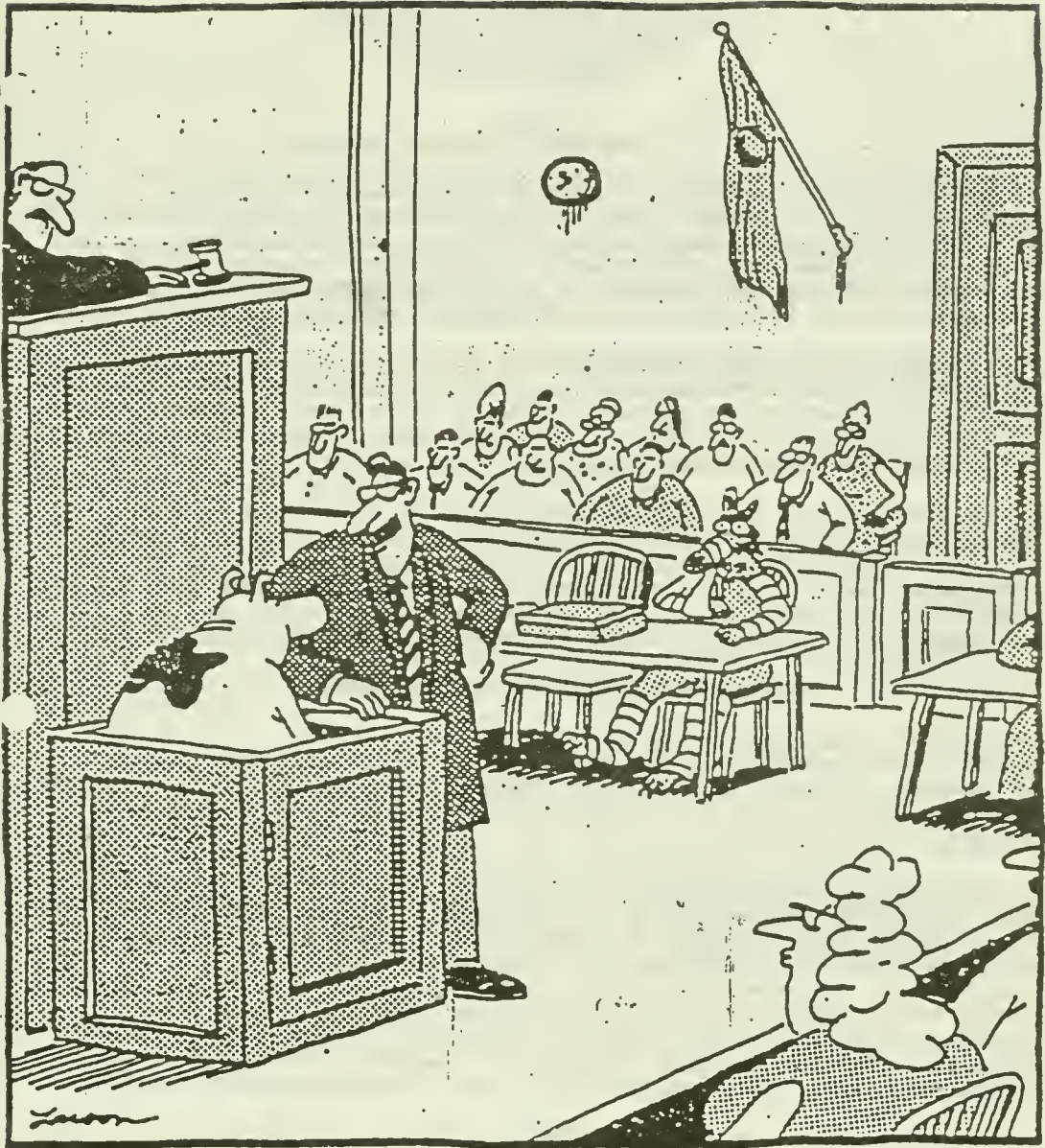
The wolves have a good prey base, with deer and elk winter range and big-horn sheep in the release area, said Bangs. Even if it takes the wolves a while to get their hunting legs under them, they can go for up to a month without eating. The 15 wolves to be released in Idaho are all lone wolves, while family groups that have already formed hunting packs are being released in Yellowstone National Park.

When asked if it was too hard for a lone wolf to pull down a deer or elk by itself, Bangs said wolves are good at finding the "walking wounded"—animals weakened by disease or age. Lone wolves have been known to kill adult moose.

The release of the first wolves to Idaho is "important for Idahoans" and is "the beginning of the end of the controversy," said David Langhorst, assistant director of the Wolf Education and Research Center. Langhorst predicted that Idahoans will find out that all the "myths" surrounding the wolf release "is just that—myths. People all over the world live with wolves. We can, too," he said.

"I'm glad they're out," said Jon Rachael, regional wildlife biologist and wolf project coordinator for the Idaho Fish and Game Department. Rachael said he hopes the Idaho House Committee approves the wolf management plan submitted by his department and allows Fish and Game to manage wolves, now that four wolves are on the

ground. Given the reality of the wolf reintroduction, the legislature will now have to deal with it, and Rachael predicted that legislators would rather see the Fish and Game Department manage the wolves than the Nez Perce Indian tribe, which has also submitted a monitoring and management plan to the USFWS.



“So, Mr. Pig — you built that fire *after* you heard my client coming down your chimney! ... Did you know my client is an endangered species, Mr. Pig, while you yourself are nothing more than a walking side of ham?”

1994 IDAHO REPUBLICAN PLATFORM
ADOPTED JUNE 25, 1994
LEWISTON, IDAHO

VII

PRIVATE PROPERTY RIGHTS

We reaffirm our commitment to the Fifth Amendment to the Constitution: "No person shall be... deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." We support strong enforcement of this "takings" clause to keep citizens secure in the use and development of their property.

The right to own, use and dispose of property inheres in mankind by nature and is a fundamental tenet of all free nations. The vigilant protection of private property rights safeguards for citizens everything of value, including their right of contract to produce and sell their fruits of labor.

Since Idaho lands are largely controlled by state and federal governments, we need to limit and if possible reduce the amount of land owned or controlled by the government. We affirm to all government officials and employees that property rights are not granted by government; rather, government is directed by the governed to protect the rights of private property owners.

VIII

NATURAL RESOURCES AND ENVIRONMENT

The Idaho Republican Party recognizes that the quality of our natural environment can be protected and enhanced while having reasonable, orderly growth. We believe there should be greater emphasis on multiple use, local control and minimal government regulation.

We believe the administration of federal environmental policy must be modified, including the Endangered Species Act and the Clean Water Act. It must be based on full evaluation of all relevant factors to include peer reviewed scientific data. Furthermore, it must give equal consideration to potential human suffering caused by restriction or elimination of basic human needs such as jobs, energy and overall quality of life. We support federal and state measures to reestablish the primacy of state government for implementation of all environmental policy.

We recognize Idaho's need for the utilization of these natural resources for Idaho's economic growth and for the benefit of all Idahoans. The dimensions and boundaries of our wilderness area should be determined by Idahoans and the remaining roadless areas should be released for multiple use.

We advocate reasonable management for the protection of Idaho soils and aquifers from contamination and recognize that hazardous waste is a continuing concern.

We support the concept, Forest Health, for the long term

1994 IDAHO REPUBLICAN PLATFORM
 ADOPTED JUNE 25, 1994
LEWISTON, IDAHO

XIII

WATER

The Idaho Republican Party recognizes the critical importance of water to this state. We firmly believe in Idaho's right to appropriate and manage water within its own borders without interference from the federal government. Idaho's water, including drawdowns, should not be the solution for restoring species listed under the Endangered Species Act.

In support of this concept, we support continued Federal and State legislation to prevent inter-basin transfer of Idaho's water to other areas.

We encourage policies that will more fully utilize and develop our water for the benefit of all Idahoans.

We believe that safeguards exist to protect Idaho's scenic and recreational rivers without creating more restrictions or regulations on Idaho's river system.

We support policies in the State water plan pertaining to acquisition of reservoir sites for water storage for irrigation, power production, flood control, manufacturing and processing, and recreation.

XIII

ENERGY

Recognizing that energy is vital to the economic growth of industry within our state, and also recognizing that the current Administration has no coherent energy policy, the Idaho Republican Party demands a progressive, common sense, equitable energy policy that encourages research and development of our most abundant energy resources, including hydroelectric power and nuclear energy.

We encourage continuous review and updating of all energy resources and their multiple uses for the benefit of our citizens.

XIV

LABOR

The Republican Party recognizes the important contribution to the State's economy from its labor force both in the private and public sector.

The Party encourages and supports joint responsibility of employee and employer in developing and administering a safety program. We believe that Idaho's safety record needs to be improved. Unsafe conditions, and labor or employee safety awareness require the attention of all concerned.

Employees should not be denied equal pay for equal work.



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1-800-836-3099

TESTIMONY

OF

LOIS VANHOOVER

RESIDENT OF YELLOW PINE, IDAHO

MANAGER OF WESTERN PARTNERS

BEFORE

THE SENATE AND MEMBERS OF THE SUB-COMMITTEE

SATURDAY, JUNE 3, 1995

REGARDING

THE REPEAL OF THE CURRENT ENDANGERED SPECIES ACT

AND

CORRELATING REGULATIONS



802 W. Bannock, Suite 602
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Mr. Chairman and members of the Sub-Committee, it is indeed a honor to speak before you today. My name is Lois VanHoover. I am a miner and director of a small mining association.

Let me begin by explaining that just being able to travel to Lewiston from my home in the central Idaho mountains would have been very difficult a few years ago. You see Mr. Chairman, my hometown of Yellow Pine, Idaho was locked up with steel gates by the United States Forest Service.

It's the sad truth Mr. Chairman. And, with your permission, I will submit the appropriate documentation into the record along with my complete statement.

Why did the Forest Service feel compelled to arrogantly lock up the town of Yellow Pine and unlawfully trample on the Constitution? Yellow Pine was locked up five days a week under the guise of a jeopardy biological opinion designed to protect the grey wolf, even though no official critical habitat for the grey wolf existed in the area. Plus, according to sworn testimony by U.S.F. & W. officials given in Federal Court there had never been a sighting of a grey wolf in the area, and what the U.S.F.S. and U.S.F. & W. really wanted was to curtail hunting and recreational use in the area. When I asked Mr. Veto J. Lasalle, the Payette National Forest Supervisor, why he was closing the road when he knew it was morally and legally wrong, he arrogantly responded, "If someone sues me, I would rather the suit come from the people of Yellow Pine because they cannot afford a good attorney."

We contacted the Mountain States Legal Foundation and went to court. On February 25, 1988, Judge Harold Ryan, in U.S. Federal Court, Boise, Idaho heard the case. He rightfully ruled that the residents of Yellow Pine have the right of ingress and egress.

This is a clear example of a town being imprisoned because of an overzealous interpretation of regulation and policy, simply to meet a private agenda.

I could go on and tell you about Congress appropriating \$8.5 million to pave the road to Yellow Pine and how substantial amounts of the money was used for "wolf education". Now it appears snow plowing the road will not meet the standards and guidelines of PACFISH. If so, Yellow Pine will again, for the seventh time, go back to court.

We have been treated by our government as trespassers on our own property. I submit to this committee, that the Endangered Species Act and the accompanying regulations are completely out of control. Further, the current Act and all its complex trappings are beyond the point of repair. Rather, I would urge you to develop a new Act that reflects sound principles, and most of all, includes humans in the environmental equation.

The existing Act is beyond repair, and I'd like to offer a few quick examples:

Today, unless you are a very large mining operation with substantial funding, and can hire enough specialists you are not going to mine anywhere there is an endangered specie. Even the large companies have to capitulate to "Agency Blackmail" by agreeing to massive and expensive "off-site" mitigation in order to satisfy the oppressive demands of the ESA. The small miner no longer has a prayer.

This problem is compounded by federal land managers who try to balance conflicting requirements of resource law, who are being personally threatened with fines up to \$25,000 and imprisonment by other federal agencies, especially the United States Fish and Wildlife Service and the National Marine Fisheries Service. Amazing! The ESA has federal agencies suing federal employees. And do you know who gets lost in the shuffle?

Under the 36 C.F.R. subpart 228 (the all controlling U.S.F.S. mining regulation), the USFS must process a miners proposed plan of operations within a reasonable time frame. However, delay and inaction is the rule. They hope the applicant will get discouraged, go broke or just simply die waiting. This is not good government. The only alternative is to sue for damages. Unfortunately, most of us don't have the luxury of multi-million dollar pocketbooks like the environmental lobby has. Once again, the ESA is in the dominate position over the statutory right to mine.

During World War II, 80% of the tungsten and antimony metals used by the allied forces came from my area of Idaho. The United States geared-up and fought WWII, defeating the Nazis in 4 1/2 years. Yet today, we have a simple exploration plan on a nearby property that has been sitting with no action for over three years.

My partner and I have a claimsite in a "special management area" for "critical" salmon habitat. This designation has no scientific basis. The salmon would have to leave the main stream, climb 5000 feet, jump a 14 foot fall and swim in very shallow water that houses fish three to five inches long, just to reach our claim. The stream, called Crooked Creek, located in the Nez Perce National Forest, is considered headwaters by the Army Corps of Engineers. Nor, has there ever been a record of it having any salmon in it. But we are impacted, delayed and frustrated.

I submit to you, Mr. Chairman, that amending the ESA is not the answer. We need a fresh approach.

The USFS and the BLM have recently implemented PACFISH which is a direct result of the ESA and the listed salmon. The guidelines instruct field personnel to overlook the mining law and the 36 CFR 228 regulations and function under PACFISH. Under this "management strategy", actions that do not require plans under the 36 CFR 228 regulations now must have a plan of operations, a reclamation plan, a bond, and cannot operate within the buffer zones created. In effect, they have created new law without involving Congress.

A placer claim is normally 600' wide by 1500' along a stream, the stream meandering down the center. But under PACFISH a 300' buffer zone on either side of the stream is required. As a consequence, our mining claims have just been eliminated. It is clear, the ESA is being used to

eliminate mineral production in our nation, not to protect the environment. It is wrong. But it doesn't stop there.

The Inland Native Fish Strategy is even more restrictive than PACFISH. This new "strategy" tries to run ahead of the ESA causing more adverse effects than the listing of the species. Unfortunately, both PACFISH and the Inland native Fish Strategy fail to recognize private property rights, social and economic impacts or coordination with local government authority.

From the beginning, there wasn't any room for humans in the ESA. By simply reading the findings, purpose, and policies of the Act it will be evident to reasonable people that the very premise for the E.S.A. is fatally flawed. Therefore, I believe the existing Act should be repealed and a new act written.

I submit for the record the following proposed findings and policies, I believe these should be incorporated into a new Act.

- * Congress should recognize that extinction of some species is a normal, natural process, even if man, in some cases, has played a part.

- * Congress should realize the ESA, as amended, has had adverse social and economic impacts on the people of the United States. Property rights should be reaffirmed in a new Act. Jobs and families must be protected. The cost of protecting species should be borne by the society as a whole, not individuals.

- * Accurate and independently verifiable information sufficient to reach a scientific conclusion should be the basis of federal decisions regarding conservation of endangered species.

- * Congress should look to the free markets, including private and voluntary propagation and conservation as the best means of conserving valuable species.

- * The States should have the primary responsibility for endangered species protection.

- ** And one very important change is a provision that a zero job loss tolerance be implemented. This provision is similar to the Delaney clause presently used in food regulation. No program to conserve species will be successful if the People most likely to impact them is punished, merely for being there.

Mr. Chairman, it is time to scrap the Endangered Species Act and start anew. We must include humans in the environmental equation. We must use conclusive science in our decision process. It is clear from my experience that the ESA has done more harm than good. It is time to take a new look at how we will address endangered species.

Thank you for this opportunity.

I would be happy to answer any questions

Exhibit
"A"

1 following up on our consultation, one of the
2 alternatives that the Forest Service provided wa
3 for opening the road with restricted seasonal
4 access. And we felt that that had merit because
5 there could be some control on the activity in
6 the back country. All our reasonable and prudent
7 alternative was to call for a two-day a week
8 midweek opening because we wanted to stay away
9 from the recreational use. We wanted to serve
10 the people of Yellow Pine. We recognize the need
11 for them to get in and out of their area and so
12 we worked with them to develop an opening. But we
13 did not want to encourage a lot of use from the
14 outside people.

15 We did not want to encourage hunting
16 activity in the South Fork and we also recognized
17 the need that there may be some emergency use or
18 needs of the Yellow Pine people, and so there was
19 a condition in our biological opinion to allow
20 use of the road any time during the week provided
21 it was in conjunction with an emergency use plan.

22 THE COURT: Counsel, may I interrupt
23 a moment. Mr. Gore, I have read your report and
24 what your recommendation was. Did you consider
25 a recommendation of only the in-holders use of

Exhibit
"A-1"

1 THE WITNESS: If the Forest Service
2 wanted to advance that as a proposal, we would
3 certainly consider it in a biological opinion and
4 research it and render an opinion.

5 THE COURT: What is your opinion?

6 THE WITNESS: Without seeing the
7 proposal fully and looking into it, I --

8 THE COURT: I am giving you a
9 proposal right now.

10 THE WITNESS: Okay. Say it again.

11 THE COURT: Out of what we have just
12 discussed, of limiting this to the Yellow Pine
13 people, the in-holders which I understand is
14 maybe 35 people in there?

15 THE WITNESS: Right.

16 THE COURT: At the outside?

17 THE WITNESS: If I --

18 THE COURT: Some of which come back
19 and forth.

20 THE WITNESS: Sure.

21 THE COURT: And on the one year that
22 they took a vehicle count with cameras as I
23 understand it, it averaged less than six vehicles
24 on an average for --

25 MR. STRINGER: Your Honor, if I may,

Exhibit
"A-2"

1 Deadwood Summit, which is the head end of
2 the Johnson Creek drainage that goes into the
3 Middle Fork.

4 Q Is that basically on the ridge of
5 mountains before you drop into the valley?

6 A Yes, it would be right here, the
7 drainage this direction goes in the Deadwood
8 Reservoir, the drainage this direction goes down
9 the Johnson Creek drainage which goes into the
10 East Fork of the South Fork, which comes into the
11 South Fork.

12 Q So you have -- well, go ahead.

13 A I guess that is it.

14 Q But no one has ever seen a female
15 wolf in the actual South Fork drainage?

16 A I can't recall that anybody has
17 actually seen a wolf in the South Fork drainage.
18 Thinking back, there was a person down around
19 some campground here in the central part near
20 Buckhorn Creek, I believe, that thought that they
21 had seen a couple of pups, young animals. This
22 was like in October, not October but August and
23 he thought at first they were coyotes. Then when
24 he thought back, he felt that they were wolves
25 and they -- those might have been young wolf



United States
Department of the Interior

Fish and Wildlife Service
Lloyd 500 Building, Suite 1692
500 N.E. Multnomah Street
Portland, Oregon 97232

Exhibit
"B"

Mr. J.S. Tixier
Regional Forester
U.S. Forest Service
324 25th Street
Ogden, Utah 84401

FILED	SEARCHED	SERIALIZED	INDEXED	JUL 22 1985
INDEXED	SEARCHED	SERIALIZED	FILED	JUL 22 1985
INDEXED	SEARCHED	SERIALIZED	FILED	JUL 22 1985

In Reply Refer To:

Your Reference

JUL 22 1985

Subject: Formal Endangered Species Consultation--South Fork Road Management Plan, Payette National Forest, Valley County, Idaho (1-4-85-F-29)

Dear Mr. Tixier:

This is the Fish and Wildlife Service (FWS) Biological Opinion in response to your March 11, 1985 request for formal consultation on the South Fork Road Management Environmental Assessment (FWS-1-4-85-F-29) for the Payette National Forest and the subsequent impacts on the endangered bald eagle (Haliaeetus leucocephalus) and gray wolf (Canis lupus). Because of a series of events in our office and the complexity of the issue, a two week time extension was established by your letter of June 13, 1985. We have reviewed the proposal in accordance with the Section 7 Interagency Cooperation Regulations (50 CFR 402, 43 FR 870) and the Endangered Species Act of 1973, as amended (ESA).

On June 17, 1985, we completed our review of the South Fork Road Management Environmental Assessment, the materials you provided with your consultation request, and additional information obtained by us or already available in our files.

In the course of this review, the following people were contacted and contributed additional information used in the opinion:

- Jim Gacey, Payette National Forest
- Larry Donohue, Boise National Forest
- Timm Kaminski, Univ. of Montana
- Dr. Les Marcum, Univ. of Montana
- Dick Thiel, Wisconsin Department of Natural Resources
- Dale Harms, FWS, Helena
- Mike Schlegel, Idaho Department of Fish and Game
- Don Anderson, Idaho Department of Fish and Game
- Jerry Lockhart, Idaho Department of Fish and Game
- Duane Peterson, Valley County Highway Department

A list of documents used in this consultation is included as Appendix 1.

CEIVED

JUL 25 1985

BOISE FIELD OFFICE
U.S. FWS

Exhibit
" B "
cont.

BIOLOGICAL OPINION

The Fish and Wildlife Service believes that opening the South Fork of the Salmon River (SFSR) road (Alternatives A, B, E) is not likely to jeopardize the present use of the drainage by bald eagles or jeopardize their continued existence. There is no officially designated bald eagle critical habitat in this area.

However, it is also our biological opinion that maintenance of an open road and the long term effects of uncontrolled vehicular access on the SFSR during winter periods (Alternative A and E) are likely to jeopardize the continued existence of the gray wolf. This opinion is based upon the potential for human-caused wolf mortality that threatens the survival and recovery of the gray wolf in the United States. No officially designated gray wolf critical habitat is found in the project area.


DESCRIPTION OF THE PROPOSED ACTION

The Forest Service proposes to authorize local government to maintain the South Fork Salmon River (SFSR) road, a Forest Service road on Payette National Forest. The Environmental Assessment (EA) for the South Fork of the Salmon River (SFSR) Road Management document evaluates five alternatives (plus the no action alternative) that address 2 main actions. These are (1) keeping the SFSR road open throughout the year and (2) restricting vehicular access during the winter period. The necessity for the EA arose because of the following events:

In 1983, the Idaho Department of Fish and Game (IDFG) requested that Valley County plow Big Creek Summit in order to gain spring access to the SFSR to release anadromous fish smolts. In past winters, the summit was allowed to snow shut. The IDFG request contained necessary funding for the spring opening. The county believed it would be more economical to keep the road open throughout the winter than to open it in the spring. In 1983, Valley County kept Big Creek Summit open the entire year. The plowing of Big Creek Summit, which is along the Cascade/Warm Lake Highway, allowed winter-long vehicular access to the SFSR road.

Shortly after Big Creek Summit was plowed, some of the people of Yellowpine, Idaho requested that the SFSR road be plowed continuously in order to gain year-round access into Yellowpine. In past winters, access into Yellowpine (located on the East Fork of the SFSR) has been by snowmobile via either the SFSR or Johnson Creek.

Valley County officials originally agreed with IDFG to allow the summit to close between January 3 and March 15 (Valley County Board of County Commissioners, letter, 9/17/84). Idaho Fish and Game supported this closure to reduce sediment flow into the SFSR from vehicle traffic on this road, and to lessen adverse impacts on wintering ungulates along the road. However, on 21 January



United States
Department of
Agriculture

Forest
Service

Payette
National
Forest

P.O. Box 1026
McCall, ID 83638

Caring for the Land and Serving the People

Reply To: 2670

Date: December 7, 1987

John P. Wolflin
U.S. Fish and Wildlife Service
Boise Field Office
4696 Overland Road, Room 576
Boise, ID 83705

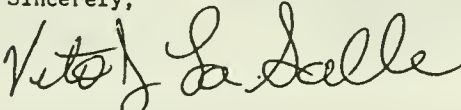
Dear John:

I received a request from Yellow Pine residents that the South Fork Salmon River Road be open to traffic on Tuesdays and Thursdays instead of one continuous 48-hour period. In considering this request, I need your comments on how it would effect Biological Opinion No. 1-4-85-F-29 on management of this road.

It is our intention that enforcement of the closure would be controlled with a gating system. The Forest would provide a person to open the gate at 8 A.M. on Tuesdays and Thursdays and close the gate at 8 A.M. on Wednesdays and Fridays. The Forest would not provide personnel to remain on site during Wednesday closures other than periodic checks for compliance.

A determination of which days the road will be open is to be made in the near future. I would appreciate a quick response regarding this request.

Sincerely,



VETO J. LaSALLE
Forest Supervisor



Exhibit
"C"

United States Department of the Interior

FISH AND WILDLIFE SERVICE

BOISE FIELD OFFICE
4696 Overland Road, Room 576
Boise, Idaho 83705

December 24, 1987



Exhibit
"C-1"

Mr. Veto J. LaSalle
Payette National Forest
P.O. Box 1026
McCall, Idaho 83638

Dear Mr. LaSalle:

We have reviewed your letter of December 7, explaining a modification to biological opinion number 1-4-85-F-29 concerning winter management of the South Fork of the Salmon River road. We had agreed in the earlier opinion that a two day, non-weekend opening of the road to serve the needs of the Yellowpine residents would not likely jeopardize the continued existence of the endangered gray wolf. We understand that road use is now better controlled with the use of locked gates rather than with the previous method of volunteer compliance.

Under your proposal for operation for January to the end of March, 1988, we understand that the Forest would provide a person to open the gate at 8 a.m. on Tuesdays and Thursdays and close the gate at 8 a.m. on Wednesdays and Fridays. Periodic checks for compliance would be made on Wednesdays, and other days, to assure that the gate had not been tampered with and the road used on officially closed days. We further understand that this road management is an interim plan until the Payette National Forest Plan is approved.

With the above understanding, we continue to believe that the two day, mid-week opening of the South Fork road for use by Yellowpine residents will not jeopardize the continued existence of the gray wolf.

Thank you for your continued conservation efforts for the wolf.

Sincerely yours,

John P. Wolflin
Field Supervisor

cc: AFWE-SE, Portland
OES

Exhibit
"D."

INLAND NATIVE FISH STRATEGY in the Columbia River Basin

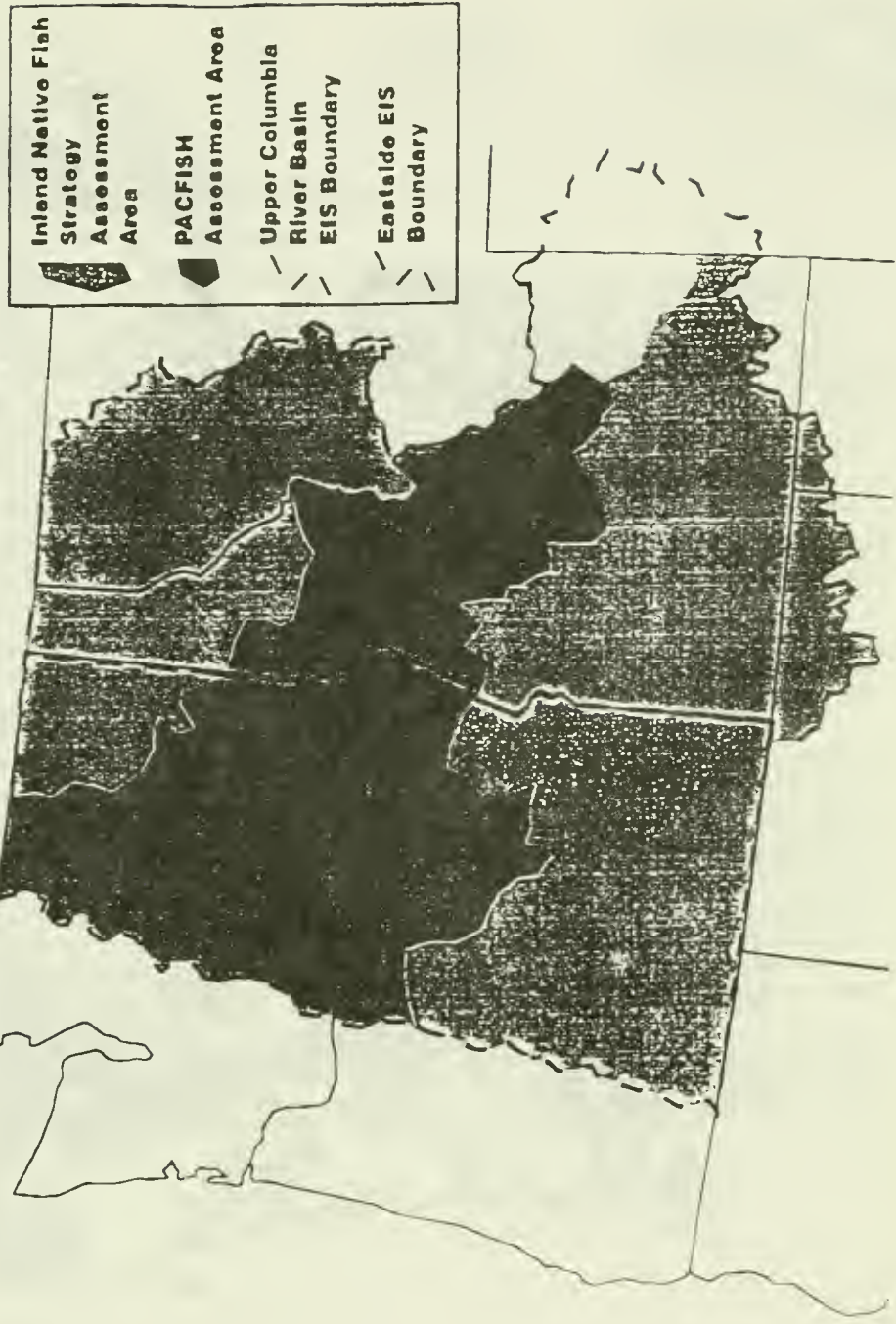
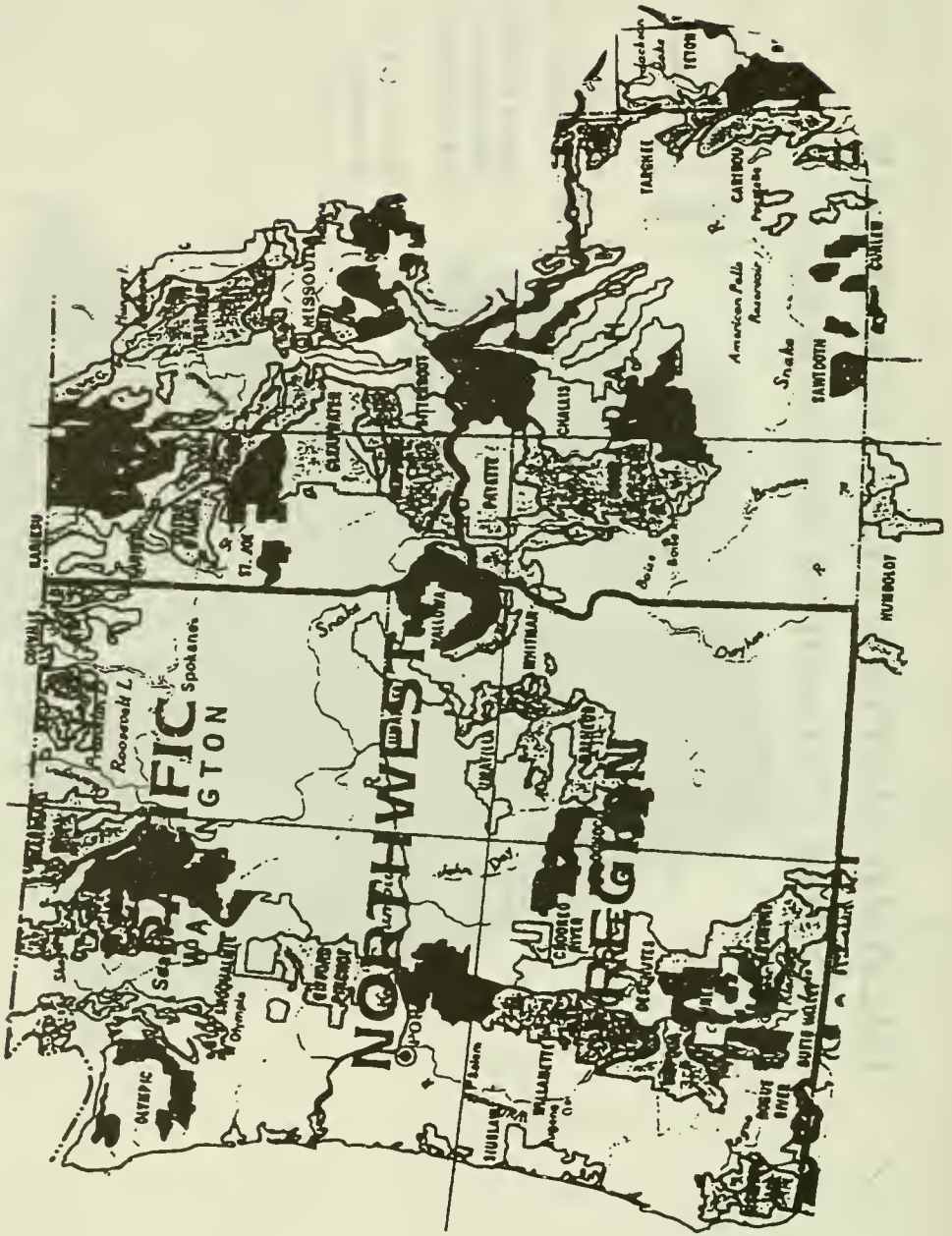


EXHIBIT
"D"
CONT.





United States
Department of
Agriculture

Forest
Service

Idaho Panhandle
National Forests

3815 Schreiber Way
Coeur d'Alene, ID 83814

EXHIBIT
"D"
CONT.

Reply to: 1920/1620

Date: March 15, 1995

Subject: Inland Native Fish Strategy

To: Forest Supervisors

On February 23, 1995, Regional Foresters from the Northern, Intermountain and Pacific Northwest Regions met with the Regional Director of the U.S. Fish and Wildlife Service (from Portland, Oregon), to discuss the Draft Interagency Bull Trout Agreement. The meeting was held in Boise, Idaho. The objective of the meeting was to come to a common understanding of the draft agreement, discuss practicality of the agreement, and how the agreement would be implemented "on the ground." During the meeting, the Regional Foresters and Fish and Wildlife Service Director identified the need to develop an inland native fish habitat management strategy to protect native fish habitats, including those of bull trout that are not covered within the geographic scope of the President's Forest Plan (FEMAT) or PACFISH.

An interagency team is being formed under the leadership of David Wright, Forest Supervisor of the Idaho Panhandle National Forests. The team will be located in Coeur d'Alene, Idaho, at the Idaho Panhandle National Forests' Supervisor's Office. The charter of this project is to gather information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of inland native fish within the Columbia River Basin.

The Forest Service is proposing to amend Regional Guides and Forest Plans to include interim direction in the form of riparian management objectives, standards and guidelines, and monitoring requirements. The interim direction will apply to the geographic area covered by the Eastside Ecosystem Management Strategy Environmental Impact Statement (EIS) and Upper Columbia River Basin EIS.

The purpose and need for the proposed action is to preserve management options for inland aquatic resources by reducing the risk of loss of populations and reducing potential negative impacts to aquatic habitat of resident fishes until the signing of Records of Decision for both EIS's. As a companion to the protection provided for anadromous fish by PACFISH, this Environmental Assessment is intended to provide the basis for establishing appropriate interim direction to protect habitat and populations of resident native fishes outside of anadromous fish habitat, including bull trout, which has recently been determined to be warranted by the U.S. Fish and Wildlife Service (Federal Register Vol. 59, No. 111, June 10, 1994, pp. 30254-30255). Specifically, this EA will address National Forest System lands on the Bitterroot, Boise, Carbou, Challis, Clearwater, CoMille, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Idaho Panhandle, Kootenai, Lolo, Malheur, Ochoco, Payette, Salmon, Sawtooth, Wallowa-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions.

I ask that each of you please distribute this information to your Ranger Districts and make it available to all employees. Employee understanding and participation are critical to the success of this project. I have enclosed a copy of the briefing packet for the Inland Native Fish Strategy. If you have questions, I can be reached by telephone at (208) 765-7223, or by DG at D.WRIGHT:R01F04A.

David J. Wright
Team Leader
Inland Native Fish Strategy



Enclosure

Exhibit
"D"
cont.

March 15, 1995

INLAND NATIVE FISH STRATEGY

● INTRODUCTION

Bull trout are members of the char family, and have recently been recognized as a separate species from Dolly Varden. They are a native char, originating in the north-western United States.

Bull trout originated in the Columbia River Basin. The known range extended from Northern California to the headwaters of the Yukon River in southern Alaska, and included primarily the states of Oregon, Washington, Idaho and Montana. Nevada has one population near the northern border of the state.

Today, the consensus among fisheries managers and biologists is that many bull trout populations have been lost and many others are declining, primarily due to natural climatic warming, loss of cold water habitat as a result of land management practices, fishing, and interaction with exotic fishes.

Bull trout are considered a "Species of Special Concern" by the American Fisheries Society, and as a "Sensitive Species" by the USDA Forest Service.

In June, 1994, the U.S. Fish and Wildlife Service identified the status of the bull trout as "Warranted but Precluded" from listing as threatened or endangered in its entire range.

The Regional Foresters from the Northern, Intermountain and Pacific Northwest Regions met with the Regional Director, U.S. Fish and Wildlife Service from Portland, Oregon. The meeting was held on February 23, 1995, in Boise, Idaho. The objective of the meeting was to discuss the Draft Interagency Bull Trout Agreement. (Refer to the attached agreements and actions.)

On February 24, 1995, the Decision Notice was signed by the Forest Service and Bureau of Land Management for the Anadromous Fish Habitat and watershed Conservation Strategy known as PACFISH. This is an interim strategy to conserve Pacific salmon, steelhead and sea-run cutthroat trout throughout their range in Oregon, Washington, Idaho, and portions of California.

Exhibit
"D"
cont.

● **AGREEMENTS**

1. Areas addressed within the geographic scope of the President's Forest Plan provides adequate protection for bull trout habitat.
2. The geographic scope of PACFISH requires slight modification for full protection of bull trout habitat.
3. Geographic areas outside PACFISH and the President's Forest Plan have need for development of a fish habitat management strategy.
4. The fish habitat management strategy will be consistent with the intent of the Interagency Memorandum of Understanding (94-SMU-058).

● **ACTIONS**

1. Identify and map core watersheds and other significant habitats.
2. Develop screening process for projects in bull trout habitat.
3. Apply screens to all on-going actions in bull trout core watersheds.
4. Design monitoring strategy.
5. Complete Environmental Assessment on Interim Fish Habitat Management Strategy.

Exhibit
"D"
CONT.

● MARCH 1 KICK-OFF MEETING

On March 1, this effort was kicked off with a meeting in Coeur d'Alene Idaho, and was attended by representatives from the Forest Service Regions 1, 4, and 6, and Bureau of Land Management from Boise, Idaho.

One point I would like to emphasize is that during our discussions on March 1, it became apparent that there would be major advantages to including the entire inland native fish in the strategy, rather than just bull trout. This would allow us to apply improved scientific knowledge to all of the streams in the geographic area covered by the Eastside and Upper Columbia River Basin EIS efforts.

● GOAL

Provide interim direction for National Forest System Lands within the geographic area of the Eastside EIS and Upper Columbia River Basin EIS.

Direction is designed to reduce the risk to aquatic habitats of resident fish until decisions are made on the two EIS's.

The team is now being assembled. Team leader is Dave Wright, Forest Supervisor, Idaho Panhandle NFs.

Exhibit
"D"
CONT

TIMELINE

March 3	Meeting notes (FS/FWS) initial strategy for review.
March 10	Proposed strategy agreement.
Week of March 13	National level briefings.
March 17	Federal Register notice published.
March 17	Information needs assessment (first cut).
March 27	Proposed Action and Alternatives drafted for review.
April 3	Proposed Action and Alternatives Agreement.
April 15	Alternatives analyzed.
April 24	Environmental consequences, alternative recommended for review.
May 1	Alternative Agreement.
May 24	Draft decision.
May 31	Complete and indexed Administrative Record.
May 31	Decision Issued.

EXHIBIT
"D"
CONT.

INLAND NATIVE FISH STRATEGY
PUBLIC INVOLVEMENT PLAN & RELEASE STRATEGY

March 1, 1995

<u>Date</u>	<u>Accomplishment</u>
March 7	Mail federal register notice (will be published <u>March 17, 1995</u>). Identify as cooperative effort between Forest Service and BLM. Describe Proposed Action, Purpose and Need, NEPA process (i.e. Forest Plan amendment). Identify use of issues identified through other projects (UCRB, ICRB) when requesting comments. Identify comments due April 17, 1995 (30-day comment period).
Week of March 13	Briefing in Washington, DC, for FS, BLM, and Justice Dept. (1 Team)
Week of March 13	Briefing for Congressionals (briefing package)
Week of March 13	Briefing for Governors of Montana, Idaho, Nevada, Washington, Oregon. Copy of briefing package to State Fish and Game directors, and Association of Counties.
Week of March 13	Briefing for tribal governments. Send 1 page summary with letter of invitation for briefing. Follow-up with phone call, offer to brief. (L. Robinson will get names, addresses, phone numbers from Ralph Perkins).
Week of March 13	Internal employees: DG/hard copy summary to all. 10-minute video starring project leader with cover letter to Regional Foresters, Forest Supervisors, BLM State directors and State Fish and Game directors, to share with employees.
March 15	Mail scoping document, utilizing mailing lists from PACFISH, UCRB project, and ICRB project, with additional individuals and organizations as needed.
April 21	Complete content analysis of all comments received (comments due April 17, 1995).
April 28	Send content analysis report to all who commented.
Week of May 22	Briefing in Washington, DC, for FS, BLM, and Justice Dept. (1 Team) on release of decision document.
Week of May 22	Briefing for Congressionals on release of decision document.
Week of May 22	Briefing for Governors of Montana, Idaho, Nevada, Washington, Oregon on release of decision document. Copy of briefing to State Fish and Game directors, and Association of Counties.
Week of May 22	Briefing for tribal governments on release of decision document.
May 31	Internal employees: DG/hard copy (FAX) notice to Regional Foresters, Forest Supervisors on release of decision document.
May 31	Mail notice of availability to federal register (will be published on <u>June 9, 1995</u>).

Exhibit
"D"
CONT.



AFFECTED NATIONAL FORESTS in the Northern Intermountain and Pacific Northwest Regions

BITTERROOT

HUMBOLDT

BOISE

IDAHO PANHANDLE

CARIBOU

KOOTENAI

CHALLIS

LOLO

CLEARWATER

MALHEUR

COLVILLE

OCHOCO

DEERLODGE

PAYETTE

DESCHUTES

SALMON

FLATHEAD

SAWTOOTH

FREMONT

WALLOWA - WHITMAN

HELENA

WINEMA

D. Statutory Debarments

The procurement and nonprocurement debarment and suspension programs are based in regulation and/or executive order. There are also many statutorily-based debarment schemes, some of which also involve procurement and nonprocurement programs. In many of these statutory programs, Congress has restricted agencies' discretion whether to debar, or to determine the length of a debarment.¹³ Congress has increasingly opted to require agencies to debar or suspend in particular situations. Debarment and suspension are not intended to be punitive remedies, but rather are premised on the need to protect the integrity of government programs. The Conference believes that Congress should ordinarily allow agencies to retain the discretion to determine (1) whether debarment or suspension are appropriate in individual cases, and (2) the appropriate length of such debarments. Moreover, Congress should review existing statutory schemes that mandate debarment and/or particular terms of debarment, and determine whether they should be continued. The primary basis for recommending that agency discretion not be limited with respect to most debarment and suspension determinations is the need to retain flexibility to meet the needs of the government and the public. The Conference believes that agency officials generally would be in a better position than Congress to determine appropriate remedial sanctions in individual cases that serve both to protect the fisc and meet program needs.¹⁴

The co-existence of the regulatory debarment programs that are the focus of this recommendation with a broad variety of statutory debarment programs creates a number of issues that relate to the interactions between them. The Conference may in the future study these issues, which include conflicts that arise from inconsistent procedural requirements and questions about whether all statutory programs are intended to have government-wide effect.

Recommendation

I. Entities coordinating the Federal Acquisition Regulation (FAR) and the Common Rule for nonprocurement debarment, and individual agencies in their procurement and nonprocurement debarment and suspension regulations, should promptly ensure that the applicable regulations provide that suspensions or debarments from either federal procurement activities or federal nonprocurement activities have the effect of suspension or debarment from both, subject to waiver and exception procedures.¹⁵

II. Entities coordinating the FAR and the Common Rule, and individual agencies in their regulations, should ensure that:

¹³ For example, DHHS is required to exclude from participation in the Medicare and Medicaid programs for 5 years any health care provider who is convicted of a crime related to the provision of services under those programs, or of patient abuse. 42 U.S.C. § 1320a-7(a).

¹⁴ This recommendation should not be read to discourage Congress from providing guidelines for agencies to consider in exercising their discretion.

¹⁵ Waiver and exception procedures are currently found in the FAR at 48 CFR 9.406-1(c), 9.407-1(d), and in the Common Rule at X.215.

A. cases involving disputed issues of material fact are referred to administrative law judges, military judges, administrative judges of boards of contract appeals, or other hearing officers who are guaranteed similar levels of independence¹⁶ for hearing and for preparation of (1) findings of fact certified to the debarbing official; (2) a recommended decision to the debarbing official; or (3) an initial decision, subject to any appropriate appeal within the agency.

B. debarbing officials in each agency should:

1. Be senior agency officials;
2. Be guaranteed sufficient independence to provide due process; and
3. In cases where the agency action is disputed, ensure that any information on which a decision to debar or suspend is based appears in the record of the decision.

III. Entities coordinating the FAR and the Common Rule, and individual agencies in their regulations, should provide that each regulatory scheme for suspension and debarment includes:

A. A list of mitigating and aggravating factors that an agency should consider in determining (1) whether to debar or suspend and (2) the term for any debarment;

B. A process for determining a single agency to act as the lead agency on behalf of the government in pursuing and handling a case against a person or entity that has transactions with multiple agencies;

C. (With respect to procurement debarment only) a minimum evidentiary threshold of at least "adequate evidence of a cause to debar" to issue a notice of proposed debarment;

D. A requirement that all respondents be given notice of the potential government-wide impact of a suspension or debarment, as well as the applicability of any such action to both procurement and nonprocurement programs; and

E. Encouragement for the use of "show cause" letters in appropriate cases.

IV. All federal agencies in the executive branch (broadly construed) to include "independent" agencies should implement the "Common rule" and FAR rules on suspension and debarment.

V. Congress should ordinarily refrain from limiting agencies' discretion by mandating suspensions, debarments, or fixed periods of suspension or debarment. Congress should also review existing laws that mandate suspensions, debarments, and fixed periods, to determine whether to amend the provisions to permit agency discretion to make such determinations.

(FR Doc. 95-6183 Filed 3-13-95; 8:45 am)

BILLING CODE 8110-01-P

DEPARTMENT OF AGRICULTURE

Forest Service

Inland Native Fish Strategy

ACTION: Proposal to Prepare Interim Direction for Native Inland Fish Habitat Management.

¹⁶ See 5 U.S.C. § 554(d)(2).

SUMMARY: The notice is hereby given that the Forest Service, in cooperation with the Bureau of Land Management and U.S. Fish and Wildlife Service, is gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish. The Forest Service is proposing to amend Regional Guides and Forest Plans to include interim direction in the form of riparian management objectives, standards and guidelines, and monitoring requirements. The interim direction will apply to the geographic area covered by the Eastside Ecosystem Management Strategy Environmental Impact Statement (EIS) and Upper Columbia River Basin EIS, except for anadromous fish habitat (which is now being managed under the interim PACFISH strategy, approved February 24, 1995).

The purpose and need for the proposed action is to preserve management options for inland aquatic resources by reducing the risk of loss of populations and reducing potential negative impacts to aquatic habitat of resident fishes until the signing of Records of Decision for both EISs. As a companion to the protection provided for anadromous fish by PACFISH, this Environmental Assessment is intended to provide the basis for establishing appropriate interim direction to protect habitat and populations of resident native fishes outside of anadromous fish habitat, including bull trout which has recently been determined to be warranted by the U.S. Fish and Wildlife Service (Federal Register Vol. 59, No. 111, June 10, 1994, pp. 30254-30255). Specifically this EA will address National Forest System lands on the Bitterroot, Boise, Caribou, Challis, Clearwater, Colville, Deerlodge, Deschutes, Flathead, Fremont, Helena, Humboldt, Kootenai, Lolo, Malheur, Ochoco, Panhandle, Payette, Salmon, Sawtooth, Wallows-Whitman, and Winema National Forests in the Northern, Intermountain, and Pacific Northwest Regions.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Environmental Assessment.

Written comments should be sent to the agency within 30 days from the date of publication in the Federal Register.

ADDRESSES: Send written comments to USDA Forest Service, Idaho Panhandle

Exhibit
"D"
CONT.



National Forests, 3815 Schreiber Way, Coeur d'Alene, Idaho, 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental assessment should be directed to David Wright, Team Leader, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, Idaho, 83814. Phone: (208) 765-7307.

SUPPLEMENTARY INFORMATION: The Forest Service, in accordance with 16 USC 1604 and 36 CFR 219 et seq. develops land and resource management plans to provide for multiple use and sustained yield of products and services including outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.

PACFISH is the Anadromous Fish Habitat and Watershed Conservation Strategy being implemented by the Forest Service and Bureau of Land Management. This is an interim strategy to conserve Pacific Salmon, steelhead and sea-run cutthroat trout throughout their range in Oregon, Washington, Idaho and portions of California. The PACFISH decision notice was signed by Forest Service and Bureau of Land Management on February 24, 1995.

There are two ecosystem-based environmental impact statements being prepared for National Forest System and BLM-administered land in the Interior Columbia River Basin. The Eastside Ecosystem Management Strategy EIS applies to the area of Washington and Oregon east of the crest of the Cascade mountain range. The Upper Columbia River Basin EIS will apply to Idaho and portions of Utah, Wyoming, Nevada and Montana. The two documents will contain long-term strategies designed to replace the interim protection afforded by PACFISH and this Inland Native Fish Strategy.

Concurrently, the Forest Service in the Pacific Northwest is completing an EA that proposes to amend the interim Forest Plan Direction issued on May 20, 1994 by Regional Forester John Lowe. This EA proposes adjustments to the Historic Range of Variability and portions of the wildlife screen. Any changes to the riparian screen portion of the current direction will be considered in the Inland Native Fish Strategy.

At its discretion, the Forest Service may amend forest plans based on the results of monitoring and evaluation (36 CFR 219.10(f), 219.12(k)). Review of research reports and published professional papers (Rieman and McIntyre 1993; Sedell et al. 1990; Grumbine 1990; Williams and Neves 1992; Oregon Trout 1994) indicates that additional long-term programmatic

protection may be warranted for native resident fish and their habitat. That long-term direction is being developed through the Columbia River Basin EIS process. This interim protection is being proposed to preserve options for long-term management that might be adopted as a result of those processes.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue without interim direction protection. Other alternatives will examine the effects of varying approaches to interim protection.

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Additional information will be utilized from the scoping activities that occurred for the PACFISH, Upper Columbia River Basin EIS and Eastside Ecosystem Management Strategy EIS. During scoping activities for these projects, issues and concerns were identified that relate to inland fisheries and may have bearing on this environmental analysis.

The responsible officials for National Forest System lands will be the Regional Foresters for the:

- Intermountain Region, Federal Building, 324 25th Street, Ogden, Utah 84401;
- Northern Region, P.O. Box 7669, Missoula, Montana 59807; and
- Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208.

The decision and reasons for the decision will be documented in a Decision Notice. The Environmental Assessment and Decision Notice are expected to be available in June, 1995.

Dated: March 8, 1995.

David J. Wright,

Inland Native Fish Team Leader, Idaho Panhandle National Forests.

[FR Doc. 95-6255 Filed 3-13-95; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

(C-122-816)

Certain Softwood Lumber from Canada; Determination to Terminate and Not To Initiate Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination to terminate and not to initiate countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has decided to terminate the first administrative review of the countervailing duty order on certain softwood lumber from Canada initiated on August 24, 1993, and not to initiate the second administrative review.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Maruna Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: On July 30, 1993, the Coalition for Fair Lumber Imports (the Coalition), the Government of Canada, and the Government of Quebec requested an administrative review of the countervailing duty order on certain softwood lumber from Canada for the period March 12, 1992 through March 31, 1993. In addition, one hundred and ninety companies requested individual company reviews. On August 24, 1993, the Department published a notice initiating the administrative reviews for that period (58 FR 44653).

On July 28, 1994, the Coalition requested an administrative review of the countervailing duty order on softwood lumber from Canada for the period April 1, 1993 through March 16, 1994. On August 1, 1994, the Government of Canada requested an administrative review for the same period. In addition, one hundred and five companies requested individual company reviews.

On August 16, 1994, the Department revoked the countervailing duty order on softwood lumber from Canada pursuant to a decision of the Binational Panel convened under the United States-Canada Free Trade Agreement (59 FR 42029), and instructed the U.S. Customs Service to (1) stop collecting cash deposits on imports of softwood lumber from Canada, and (2) refund, with interest, all cash deposits made on or after March 17, 1994, the effective date of the Binational Panel's decision.

On December 15, 1994, the United States and Canada agreed to enter into consultations to try to resolve the trade dispute regarding softwood lumber from Canada. The Department also decided, under the authority of the Tariff Act of 1930, as amended, to compromise its

Exhibit
"E."

I. BACKGROUND

On July 7, 1994, the U.S. Court of Appeals for the Ninth Circuit determined in Pacific Rivers Council v. Thomas, 30 F.3d 1050 (9th Cir. 1994) that Land and Resource Management Plans (LRMPs), adopted by the U.S. Forest Service (USFS) before a species is listed for Endangered Species Act (ESA) purposes, hereafter "existing LRMPs", represent continuing agency "actions" within the meaning of ESA section 7(a)(2). Furthermore, the court determined that existing Land and Resource Management Plans (LRMPs) "may affect" listed species and therefore the USFS must consult with the National Marine Fisheries Service (NMFS) on LRMPs themselves pursuant to section 7 of the ESA in addition to any consultations the USFS may request concerning site-specific, ground disturbing forest activities.

Also, in February, 1995, the United States petitioned the U.S. Supreme Court to grant certiorari and review the Ninth Circuit's decision in Pacific Rivers Council v. Thomas, supra.

On August 3, 1994, in response to the decision by the Court of Appeals, the USFS sent to NMFS two biological assessments (Bas) with cover letters requesting formal consultation on LRMPs for the Umatilla and Wallowa-Whitman NFs. Both BAs concluded that the LRMPs "may affect" ESA listed salmon and their designated critical habitat.

Also in response to the decision by the Court of Appeals, on September 12, 1994, the USFS sent to NMFS BAs and accompanying cover letters requesting formal consultation on the LRMPs for the Boise, Challis, Nez Perce, Payette, Salmon, and Sawtooth NFs. The Boise, Nez Perce, Payette, and Sawtooth NFs concluded that implementation of their LRMPs "may affect" Snake River spring/summer chinook salmon, Snake River fall chinook salmon, and Snake River sockeye salmon.

Prior to these consultation requests and the Court of Appeals decision, on March 6, 1992, the USFS Northern, Intermountain, and Pacific Northwest Regions signed an Interagency Agreement with the NMFS. The goals of this agreement were to (1) further the purposes of the ESA by managing habitat for the conservation of endangered and threatened anadromous fish species listed pursuant to section 4 of the ESA; (2) contribute to the conservation of wild and naturally reproducing stocks of endemic salmonid fishes in the Snake River Basin by removing threats of further habitat degradation and by providing habitat suitable for perpetuation of these species on National Forest lands; (3) promote recognition of the significance of these salmon stocks; (4) effectively implement LRMPs in a manner consistent with the ESA and the USFS Columbia River Basin Anadromous Fish Habitat Management Policy and Implementation Guidelines; and (5) facilitate implementation of conservation strategies that would reduce the time needed to

TESTIMONY PREPARED FOR THE UNITED STATES SENATE
FISHERIES AND WILDLIFE SUB COMMITTEE OF THE
ENVIRONMENT AND PUBLIC WORKS COMMITTEE
AND DELIVERED BY R.C. "BOB" SEARS, CAE
EXECUTIVE VICE PRESIDENT
THE IDAHO CATTLE ASSOCIATION
2120 AIRPORT WAY
BOISE, IDAHO 83705
JUNE 3, 1995

Mr. Chairman, Members of the Committee. My name is Robert Sears, I am the Executive Vice President of the Idaho Cattle Association, (ICA) in Boise, Idaho. ICA is a non-profit trade association representing in excess of 1600 cattle producers, feeders, agribusinesses and more than 25,000 individuals involved in the livestock industry in Idaho, I thank the Committee for the opportunity to appear here today to enter the following comments.

My members recognize, better than most, the importance of providing habitat, food and water for the wildlife we enjoy in this beautiful state. They provide these necessities on both their private lands, and on the public lands for which they act as caretakers.

Other will testify to the dilemma they face from the interpretation placed upon the provisions of the Endangered Species Act, that Idaho's former U.S. Senator James McClure has recently called "synonymous with the term overzealous government regulation."

I will limit my comment to the most exasperating and devastating section of the Act, Section 11 (a), (5) (g) CITIZEN SUITS. The flagrant use of the provisions of this section, in the filing of hundreds of lawsuits that are obviously, frivolous, nuisance actions, and deliberate attempts to exploit the intent of the Act, to block implementation of appropriate actions, approved by the agencies, is absurd.

The resource users of Idaho, and the taxpayers of the country, can not continue to waste thousands of non-productive hours in Court and expend millions of dollars in attorney fees and court costs, to defend legitimate actions and/or to challenge "sweetheart agreements" put together by some agency personnel with these "enviromaniac groups" to avoid litigation. The case of the Bruneau Hotspring Snail, in Southern Idaho, is a classic example of this ridiculous type of action. The US Fish & Wildlife Service had declined to list the snail due to a lack of sufficient scientific data to justify the listing. In response to environmental organizations filing of a suit, under the above referenced section of the ESA, the USF&WS acquiesced to their demands and listed the snail. The ramifications from this action were tremendous. Virtually every farmer and

rancher in the Bruneau Valley was in danger of losing their farm/ranch due to restriction of use and/or total shut down of their irrigation wells. The Idaho Farm Bureau Federation, Idaho Cattle Association and their county organizations, along with concerned citizens of the area, filed suit to remove the listing and won our case in US District Court. The agency declined to appeal the courts decision and the court ordered reimbursement of our legal expenses, (which to date are in excess of \$170,000, however the environmental groups who had been allowed intervénor status appealed the lower court decision to the Ninth Circuit Court of Appeals, causing the expenditure of additional funds for continued legal representation. The bottom line is that win lose or draw either the industry or the taxpayers will pay the bill, as they already have for the ICL's fees on the original suit to force the listing.

This is but one example of the exorbitant cost this section of the ESA has in store for the taxpayers of this country. This section of the ESA must be changed to require some accountability from those who arbitrarily use the law to beleaguer law abiding resource users. The legal costs are infinitesimal when compared to the losses in jobs and income suffered by these responsible resource users, their employees and the nation, when Court ordered injunctions hold up legitimate activities authorized by the agencies who have determined they should go forward. WE MUST GET REAL AND REVISE THE ENDANGERED SPECIES ACT. We must recognize that ranchers, and all of the others who's livelihood depends on managed resource usage, are the real endangered species, as are those across this land who depend upon the products derived from those resources for their livelihood and sustenance.

As the author of the Poem, "The Endangered Species Cowboy" put it:

If the choice is ours to make,
 between our kids and a rattle snake
 I've got to tell without pause,
 that snake has got a losing cause.
 We need to all sit down and chat,
 how wise is it to save a rat,
 a wolf, an owl, a snail we find,
 IF DOING SO DESTROYS MANKIND.

June 3, 1994

Task Force on Endangered Species
Lewiston, Idaho

Mr. Chairman and Committee members,

My name is Jeanette Knott, I was born at the San Bernardino County Hospital in San Bernardino, California.

Eighty two years ago my father was born at the same hospital.

Now, after all these years the County of San Bernardino, with help from State and Federal dollars, has enough money to build a new facility. They purchased land in Colton, California seven miles away because it was less expensive. They designed a new County Medical Center. (For those of you who are unfamiliar with medical care in California, County hospitals and facilities are for low income families or those who have no income at all).

The hospital was to be completed in 1997; but low and behold, on the new land was found 8 DELHI SAND FLOWER LOVING FLIES.....AN ENDANGERED SPECIE.

Negotiations began between the hospital the United States Fish and Wildlife Service and the California Department of Fish and Game.

The results:

The County Medical Center will incur an extra \$3,310,199 in construction costs and a one year delay in opening because of the requirement to move and redesign the facility in order to provide 1.92 acres of protected habitat for the 8 flies, believed to occupy the site. That's a cost of \$413,774.25 per fly.

That amount of money would treat 494 in-patients at the hospital or 23,466 out-patients.

Ladies and gentlemen, this makes me ill to my stomach.

I have been a member of the board of trustees for a small non-profit hospital for seven years and we struggle each and every day to contain costs, provide excellent care and maintain our thirty year old facility.

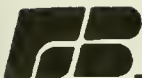
If we should be unlucky enough to have this happen to us on one of our expansion projects we would have to close our doors.

THE ENDANGERED SPECIES ACT NEEDS TO BE REVISED SO THAT HUMAN LIVES AND HUMAN HEALTH ARE NOT PUT AT RISK FOR A FLY.

The endangered species, in this case, are the children and the elderly who would have been treated free at the clinic.

Please use some common sense.....8 flies versus 23,466 patients just doesn't seem like a common sense choice to me.

Thank You

**GRANT COUNTY FARM BUREAU**

PO Box 1694 • Moses Lake, WA 98837 • 509-766-8267

1 June 1995

Distinguished Members of the U.S. Senate Special Committee on the Endangered Species Act:

Thank you for recognizing there is a problem with the Endangered Species Act (ESA) as it is being pursued. The intent of the Act was very honorable but unfortunately it has ran amuck. The unanimous (300+) testimony and attendance in opposition to the National Marine Fisheries proposed plan for the Columbia Snake River Basin held at Richland, Washington is a superb example. The NMF plan is propelled by the ESA.

Grant County Farm Bureau, representing 768 families, favor changes to the present Act and the way it is being implemented. These amendments include:

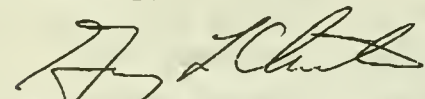
1. Compensating landowners for diminution in value of private property.
2. ESA actions must only be undertaken after a determination that the benefits of the action outweigh the costs to the community, and further prohibiting any ESA action from imposing an unfunded mandate on state or local governments.
3. Aggressive promotion of Farm Bureau's proposed Critical Habitat Reserve Program. This provides incentives for private landowners to manage listed species on a voluntary basis.
4. Requiring Fish and Wildlife Service to include a draft management plan at the time of any listing proposal that considers economics and other factors.
5. Requiring the ESA determinations be supported by credible, verifiable scientific evidence, and that listings and other agency actions be subject to scientific peer review.
6. Clarify that under the citizen suit provisions that individuals whose socio-economic interests are injured by an ESA action have the same standing to challenge that action as to environmental groups.
7. Prohibit citizen suits against private persons, such as individual landowners.

Page 2 - ESA Committee Members

8. Amend Section 7 consultation requirements to allow private permit or license applicants to participate in the consultation, provide a maximum time limit for completion of the consultation, provide that participants in an approved habitat conservation plan or in a Farm Bureau's proposed Critical Habitat Reserve Program will not be required to undergo consultation for activities approved under those programs.
9. Provide categoric exclusions or exemptions from Section 7 consultation and possibly from Section 9 takings liability for activities that will have minimal or no adverse impacts on listed species.
10. Eliminate listing based on subspecies or distinct populations; an exception might be made if listing the subspecies or distinct population is necessary to save the species as a whole.
11. Currently the same prohibitions applied to endangered species also apply to threatened species unless the Fish and Wildlife Service specifies otherwise. The Act should be amended to either set forth a different set of prohibitions for threatened species, or state that no prohibitions apply unless set forth by rule.
12. Remove habitat modification from the definitions of "take".

Grant County, being located in the middle of the Columbia Basin Irrigation Project, has great concern and fear of the ESA as it is being applied. The vast complete irrigation project utilizes a mere 5 percent of the Columbia River with most of that being returned to the river. However, constantly we hear about the need for more water for instream flows and we must constantly combat attempts by government agencies to remove the water from the project due in part to the Endangered Species Act. We are the breadbasket of the State of Washington. Without water and private land being protected, this area would return to desert. Please come and see the wildlife and waterfowl that this project supports.

Sincerely,



Gary L. Christensen, President
Grant County Farm Bureau

P.O. Box 163
Ahsahka, ID 83520
June 3, 1995

Senator Dirk Kempthorne, Chairman
Drinking Water, Fisheries and
Wildlife Subcommittee
367 Dirkson Building
1st & C Streets, N.E.
Washington, D.C. 20510

Mr. Chairman and Distinguished Members of the Subcommittee:

My name is Wade Miller; my home is Greer, Idaho on the Clearwater River. I am a college student, and I believe I represent the feelings of many of my generation. We are this country's future, and we will inherit the responsibility for continuing the management of the natural resources of this great country of ours. We want to have options left for us to enjoy and prosper in this world. I believe the Endangered Species Act is critical for ensuring quality of life for my generation's and following generations' futures.

For years controversy has centered around the need to protect Idaho's wildlife and to provide recovery plans for declining anadromous fish populations. In the past such protection and incentive was provided through the Endangered Species Act. Now this law is up for reauthorization and many of its key elements are under the threat of being repealed. Some people seem willing to believe that domestic environmental problems are largely solved and that the real problems are elsewhere and occur in other countries; that for what domestic problems remain, "big business" is to blame.

Mr. Chairman, the problems of preserving our environment are everyone's concern and who is to blame is relatively unimportant when, in fact, we all must share the blame. Controversy over the gradual unravelling of ecosystems as expressed in the accelerating loss of the natural diversity of plants and animals has already exploded. The volatility of the biodiversity issue is a symptom not so much of real controversy over its scientific basis or its significance but, in fact, a symptom of the public's ignorance and resistance to understanding ecological complexity. Some of the controversy is the natural outcome of the public's encounter with a problem that creates a tremendous dissonance between many of our deeply held values: conservation, private property rights and limitless growth. Much of the problem is our resistance to change and to accept the fact that we are overusing our resources.

Nature holds within it a delicate balance of ecosystems, which man is a part. To destroy parts of these ecosystems is anything but beneficial to mankind in the long run. Property titles will change hands, industries will come and go, but ultimately the real mark of man may be his destruction of a sensitive ecology. We do not have the knowledge to create biodiversity, but we do have the knowledge to save what little we

have left. Can we really afford to set economic and political considerations above the preservation of the environment in which we live? When a species shows up on the endangered species list, the damage has already been done to an extent that only through a severe change in human activity will a species continue to survive. Many of the species which are listed have lost over 90 percent of their original habitat to development or pollution. That means that for 200 or 300 years, Americans have set the choice as either habitat or economic development, and have always opted for the latter. We have reached a critical point at which we must decide if mankind should remain destructive towards the environment or if we have reached the point at which we are ready to take responsibility for our action. What will be left for my generation?

Private business has never, in the course of history, made a concerted effort to prevent environmental degradation, unless public decree has compelled it to do so. Ensuring the viability of our ecosystems is a public responsibility, or through an economic standpoint, it is a public good. Protecting our environment is no less important than protecting the security of our nation; a lapse in either could lead to the detriment of our society. According to a finding released by the National Academy of Sciences panel established four years ago to look into the 1973 E.S.A., all 16 of the panel's prominent scientists strongly endorsed the measures which recent legislation threatened to weaken: "To sustain a viable future for our descendants," the scientists said, "we must find ways to preserve both species and ecosystems. The Endangered Species Act is a critically important part of our efforts." The Endangered Species Act emphasizes the protection of the habitat in which threatened species are found as crucial to protecting biodiversity. Habitat protection is a prerequisite for conservation of biological diversity, and further, the protection of our ecosystems.

In conclusion I strongly urge your Subcommittee to NOT weaken the Endangered Species Act.

Wade Miller

Wade Miller

PORT OF LEWISTON
TESTIMONY FOR SENATE ESA HEARINGS

June 3, 1995

David R. Doeringsfeld, Manager

On behalf of the Port of Lewiston, we are pleased to have the opportunity to address the Senate Fisheries and Wildlife Committee here in Lewiston, Idaho. Because it is here in the Pacific Northwest that the affects of existing ESA legislation are destroying our regional economy.

Since 1989, 180 mills and over 22,000 jobs have been lost in the states of Washington, Oregon and Idaho alone. The State of Idaho is 67% Federally owned and ESA legislation has essentially locked-up timber sales in the State. More mills will close and jobs lost unless ESA guidelines are streamlined and economics become an element of ESA implementation guidelines.

Twenty years ago, slackwater came to the confluence of the Snake and Clearwater rivers and forever changed our regional economy. Barging grain to Portland markets is one third the cost of rail and one fifth the cost of trucking. Considering that eighty to ninety percent of local agricultural products are exported, this river is our highway or lifeline to compete in overseas markets. It has taken 50 years of public and private investment to build the Snake River transportation system. Today that investment is paying huge economic and environmental dividends. Lewiston is the furthest inland seaport on the west coast. NAFTA provides enormous potential in continuing to develop this area as a transportation hub.

However, environmental extremist groups would say that the \$600 million or approximately \$300,000 per returning salmon we are spending annually for salmon recovery is not enough. Better yet, we should experiment by removing the Snake River dams to see if it aids salmon recovery. The tens of thousands of jobs lost aren't of any real consideration, we might and I emphasize might get a few hundred extra salmon back.

Senators, Idahoans are this country's strongest environmental supporters. But I implore you that some rationalization must be put back into ESA legislation. Economic impact and cost/benefit analysis must be included in ESA. We can not continue to bankrupt this country trying to save every subspecies and plant.

P.O. Box 1560
 Orofino, ID 83544
 June 3, 1995

Senator Dirk Kempthorne, Chairman
 Fisheries, Drinking Water and Wildlife Subcommittee/
 Senate Environment and Public Works Committee
 Lewiston, Idaho Hearing, "Endangered Species Act Reauthorization"

Dear Senator Kempthorne:

I am retired, live here in the Clearwater River country, hunt, fish, boat, cut fire wood, berry pick, back pack and in general enjoy the use of public lands. When friends visit we often include trips to our public lands to entertain them.

Timber sales have been reduced to a point of embarrassment for such a large area of federal land. Even a flower, the Bank Monkey flower caused several important recreation projects and a timber sale to be canceled. Later this flower was found to be abundant in nearby areas. This is just one example of the way the ESA is used by preservationist to stop or delay all development. More recently the endangered salmon runs are eliminating timber sales to protect spawning beds even though these spawning beds have always been protected on federal timber sales and there are many, many miles of unused spawning beds here in Clearwater country. There is a abundance of spawning areas and many of these areas are of higher quality now that they were in the early 1900's after the large fires burnt over much of the Clearwater country (recent Forest Service studies have found this to be a fact). Bull Trout are another species that is costing jobs and endless rules, regulations and studies. These trout are well on their way to be classified as endangered even though many live in designated Wilderness areas where no logging is allowed and man has a very low impact on these fish. These Bull Trout had been considered a trash fish by elitist fishermen until they found they could use this fish to further their own selfish plans. This is another case where the ESA has been used without the science to back it up.

Wherever conflict has occurred man has lost to the Endangered Species, we have lost jobs, we have lost places to recreate and Clearwater country is hard pressed to provide schools and county roads since the federal timber sale program has been reduced to such low levels. The timber is here and is growing by millions of board feet each year. This timber is being wasted now as trees die and rot. Much of this timber could be harvested without harming any endangered species. Timber sales provide other benefits such as opening roadless areas to use for hunting, fishing, wood cutting, berry picking and many other uses. Six mills closed near here in Oregon last year and more recently one mill has closed at Grangeville Idaho. A study commissioned by the Idaho legislature found that five (5) more mills will probably close before 1996 is over.

I bought a boat when I retired so I could enjoy the excellent fishing on the Dworshak. First the draw downs flush the Kokanee by the thousands through the dam and kill them. I have seen these dead fish float by. These fish are mostly wasted by these draw downs. The Small Mouth Bass spawn this time of year and as the Dworshak is drawn down these spawning beds are left high and dry. This will affect bass fishing in the future.

The Dworshak Reservoir has been drawn down to the point that I couldn't put my boat in. The town of Orofino lost \$7,000,000 in business last summer because of the draw down. We have lost boat and motor dealerships and a Sport Shop.

The Decision Notice that the Corps. of Engineers issued to build this dam stated it would be kept full for recreation during the summer months, again man is the loser when the water was used for a fish flush that even the fishery biologist could not agree helped the salmon and may have killed the fish they were trying to protect. This is why many people do not trust federal laws or faceless bureaucrats that administer these laws from afar. This past fall the Clearwater River was marked with orange buoys to mark salmon spawning areas. The word was out loud and clear that if any fish were disturbed by fishermen, rafters or others that the river would be closed and off limits to all except the fishery biologist.

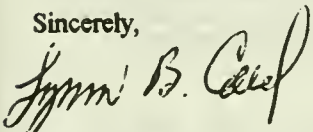
The back country near the headwaters of the Clearwater is some of the most beautiful land in America. People come from all the states to hunt, fish or just explore these remote areas. I hunt and fish these areas as well and do not care to share these areas with grizzly bears. We got rid of the grizzly bears and wolves once and do not need them back now. They are just not good neighbors. It is not like the old days when these areas were seldom visited by people, you should visit these areas on opening day of hunting season to see what conflicts introducing these animals will cause.

As a taxpayer I would expect that my taxes be spent prudently and money would not be spent building more spawning areas if there are ample areas unused now. That our water would not be used for fish flushes unless they are based on proven science and someone can be held accountable. That we not attempt to save every Sub Species just because it runs up a different creek or lives in a different area. We can not afford \$12,500,000.00 salmon or salmon that cost \$3000,000.00 each.

In my opinion we do not need the Endangered Species Act in any form. I don't care to go back to the days of oil lamps to protect any endangered species. We have made a lot of improvements in Idaho in the last 150 years. Dams have been built, roads provide access, people live, raise families and prosper. We provide food and manufactured goods for the nation and for export around the world. We need to continue development so we can continue to contribute. These are the "Good Old Days", right now, today.

I feel that the Idaho Department of Fish and Game does a excellent job of protecting fish and game in the state of Idaho. They have a proven track record. Our big game herds are the envy of most states. There are many times more deer and elk in Clearwater country now than when Lewis and Clark came this way. I trust the Idaho Department of Fish and Game. If I don't agree with them they are close enough that I can at least visit with them. Thank You for including this testimony.

Sincerely,



Lynn B. Card

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

MY NAME IS STEVE BLISS AND I LIVE IN HORSESHOE BEND, IDAHO. I AM A SAWMILL WORKER, A MEMBER OF THE NORTH WEST TIMBER WORKERS RESOURCE COUNCIL AND I AM ALSO ON THE BOARD OF DIRECTORS FOR THE BOISE COUNTY COALITION.

THE COUNTY IN WHICH I LIVE IS TOTALLY DEPENDENT ON NATURAL RESOURCES , AND SINCE THE FEDERAL GOVERNMENT MANAGES 84% OF ALL THE LAND IN THE COUNTY, THE WAY THAT THE LAND IS MANAGED IS VITALLY IMPORTANT TO EVERYONE IN THE COUNTY.

WE ARE HERE TODAY TO TALK ABOUT THE ENDANGERED SPECIES ACT. AT THE TIME THIS LAW WAS ENACTED IT HAD BROAD SUPPORT AND LOFTY GOALS OF SAVING MAJOR SPECIES FROM EXTINCTION. AT THE TIME WE WERE LOSING OUR BALD EAGLE POPULATION AND CALIFORNIA CONDOR TO DDT AND SOME OTHER MAJOR SPECIES WERE ON THE DECLINE. SOMETHING HAD TO BE DONE SO THE ENDANGERED SPECIES ACT WAS PASSED.

SINCE ITS PASSAGE, THE ACT HAS BECOME THE TOOL OF CHOICE FOR SPECIAL INTEREST GROUPS TO STOP THE USE OF NATURAL RESOURCES IN THIS COUNTRY. THE SPOTTED OWL CONTROVERSY, FOR INSTANCE, WASN'T ABOUT THE OWL, IT WAS ABOUT STOPPING THE HARVEST OF OLD GROWTH. FALSE CLAIMS WERE MADE ABOUT THE OWL LIVING ONLY IN OLD GROWTH AREAS AND THAT LESS THAN TWO THOUSAND PAIR WERE LEFT IN EXISTENCE. WITHOUT PROPER SCIENTIFIC STUDY THE OWL WAS LISTED AND TIMBER HARVEST IN OREGON, WASHINGTON AND CALIFORNIA CAME TO A SCREECHING HALT, PUTTING THOUSANDS OF PEOPLE OUT OF WORK AND PUTTING THE ECONOMY OF TIMBER COMMUNITIES IN THE TOILET. NEW STUDIES HAVE BEEN DONE ON THE OWL, FINDING THEM AS FREQUENTLY IN SECOND OR THIRD GROWTH TIMBER AREAS AS IN OLD GROWTH AREAS. ALSO, IDENTIFYING MORE THAN 20,000 PAIRS OF OWLS.

NOW IT WOULD SEEM, WITH ALL THE NEW INFORMATION ON THE OWLS, THAT FISH AND WILDLIFE OR THE CLINTON ADMINISTRATION WOULD CHANGE THEIR OWL RECOVERY PLAN AND ALLOW SOME TIMBER HARVEST, BUT THIS IS NOT THE CASE. I RECENTLY ASKED PRESIDENT CLINTON'S REPRESENTATIVE ON PROPOSITION #9 , MR. TUCHMANN IN FRONT OF ABOUT 1000 PEOPLE , "IF IN LIGHT OF THE NEW SCIENTIFIC INFORMATION, IF THERE WERE ANY PLANS TO MODIFY THE OWL RECOVERY PLAN". HE SAID, "THEY DIDN'T BELIEVE IN THE NEW SCIENTIFIC INFORMATION AND WOULD CONTINUE WITH THE PRESENT PLAN". THIS STATEMENT WAS REMARKABLE TO ME WHEN IT WAS GOVERNMENT SCIENTISTS DOING MANY OF THE STUDIES , THAT WOULD SEEM TO SHOW THAT THE OWLS PROBABLY SHOULD HAVE NEVER BEEN LISTED AND THE PROTECTION OF LARGE TRACKS OF OLD GROWTH FOR OWL HABITAT DEFINITELY COULD NOT BE JUSTIFIED.

NOW LET'S TAKE A LOOK AT SALMON. IT IS INTERESTING THAT ALL THE SCIENCE I HAVE SEEN ON THE SALMON SAYS, "THAT WELL OVER 90% OF THE PROBLEM IS THE DAMS, BUT THE MAJORITY OF THE RECOVERY PLAN IS GEARED TO PROTECTING SPAWNING HABITAT WHICH IS A SMALL PART, IF ANY, OF THE SALMON PROBLEM. SPAWNING HABITAT IS IN PRETTY GOOD SHAPE. WHAT WE ARE DOING WITH SPAWNING HABITAT IS LIKE A DEVELOPER BUILDING A MILLION ROOM HOTEL WHEN HE IS EXPECTING ONLY A FEW HUNDRED GUESTS.

PAGE 2

LET'S TAKE A LOOK AT WHAT IS INVOLVED WHEN YOU START PROTECTING SPAWNING HABITAT. TIMBER HARVEST IS SHUT DOWN, CATTLE ARE PULLED OFF GRAZING ALLOTMENTS AND MINING IS STOPPED, BASICALLY, THE STOPPING OF ALL RESOURCE USERS. DO YOU SEE A PATTERN HERE? THE SCIENCE SAYS FEDERAL DAMS ARE THE PROBLEM BUT WE ARE CONCENTRATING ON SPAWNING HABITAT WHICH IS HURTING PRIVATE PROPERTY OWNERS, NATURAL RESOURCE PROVIDERS AND SMALL RURAL COMMUNITIES BECAUSE THEY DON'T HAVE AS MUCH CLOUT AS PRESERVATION GROUPS AND THE FEDERAL AGENCIES WHO ARE WRITING THE RECOVERY PLANS. THE NET RESULT IS THE FISH LOSE AS WELL AS THE COMMUNITIES WHO DEPEND ON NATURAL RESOURCE PRODUCTION.

I HAVE GIVEN A FEW EXAMPLES OF HOW AND WHY THE CURRENT ACT IS NOT WORKING. I WOULD LIKE TO MAKE SOME SUGGESTIONS THAT COULD MAKE THE LAW WORK FOR THE BENEFIT OF THE ANIMALS AND THE PEOPLE. WE MUST STOP ENDANGERING PEOPLES LIVELY HOODS TO PROTECT ANIMALS. IF GOVERNMENT WANTS TO PROTECT HABITAT ON PRIVATE LAND , THEY SHOULD COMPENSATE THE LAND HOLDER FOR THE LOST USE OF THEIR LAND.

RECOVERY PLANS SHOULD BE BASED ENTIRELY ON INCENTIVE BASED PROGRAMS THAT ENLIST LAND OWNERS COOPERATION RATHER THAN PUT THEM OUT OF BUSINESS. MORE SCIENTIFIC STUDIES SHOULD BE DONE BEFORE A SPECIES IS LISTED TO MAKE SURE IT IS REALLY ENDANGERED.

THE PRIMARY RESPONSIBILITY FOR THE CONSERVATION OF SPECIES WITHIN ITS BORDERS SHOULD FALL TO THE STATES. SPECIES PROTECTION IS NOT A CONSTITUTIONALLY ALLOWED FUNCTION OF THE FEDERAL GOVERNMENT.

ANY RECOVERY PLAN SHOULD BE FLEXIBLE ENOUGH THAT WHEN THE SCIENCE SAYS THE PLAN YOU ARE FOLLOWING IS NOT WORKING OR NEEDED, THE PLAN WILL BE CHANGED INSTEAD OF BLINDLY FOLLOWING THE SAME PLAN, NEITHER HELPING THE LISTED SPECIES OR THE TAX PAYERS WHO ARE FUNDING THE RECOVERY PLAN.

IN CONCLUSION, WE NEED A LAW THAT WILL CONSERVE THE ANIMAL POPULATION WITHOUT DESTROYING THE ECONOMY AND WAYS OF LIFE OF THE RURAL PEOPLE WHO SHARE THE SAME HABITAT WITH THESE CREATURES.

THANKS FOR LETTING ME SHARE MY VIEWS AND I HOPE SOME OF THEM MAY BE HELPFUL.

check of
 Staff for
 Xerox

Phil Reberger

6-3-95

Letter for Congressional Committee Review

Geo. G. Harrington, Lewiston, Idaho **996**

Subject: Review and Comment on Amendment Proposals for the Endangered Species Act

I, being an employee of the federal government since passage of the Endangered Species Act, feel I bring first-hand information to light concerning the pitfalls of the Act. Also, by education, I have worked in the field as a wildlife biologist for 20 years and also have an MBA. This dual education provides me with much more insight into economic realities, private enterprise, and government interference with such processes.

My first exposure to the Act came as a biologist working for the U.S. Fish and Wildlife Service in Tulsa, Oklahoma. Species of importance in that area were the bald eagle, black-footed ferret, whooping crane, and red cockaded woodpecker. In my role of reviewing the environmental effects of water resource development in Oklahoma, at that time we only provided one paragraph notice to the construction agency concerning endangered species.

A few years later, in 1976, I worked out of an office in Kansas City for the Fish and Wildlife Service. Merrimac Park Reservoir in Missouri was stopped in the land purchase stage and never built, mostly due to the presence of the Indiana bat. Other species were now getting on the list, i.e. freshwater clams, small fishes, etc. A credibility gap started to grow with the public on importance of protection for species that didn't fly like eagles or howl like wolves.

I moved to Idaho in 1978. Now we had a separate office staff to handle Endangered Species matters for the Fish and Wildlife Service. I recall several people working earnestly on what they called a wolf recovery plan. I had no responsibility at that time for any features of the Act. Somewhere in the early 80's something went astray with the Endangered Species Act and the role of the Fish and Wildlife Service employees interpretation and enforcement of its jeopardy features. Emergency listings came like 88 fire at night in Viet Nam. Owls and salmon joined the ranks of species that were at the brink of extinction, although either of these animals were anywhere in the same ball park.

What happened? I recall a professor back in college that said the world of biology will continue to have clumpers and splitters, relating to species of plants and animals. Salmon exist in commercially exploitable numbers off Canada and Alaska. From humpies to sockeye, silver, chum, and king - none are endangered. A strain, or sub-species, or Columbian Basin fish were listed as Endangered. This, I firmly believe, was an incorrect application of the Act (the Act states SPECIES) not sub-species or race or strain or whatever the biological splitters

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feel is a bit different.

A good friend of mine, Ed Chaney, told me why the environmentalists used the Endangered Species Act for the salmon in the Northwest. His point is clear, after 30 years of frustration, they used the Act as the last resort to try to rally ALL of the federal and state players into doing something about the dwindling runs of anadromous fish in the Columbia and Snake River drainages. Has any efforts bore fruit yet?

As good bureaucrats go, we love to make problems more complex and less solveable than before -- so long the agency receives priority bucks from Congress to continue to escalate and tackle the newer, much larger problem that it contributes to, in lieu of understanding IT (the agency) is part of the problem. Good economic sense with salmon says do everthing humanly possible for a stated length of time, either succeed or fail, then refocus on dreams that can have a reality. Where I work in eastern Washington, fishermen are constantly asking me when is the government going to improve local, resident fisheries of bass, crappie, and channel cat and quit throwing money, resources, water, and rhetoric down the proverbial toilet for the sake of salmon that don't seem to want to come back.

In 1991 I witnessed a use of the Endangered Species Act which I view as a large part of the whole problem. While working for an environmental contractor on the Southwest Intertie Project for the Idaho Power Company, we were planning alternate routing for a trunk line to connect an existing fossil fuel power plant to the proposed north-south corridor into Las Vegas. One practical alternative, although much longer, was to follow an existing transportation corridor back to the power plant. It crossed a small wetland area which was flagged as important. A much shorter route existed, over desert land that was principally native, wild, and without development. Clearly, the preferred route with the least environmental damages was along the road. But, two college professors said they found two kinds of butterflies around the wetland area and claimed they lived no other place on earth. At a public meeting, they stated and wrote to the record that they would ask for an Emergency Listing for the two butterflies if the contractor persisted in calling the route through the small wetland the preferred route. This is not what I think the Act is intended to do.

Another example during the same time frame. The desert tortoise, as we know it, is doing fine south of the Colorado River. Albeit, on the north side, the turtle population suffers from a devastating lung disease. The contractor was working with a private outfit for an analysis of a co-generating plant using natural gas to produce sheetrock near Las Vegas in Clarke County, Nevada. A contract person, not an employee of the Fish and Wildlife Service, wrote a 28 page "biological opinion" which included fencing, time frame studies, search and rescue, land movement cessation, etc. in this opinion. The site was 20 acres

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of land, not, at best, a haven to more than 6 turtles. The company concluded the cost of following such terrific biological advice would cost them a half a million dollars. I believe they thought the turtle was more important on the 20 acres than their project and abandoned the plans.

New words have come forth concerning the Endangered Species. Gems like ECOSYSTEM MANAGEMENT and BIODIVERSITY. These new terms I did not have a chance to study in school. National symposiums have been held just concerning one or the other topic. Then I read in Wyoming Wildlife that the world has ecosystems in jeopardy and they are in an avalanche of extinction. Where are these ecosystems and just what must we do to stop the avalanche? Again, I must state I truly don't think any author of the Endangered Species Act meant the basic meaning to get so far-fetched. I listen to Rush Limbaugh - he says words have meaning. I also think, as the environmentalists dream up new gems like the above, common sense and sound logic are going out the window.

My closing comments are to summarize what I think the Endangered Species Act should be. I will beat my chest to contribute taxes to saving endangered SPECIES, not sub-species. I do relish the idea of sending thousands to the IRS each year to be handed like bread for entitlement programs. If the federal government has the land or water base under its control to surely protect a species from jeopardy (the spotted owl and MacFarlands four o'clock, for example) then I believe no private restrictions or condemnation should occur. Lastly, I truly would like commend real pioneers like Glen Titus (black-footed ferret), Morley Nelson (bald eagle), Rod Dreiwien (whooping crane), and Buckholtz (California condor) for their unselfish commitment to keeping a species from slipping into oblivion. We should never forget for a heartbeat that as the world grows with human critters, we are challenged to save and provide habitat for all the non-human living components on what spaceship Earth provides.

I thank you for allowing me to comment.

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June 3, 1995

Honorable Senator Dirk Kempthorne
SD 367
Washington, D. C. 20510

RE: Endangered Species Act Hearing in Lewiston, ID, June 3, 1995

Dear Senator Kempthorne:

The following is the position of the Associated Logging Contractors Inc. (ALC) concerning the Endangered Species Act. Please enter this position into the hearing record concerning reauthorization of the Endangered Species Act (ESA).

ALC is an association of small, family owned business or closely held corporations that are actively engaged in the business of timber harvesting, log hauling, and road construction. There are approximately six hundred fifty (650) members throughout the state of Idaho. We have observed the disastrous effects of ESA upon the timber industry in California, Oregon, and Washington. Several of our members are already experiencing similar effects. The problem has become severe in Southeastern Idaho. Some of our members have been forced out of business; others will soon follow. We clearly understand what will happen to our industry in Idaho with listing of anadromous fish and the probable listing of bull trout. The revision of ESA to inject some common sense is our only hope.

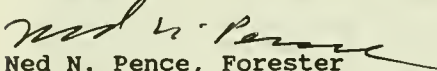
ALC is sympathetic with the noble intention of ESA. We understand and support the need for rational care and concern for the environment. It is unfortunate that the Endangered Species Act has become a flawed law. The persons and groups responsible for turning an act, passed by Congress with the best of intentions, into a flawed law are environmental fringe groups with radical preservation views. These persons have utilized ESA as a powerful tool to attain their goals. As such, the spotted owl, anadromous fish, and other listed plant and animal species are simply surrogates in the quest to stop industrial development and destroy the livelihoods of millions of Americans.

ALC strongly supports revision of ESA. The war on the West and the American people must be stopped. ALC believes that the following changes are necessary to restore balance to an Act that is out of control:

1. Economic considerations should become part of the equation. The United States simply cannot afford to destroy industry and to spend millions of dollars on very questionable actions.
2. Private property rights should be protected. Compensation needs to be provided when there is a taking of private property. The constitutional rights of citizens and the right to earn a living are inherent to the American system.
3. The listing process should be based on pure science and not emotion. Only those species actually threatened with extinction should be listed. Listings based solely upon sub-species should not be allowed. ESA should recognize that extinction is a normal and even necessary part of the evolutionary process.
4. Recovery plans should contain expenditure and time limits. The American public has a right to know the effect of a recovery plan. Fiscal responsibility and common sense should be a major feature in all recovery plans.
5. Administration of ESA should mandate cooperation with state and local agencies. The Act made the Fish and Wildlife Service and the National Marine Fishery Service two of the most powerful agencies of the Federal Government. The Act should contain some method to oversee and to control their activities.

ALC is hopeful that the above changes will be seriously considered by Congress. We very much appreciate the efforts of the Idaho Congressional delegation toward this end. Revision of ESA is clearly needed. Economic efficiency, social acceptability, and common sense must become part of an Act that is clearly out of control.

Sincerely,


Ned N. Pence, Forester
Associated Logging Contractors

June 3, 1995

Endangered Species Act

I farm near Colfax Washington. If an Endangered Species were found on my farm I would have a clear choice, either have my farm confiscated and go bankrupt or shoot the Endangered Species. It is an unwise law that forces people to make a choice like this. If you are serious about protecting Endangered Species you should also protect Private Property Rights so this conflict could be eliminated.



Greg Jones
Rt. 1 Box 206
Colfax, WA 99111

509-397-3145

May 27, 1995

U.S. Senator Dirk Kempthorne
Endangered Species Act Reform Hearing
Lewiston, Idaho

Dear Senator Kempthorne:

My name is Dwight Osborne. I am engaged in production of agricultural food and fiber, as a farmer and rancher in the Hagerman Valley of Gooding County, Idaho. I currently serve approximately 550 Farm Bureau member families as county president of the Gooding County Farm Bureau. We are in agreement with your concerns of the Endangered Species Act and feel it is time for positive reform. We would appreciate the Hearing Committees consideration of the following amendments to the Endangered Species Act.

1. Removal of habitat modification from the definition of "take."
2. Prohibit listing "isolated populations" of species that are plentiful in other states or countries. Also, prohibit listings where more than 75% of the species is outside of the United States.
3. Eliminate listing based on subspecies or distinct populations; an exception might be made if listing the subspecies or distinct population is necessary to save the species as a whole.
4. Prohibit citizen lawsuits against private persons, such as individual landowners. Such lawsuits would only be filed against the federal government.
5. Aggressive promotion of the Critical Habitat Reserve Program as set forth in our policy. This provides incentives for private landowners to manage listed species on a voluntary basis.
6. Require ESA determinations be supported by credible, verifiable scientific evidence, and listings or other agency actions be subject to scientific peer review by the same scientific discipline.
7. Require the U.S. Fish & Wildlife Service to include a draft management plan at the time of any listing proposal that considers county, state, and other factors.
8. Endangered Species Act actions must only be undertaken after a determination that the benefits of the action outweigh the costs to the community, and further prohibiting any ESA action from imposing an unfunded mandate on state or local governments.
9. Compensate landowners for diminution in value of private property. This would track the Takings bill currently in Congress.

Sincerely,



Dwight Osborne
1303 E. 2500 S.
Hagerman, Idaho
83332-5448



Twin Falls County

Farm Bureau

Farmers Speaking for Farmers through Farm Bureau

P.O. Box 1788 • 2732 Kimberly Road • Twin Falls, Idaho 83303-1788

(208) 733-7212

May 26, 1995

Senator Dirk Kempthorne, Chairman
Endangered Species Act Hearing

Dear Senator Kempthorne, committee members;

My name is Dave Fullmer, and I operate a diversified row-crop farm near Kimberly, Idaho, which is in the south-central area of this state. I am also currently president of Twin Falls County Farm Bureau, and I represent 2,418 families who retain a membership in this county. 78% of our area's economy relies on agriculture production or food processing. Current listing of several species has impacted our economic vitality and threatens our water rights. Thus far, our experience with the Endangered Species Act (ESA), and the federal agencies that administer it have evidenced the need for reform.

First, since the ESA relies entirely on credible, unbiased scientific data, we feel that reform of the fact-gathering process should include a broader procedure which considers all sources of available evidence, and is founded on the merits of full scientific peer review. This fact finding should also include beneficial actions or trends of recent years. Fact-finding efforts should also include the economic costs of recovery, including the costs incurred by private individuals, businesses, and government entities. There should be some determination process to indicate which species merit full recovery efforts. The present ESA has resulted in a multitude of listings and many times more proposed listings, while actual recovery is virtually non-existent. Some species slated for listing are non-essential compared to the cost-benefit aspect of an uncertain recovery. Regions, states, and localities should have some representation in any decision to list or recover a proposed species.

Compensation to private property owners should be included in ESA reform, especially where recovery efforts impact those who are not directly responsible for species decline.

Voluntary recovery efforts should be a valid part of the reformed ESA. Private individuals and entities should not be barred from efforts which seek to recover species which are proven to be threatened or endangered. An incentive based system which relies on more voluntary endeavor could create more critical habitat as well as successful propagation of at-risk species.

ESA reform should seek to curtail nuisance litigation which only increases the administrative cost of ESA recovery efforts. Law suits against private persons should be prohibited, in that the cost of defending oneself often results in economic devastation. Individual persons cannot afford to compete with large environmental groups in the legal arena. Law suits should only be filed against the federal government.

Reform of the ESA is absolutely necessary. Currently, the path we're on will result in regional economic bankruptcy, without species recovery. The present ESA is inequitable and ineffective. Let's get some common sense back into conservation. Thank you for your consideration.

Sincerely,

Dave Fullmer, Pres.

Twin Falls County Farm Bureau

"Farmers Speaking for Farmers through Farm Bureau"



NEVADA OUTDOOR ALLIANCE

17290 Sunbird Lane
 Reno, Nevada 89506
 (702) 334-2772, 677-0690 334-2770 fax

**The Honorable Dirk Kempthorne
 United States Senate
 Environment and Public Works Committee
 Washington, D.C. 20510**

May 23, 1995

Dear Senator Kempthorne:

Please accept our written comments concerning the Endangered Species Act reauthorization, and enter them into the record of the hearing on June 3, 1995.

The Nevada Outdoor Alliance voices the concerns of American recreationists who are seeing a continual reduction of recreation opportunities in our country. In particular, families who camp, fish and enjoy other forms of recreation are finding the access they depend upon has been closed. They are finding the areas they have enjoyed in the past are withdrawn from multiple use. They are seeing a growing number of reasons used to justify the closures, the ESA being used more and more.

Environmental groups eager to control land use have found the ESA a valuable tool with which to achieve that control. Through gradual, continual perversions of the original intent of the ESA, there is now a reason to stop almost any activity anywhere.

As an example, in the California desert and portions of Utah and Nevada, the U.S. Fish and Wildlife Service says that seven million acres will be needed to recover the Mojave desert tortoise. This area would be essentially off-limits to human intrusion, roads would be "rewilded" and recovery units fenced off. It is not enough that eight million acres were recently withdrawn from the California desert as wilderness, more land, about two million acres outside the wilderness are needed for the tortoise. When is it going to be enough? If the ESA continues on to its present objective, then enough will equal all.

Your efforts to set the ESA on a common sense course as Congress intended are appreciated.

Sincerely,

Richard Lassen, President NOA

*The Nevada Outdoor Alliance Strives to Maintain the Concept of Multiple Use on the Federal Lands,
 Thus Insuring Equal Recreational Opportunities For All Americans*



E.N.O.U.G.H.

"Enraged Natives Opposing Underhanded Government Hanky-panky"

P. O. Box 82 Mount Shasta, California 96067

ESA HEARING

Dear Senator Kempthorne:

Siskiyou County California is one of the states largest countys and borders Oregon to the North. To say that the Endangered Species Act has been devastating over the past ten years would be putting it mildly! The spotted owl, red banded trout, sucker fish, salmon, and the marbled murrelet to name just a few have wiped out the total economy of some of our communities. No longer can we harvest timber on a sustained basis, have enough water to raise our crops or mine the precious minerals that abound in our mountains thanks to the ESA. Alcoholism is on the rise, family break-ups are increasing and unemployment averages 20% for the county while towns like Happy Camp, California are no longer happy as unemployment is almost 100%!

I and my family have been here for five generations. We have done such a good job of taking care of the land that everyone from the big cities is either moving here or wants to because of the beauty. I can only conclude that we have kept it so nice after our timber harvesting, ranching, farming and mining that the environmentalist want it all to themselves.

They have used these poor animals to further their addenda. The ESA was not a bad idea at the time of implementation, but it has now grown to a tool of socialistic proportions greater than its authors could have conceived.

Sir, there must be a balance. We can maintain what God has created and also keep this great nation from losing all that has made her great, if we just use common sense.

Sincerely,

Jim Ayer
President, E.N.O.U.G.H.

WALLOWA COUNTY COURT

State of Oregon

Phone: 503-426-4543
101 South Main Street, Room 202
1995 JUN 12 11:06

Enterprise, Oregon 97828

TESTIMONY OF THE WALLOWA COUNTY COURT

ENDANGERED SPECIES ACT JUNE 3RD, 1995

LEWISTON, IDAHO

TO THE HEARING OFFICER AND THE CONGRESS OF THE UNITES STATES

After careful consideration of all aspects and circumstances relative to the Endangered Species Act, this County Governing Body has concluded changes must be made to ensure the well being of society and the protection and enhancement of our Natural Resources. This decision is based on substantial research, field experience and activity involving natural resource management. This Court is composed of three Commissioners with substantial experience and education in the natural sciences. One member has been a science teacher for over ten years and is trained in the field of natural sciences. Another is a trained ecologist and has over twenty-five years of field experience in Oregon, California, Nevada, Washington and Idaho. The third Commissioner has over twenty years experience in the application of practical natural resource management. In addition, we are or have been members of numerous boards and Committees who dealt exclusively with natural resource issues. Further, we deal with natural resource issues on a daily basis and are to the best of our knowledge the only County Government that has successfully written and implemented an endangered species habitat restoration plan. This plan; the **WALLOWA COUNTY/NEZ PERCE TRIBES SALMON HABITAT RESTORATION PLAN** has withstood peer review and has been validated as technically sound, based on scientific information available today. In addition, the Plan is practical and can be implemented at low cost with significant benefits beginning immediately.

Our experience and training clearly indicate the need to improve the **ENDANGERED SPECIES ACT** in a way that will make the Act accomplish the objectives intended. Improvement requires flexibility, practicality, cost and biological effectiveness and acceptance by society. The current Endangered Species Act lacks these attributes. We feel these attributes can become a part of the current Endangered Species Act if the drafters utilize well known ecological, biological, sociological, and economic principles.

The Wallowa County Court requests the following changes in the Act:

- 1) Pre-listing consideration must include an analysis of the

actual cause of species decline. Only if it is man-caused and only if the circumstance can be rectified by man's efforts should listing and species preservation actions be implemented.

2) We must move from single species management to comprehensive management that includes all species, landscape habitat and all social-economic implications. Recovery Plans must consider habitat, not species recovery, as habitat includes other species.

3) Interim review of projects under Section 7 must be clarified. The terms of irreversible and irretrievable must be clarified to relate to Federal Projects and the commitment of Federal Financial Resources. It was never intended to include habitat or natural resources. Successful Natural Resource Management requires long term commitments that provide the opportunity for Natural processes to achieve stated objections.

4) Social/economic costs benefits must be assessed at the Community, County, and Regional level.

An axiom that requires important consideration is (ANY CHANGE TO BENEFIT ONE SPECIES WILL BE DETRIMENTAL TO ONE OR MORE OTHER SPECIES). This circumstance is especially important when we attempt to save or benefit a species because of the far reaching implications to all species that inhabit the earth. Overlooking this axiom has contributed to our current problems and thus presents society with serious situations that will require our immediate attention. As an example, efforts to reduce bulltrout and benefit salmon has accomplished little for the salmon, but we now have the concern of saving the bulltrout. Efforts to save marine mammals have further reduced already low salmon populations. Other examples can be cited but let it suffice to point out the importance of considering the effects on other species when we attempt to help a specific species. In the design and implementation of species or habitat restoration plans we must understand the consequences of our efforts relative to other species that inhabit the same areas and how our efforts fit within the natural processes that are occurring. Neglect or misunderstanding of these basic factors can result in catastrophic events that will not benefit the target species but will be very damaging to other resources and species. We witnessed this situation last summer as catastrophic wildfires ravaged the Pacific Northwest.

Even though (SURVIVAL OF THE FITTEST) is an old and well-known axiom it seems to have been forgotten when the Endangered Species Act was written. We need to elaborate on this axiom because of its importance relative to the objective of prolonging the time certain species will be inhabitants of the earth. It is imperative that society realizes the relationship between natural changes (geological and ecological development) and the changes in plant

and animal species that accompany the occurrences. As geological changes occur, they are accompanied by changes in the soil and other components of the environment. For example after major natural events, such as volcanic eruptions, the terrestrial environment is composed of bare rock and with sufficient moisture, lichens appear. However, this situation starts to change with the development of soil and appearance of plants. As more soil develops, lichens are replaced with plants and small creepy-crawly animal life is replaced with other species. This natural process causes some species to disappear and to be replaced by new species. The emergence of new species is equally as important as retaining current species, because as ecological niches change species changes are necessary for the efficient and appropriate utilization of natural resources needed to recycle nutrients and promote the complex symbiotic relationships that exist between the flora and fauna that inhabit these areas. As ecological niches change, those species that are most stressed must change to exist within the new environment. Mutation and hybridization are the most common routes species utilized to change and take advantage of new ecological conditions. Whenever mutation or hybridization is successful, the parent species is immediately in danger of extinction as the new hybrid or mutant can utilize the available environment better than their parents.

In this manner one species is replaced by another. Therefore, we, as resource managers, must learn to recognize when species replacement is within the natural course of events and when man's interference has disrupted the natural processes of evolution. Only in the circumstance where we have disrupted the natural processes of evolution should we interfere and try to save a species from extinction.

The next axiom we must address is (**PEOPLE IN POVERTY CANNOT PRACTICE CONSERVATION; THEY ARE FORCED TO PRACTICE EXPLOITATION.**) Throughout the world we see people in poverty exploiting natural resources and their opportunities being reduced as the basic resources are over-utilized. Prudent management requires astute actions that optimize current opportunities while maintaining future alternatives and productivity. A prosperous society can afford to utilize multiple resources in a conservation effort even if there is no immediate or short term payoff. In fact they can afford huge expenditures without any future benefits if that is their desire. Therefore, any successful Endangered Species Act will be designated to ensure prosperity, individual rights and social harmony. In circumstances where society cannot pay for specific conservation practices we cannot expect certain individuals to contribute the entire amount. In addition, those who benefit must pay in relation to the benefits received. Proper distribution of cost and benefits is particularly important for long term success because as soon as society perceives a situation is inequable there will be a major effort to change the system. This action in turn leads to disruptions, inefficient use of

resources and consequently, failure over the long term. The inappropriate allocation of costs and benefits are in large, part of the reason this hearing is taking place and for the demands to change the Endangered Species Act.

Confrontation and Conflict Waste Resources and Lead to Polarization. Most success stories are the results of cooperation and incentives. People respond to incentives whether they are monetary or recognized by their peers. Laws designed to provide incentives are much more beneficial than punitive actions. Laws that can be utilized by special interest groups, usually, do not contribute to achieving objectives but tend to cause conflict and polarization. The current Endangered Species Act lends itself to such tactics and has resulted in undue conflict, wasted resources and set efforts to promote conservation activities back years.

Thank you for considering this testimony on behalf of the people and a place called Wallowa County.

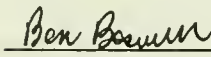
WALLOWA COUNTY COURT



 ARLEIGH G. ISLEY, JUDGE



 PAT WORTMAN, COMMISSIONER



 BEN BOSWELL, COMMISSIONER

Endangered Species Act Hearing
Lewiston, Idaho
June 3, 1995

Testimony by Carolyn Hubble

Senator Chafee, Senator Kempthorne, Distinguished members of the Committee:

Thank you for holding this field hearing in Idaho on the Endangered Species Act. As indicated by the hundreds of participants in this hearing, the Endangered Species Act is of major concern to the citizens of Idaho.

I speak to you as a private citizen and business person from Challis, Idaho. There are many provision of the Endangered Species Act that have caused serious problems but none more troublesome than Section 7 - Interagency Cooperation. The manner in which this Section has been implemented should justify its being renamed "Lack Of Interagency Cooperation." In fact, the consultation provision - sets up a procedural maze wherein one agency is pitted against another, while state, local agencies and permittees are left out of the process. The ambiguity in Section 7 served as the basis for the recent Sierra Club lawsuit which resulted in the Injunction against logging, grazing and mining activities on six national forests.

To correct some of the problems in Section 7, I recommend an amendment to the ESA to eliminate the situation whereby the U.S. Fish & Wildlife Service or National Marine Fisheries Service can create a regulatory limbo by failure to react to 7(d) determinations made by other government agencies within the 150 day timespan. Time delinquencies and lack of responsiveness to consulting agencies is a common situation, even though the ESA clearly requires action within 150 days. There is currently no way to cause the responsible agencies to react as necessary except to bring suit in Federal Court, an action many applicants are unwilling or unable to do.

The Section 7 process should be streamlined. Full, formal consultation should be limited to high impact plans and projects that may affect the continued existence of a species. An expedited or proforma process should be provided for low impact activities or minor modifications to currently permitted activities meeting 7(d) and NEPA requirements.

These revisions would go a long way toward removing the bureaucratic requirements that have resulted in a procedural lawsuits, and redundant permitting requirements that provide none of the benefits intended under the Endangered Species Act. Thank you for your attention to this request.

Endangered Species Act Hearing
Lewiston, Idaho
June 3, 1995

Testimony by Allen Getty, Challis, Idaho

Senator Chafee, Senator Kempthorne, and distinguished members of the Committee: Thank you for holding this hearing in Lewiston to give citizens from Idaho an opportunity to provide input on issues that are critically important to us.

I am a long time resident of Challis and serve as Chairman of the Custer County Water Ways Commission. My message for you today is Safety and the Endangered Species Act. It may sound strange but the Endangered Species Act has a very serious impact on public safety in Custer County. Our county compares in size to the State of Connecticut. It is 95% government owned. We have over 400 miles of County roads to maintain, in addition to the State maintained roads.

The example I would like to share with you involves the restrictions National Marine Fisheries Service has imposed on State road maintenance for 65 miles of highway #75 which is a winding, mountain canyon area following the Salmon River.

This road should normally be 24 feet wide (oil base) with three feet of shoulder on each side. Because NMFS (out of concern for protecting salmon habitat) will not allow proper road maintenance, the river side of the shoulder has eroded up to the edge of the oil. The guard rail is either gone or hanging out in space because of the absence of shoulder.. NMFS prohibits side castings from grading, rocks from falling into the river, adequate sanding in the winter, and many other important maintenance activities.

Tourists don't like driving so close to the drop off to the river, so they generally drive down the center of the road. This results in highway #75 being essentially utilized as a one lane road. The State Transportation Department is not allowed to bring the road width back to desirable condition because of the Endangered Species Act regulations.

This situation cannot continue. I recommend that the Endangered Species Act be reformed to eliminate the current situation that allows Federal agencies to preempt state and local management. The system of ESA management is not working because many of the restrictions are unreasonable and illogical. Will it take a catastrophic incident - such as a school bus going off into the river - before it is recognized that local people are the best qualified to make decisions that protect people and the environment in their area?

I urge you to rewrite the Endangered Species Act to correct these and other problems presented today.

Senator Dirk Kempthorn
Chairman, ESA Hearings

Senator Kempthorn,

Please consider the following information during the decision making process for the reauthorization of the ESA. You and your group have an opportunity to make a profound positive impact on the ESA and its administration.

Currently the land management agencies, Forest Service and Bureau of Land Management, are spending in excess of 80 percent of their time and resources on preparation and review of environmental documents and Biological Assessments and related studies. All of these environmental documents are prepared by resource professionals and biologists.

Biological Assessments are prepared by professionals that are knowledgeable about the resources in their area and with the project that is being addressed. It also receives adequate review within the agencies. It is NOT necessary to have a second agency perform an independent review by people that are not knowledgeable about the project or the resources in that particular area.

You must make the ESA a workable law that takes into account the impacts on people and the economy while better identifying what is truly and endangered species. We must also make the preparing agency, FS or BLM, responsible for the administration of the ESA. Oversight by other Government agencies who have a single environmental agenda is costly, time consuming and unnecessary.

The ESA has an extremely poor track record. It has accomplished little in the protection and reestablishment of endangered species while costing the taxpayers billions of dollars. It has also significantly reduced the ability of land management agencies to be responsive and productive.

For our land management agencies to once again become effective and responsive to the needs of the resources and the people they must have the latitude and responsibility to determine the extent of environmental documentation needed to address each individual project.

Our judicial system, that has run amok, must be prohibited from ordering unreasonable injunctive relief at the request of special interest groups when it has such a detrimental impact on agencies, industry and the public and does nothing for the endangered species as we have seen in the Pacific Rivers case.

Bill N. Savage
BILL N. SAVAGE
P.O. Box 5
Challis, ID 83226

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

WEDNESDAY, AUGUST 16, 1995

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON DRINKING WATER, FISHERIES,
AND WILDLIFE,
Interstate Oil and Gas Commission Building, Casper, WY.

The subcommittee met, pursuant to notice, at 9:30 a.m. in the auditorium of the Interstate Oil and Gas Commission Building, Casper, WY, Hon. Dirk Kempthorne (chairman of the subcommittee) presiding.

Present: Senators Kempthorne, Thomas, and Chafee [ex officio].

OPENING STATEMENT OF HON. DIRK KEMPTHORNE, U.S. SENATOR FROM THE STATE OF IDAHO

Senator KEMPTHORNE. Ladies and gentlemen, it is now 9:30 and I will call this Senate hearing to order on the Endangered Species Act.

Let me introduce myself. My name is Dirk Kempthorne. I'm a Senator from Western Idaho, a westerner who feels at home here in Wyoming.

Joining me here is Senator John Chafee of Rhode Island, who is the chairman of the full Environment and Public Works Committee that has jurisdiction over the Endangered Species Act. I'm chairman of the subcommittee that has jurisdictions to rewrite the Endangered Species Act as we move forward with the reauthorization.

We are here in Wyoming at the invitation of Senator Craig Thomas. Senator Thomas is a member of the Senate subcommittee that I've been chair to, the Endangered Species Act. At the hearings we've held in Washington, DC, Senator Thomas has attended every one of them, has been a tremendous help as we deal with this issue.

The process this morning, I'm going to make a few opening comments as to an overview of my perspective of the Endangered Species Act. I'll then ask Senator Chafee to make comments, and then Senator Thomas. Following that we will then be moving to the panels that we have invited today.

Now, there are a number of individuals who wish to speak that time just does not permit, so we will go through the order of the panelists. Each member of the panel will be asked to, to the extent possible, follow the 5-minute rule.

We have the light-system here that will just remind you when you've reached 5 minutes. When you see the red light come on we

would ask that you simply conclude your remarks. Then we will have a series of questions, again a 5-minute limitation on each member of the panel that will be directed to the panels.

As I've said, there were a number of you who wished to speak, so many that not everyone was able to be listed as a panelist. Those of you who did want to speak have been asked to fill out cards that are placed in the back of the room. Following the first panel, there will be a drawing of 10 names. We'll list those 10 individuals up here on the blackboard, and following the completion of testimony by all of the panelists, you'll be invited to come forward. You'll be given 2 minutes to just give us your views on the Endangered Species Act—what you like, what you don't like, what you think ought to be done with regard to the Endangered Species Act.

So with that, let me just give a few, again, an overview of the Act from my perspective. The message we've received so far is that there is too much regulation, with too much Federal control.

That message has come through loud and clear. There's a difference in attitude between people who have admired the objectives of the ESA from a distance, and folks who have to live, work, and raise a family with the Endangered Species Act never far from their property lines.

It relies too often on untested science, administrative problems. It will exclude State and local government in decisions that affect their own people. Nearly every witness has said that ESA needs changes.

Testimony that the Act should be reformed comes from everyone—from the unemployed timber worker in Idaho to the Secretary of the Interior. The fact that so many of you are here makes it clear to us that the Endangered Species Act has significant impact. As we may hear today, that impact may be positive or negative.

Every one of you here feels strongly about the Endangered Species Act. That's why these hearings are so important. Wyoming and Idaho have several species of fish listed under the Act. In Wyoming you have the humpback chub, razorback sucker, the squaw fish, and bony tail chub. Idaho has several runs of endangered salmon.

Our States and private land owners and businesses have spent billions of dollars to comply with recovery plans under the Act, and we've lost millions of dollars' worth of valuable water resources in the effort. We must recognize a greater State and local role in how money is spent under the Endangered Species Act.

We must make the Federal Government understand that we as States have constitutionally guaranteed rights when it comes to appropriation and adjudication of the water. I've described myself as a pro-business environmentalist, and as a result of what I've heard so far in our hearings, I will tell you that I'm also a pro-family environmentalist.

Unfortunately, I believe the Act has disregarded the very people who support its objectives. The Act must be repaired, or over time it will fall from its own weight.

It's important to note that I want to see the return of salmon to Idaho, and the preservation of valuable species and habitat, but we need to bring balance to the Endangered Species Act so we don't put entire communities and families and industries out of work.

For too long the only tools that Congress gave Federal agencies to carry out the Act was the blunt instrument of regulation and the heavy hand of enforcement. Today we'll hear about the real-world effects of the Endangered Species Act has on people, property, and conservation of species and habitat.

Senator KEMPTHORNE. With that, let me turn to Senator John Chafee, who as I mentioned, is the chairman of the Environment and Public Works Committee, and thank him for attending the Wyoming hearings. He also attended the ones in Idaho and Oregon.

For those of you who don't know, Senator Chafee left college to enlist in the Marine Corps and fight during World War II. He was in Guadalcanal. He was called again in 1951.

He was elected Governor of Rhode Island by 391 votes. Then in 1969, President Nixon chose John Chafee to be his Secretary of the Navy.

In 1978 John Chafee was elected to the U.S. Senate, where I'm proud to serve with him.

With that, Senator John Chafee.

**OPENING STATEMENT OF HON. JOHN H. CHAFEE,
U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. Thank you very much, Mr. Chairman. My thanks, also, to everyone today who's taken the time to come out on this.

Governor, I want to thank you and all your citizens for the wonderful hospitality that has been extended to us here. You've got a lovely State, and I'm just thrilled to have this opportunity to be with you. I want to take a moment to express my respect and admiration for you, Senator Thomas, both as a member of the Environment and Public Works Committee, and of the Senate as a whole. He brings an important perspective to our work on fish and wildlife issues, and I look forward to working with him.

Senator Alan Simpson has been a close friend of mine since his first days in the Senate in 1979. Senator Simpson was formally a member, served as a member of the Environmental and Public Works Committee for some 16-plus years, and it's been my privilege to work closely with him on environmental and other issues over the years. I regret, as do others, that a previous commitment prevents him from being here today.

Representative Cubin, so nice to see you here. The concerns of the people of Wyoming have been and continue to be well represented when we're dealing with natural resource issues in Congress.

Today we're here to continue the process of reauthorizing the Endangered Species Act, so-called "ESA." The Nation is fortunate to have Senator Kempthorne at the helm of this subcommittee.

He provides a steady leadership as we start our course through the rocks and shoals of this complicated process. Senator Kempthorne, as I mentioned, has conducted a series of hearings in the West and in Washington, DC, all of which have provided an opportunity for thoughtful consideration of the ESA. I appreciate and applaud his attitude and his hard work on this changing law.

This hearing provides an important opportunity to learn from you, the people who are familiar with the effects of ESA right on

the ground. As we discuss how this law impacts Wyoming, I encourage each of our panelists to address this question, if you would:

How can we work together to resolve the conflicts? How can we acknowledge the conflicts that arise under the ESA, and at the same time, maintain the commitments to conserving America's rivers and diverse heritage of wildlife, fish, and plants?

What do we hope to accomplish? I think most would agree we should maintain the underlying goal of the 1973 Act: that is, "To provide a means to conserve endangered and threatened species and their ecosystems." The question is: How do we reach this goal in a less costly and less contentious manner?

In the hearings, a variety of specific concerns have come through. At the same time, sufficient themes are emerging to justify hope that an ESA reform bill can be enacted in this Congress. What are the common themes? To increase State and local authority. To provide greater flexibility in the management of threatened species. To use multi-species planning and conservation methods. Finally, to have incentives for conservation for private land owners. That seems to be one of the great challenges we have.

These themes have been endorsed variously across the spectrum. Our challenge, then, is to build a workable law upon a framework of shared objectives. That's the task before us.

In the Senate it's important to remember that any endangered species reauthorization bill is going to require bipartisan support. Indeed, there are obviously, there are Democratic members of this subcommittee. Unfortunately, they could not be here today. But we seek a bipartisan agreement, because in the Senate it takes enough votes to overcome a potential filibuster.

Now, so far no one has testified in favor of repeal of the whole Act. I think that's because as a society we agree that we would suffer from the loss of the whooping crane or the gray owl or grizzly, or countless other creatures great or small that provide a world rich in diversity. Thus, conservation is critical unto itself.

As stewards of the earth, it seems to me we must always ask ourselves this question: What kind of a country do we want to leave to our children and those who come after us?

The Endangered Species Act causes us today to give consideration to tomorrow, and I think that's worthwhile. So I look forward with great anticipation and interest to this hearing today. Thank you.

Senator KEMPTHORNE. Senator Chafee, again, thank you very much. Again, it's just worth noting that having the chairman of the full committee come to these subcommittee hearings is very helpful, because his insight's helps us in the whole process.

With that, I need not introduce to you your own Senator, but let me acknowledge what a tremendous asset Wyoming has in Craig Thomas in the U.S. Senate. I know he served for a number of years as your Congressman, and he has been extremely effective.

He is one of the leaders of the freshman group of recently elected Senators. With Alan Simpson you have a tremendous team working on behalf of Wyoming.

So, with that, I want to acknowledge your Senator, Craig Thomas.

**OPENING STATEMENT OF HON. CRAIG THOMAS,
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator THOMAS. Thank you. Thank you very much, Mr. Chairman.

It's always nice to have people come from out to the State and say some nice things about you. I appreciate that.

At any rate, let me thank you from all of us for coming to Wyoming. This is an important issue to us. We feel strongly about it. It gives us an opportunity to have direct Wyoming impact on what you're doing.

It's not easy. We were out in Shirley Basin with Senator Chafee. I think the area we could see there looking for black-footed ferrets, was probably larger than the State of Rhode Island. In any event, it's a little different area.

Senator CHAFEE. That's the story of my life.

Senator THOMAS. We're delighted to have you here to share these things with you. We're working for ways, I think, to examine both the weaknesses and the strengths of the Endangered Species Act. It's been in place now for some time.

We have had substantial successes. We've had some failures, and what we really need to do is look for ways to make this work so that it's effective for local land owners, for public land managers, for communities, and for State governments. True, the success lies with teamwork and bringing people together.

If we're really serious about reform, we have to start with the assumption that we all want to preserve endangered species. This idea that somehow we divide into two groups, one group opposed to the endangered species issue and the other group for it, is simply not so. It's simply not an effective nor efficient way to go about the debate. So I hope we start with the stipulation that our purpose here is to find a better way to do it.

There are some areas, of course, we need to look at. Listening is one of the areas that is difficult.

Everyone agrees that science ought to be the basis for decisions. In one of the hearings, we had people from the logging industry, and we also had environmentalists, and they have their own scientists. All scientists don't always agree, so we need to have some way to sort out the various ideas, perhaps by employing a process of peer review.

Listening is important. We're talking about prairie dogs—black-tailed prairie dogs. Part of our group, our Game and Fish officials say there's tons of them around, others say there are not. You'll hear about both sides. Today, I suspect, we'll hear about the grizzly bears in terms of how you reach your goals and how many you're able to deal with. There are specifics that need to be considered.

Mr. Chairman, we have an extensive witness list, and I'm anxious to get on with that. So I will conclude by saying how much I appreciate not only your being here, but the effort that Senator Kempthorne has put into this.

Someone suggested there ought to be some agency people here today. Well, let me tell you, we've had lots of agency people, including the Director of the Wildlife Service, at our hearings in Washington, and we had a very broad, extensive effort.

Senator Chafee, I know it's difficult for you to find time to do this. We don't always agree on every issue, and so I think that's healthy. I'm elated that you're here to share your views and your expertise. Mr. Chairman, thank you. I look forward to the witnesses.

Senator KEMPTHORNE. Thank you.

Senator THOMAS. Al Simpson asked me if I could have unanimous consent to put his statement into the Record.

Senator KEMPTHORNE. Without objection.

[The prepared statement of Senator Simpson follows:]

STATEMENT OF HON. ALAN SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

I surely desire to be able to submit testimony for the record during this endangered species field hearing. I no longer serve on the Environment and Public Works Committee but I remain keenly interested in all of the issues before the committee, especially the Endangered Species Act. My old friend Senator Craig Thomas has replaced me on that committee and he will carry on the work of ensuring that Wyoming interests are well represented. I am unable to be with you today because of a long held previous commitment. I am attending a conference on general trade and tariff issues and the North American Free Trade Agreement (NAFTA) sponsored by non-governmental organizations—the Carnegie Foundation and the Aspen Institute. Let me take this opportunity to share with you some of my thoughts on the dire need for Endangered Species Act reforms.

The Endangered Species Act has become highly controversial over the years. The public is growing so very tired of the land use restrictions the Act is causing on both private and public lands and Congress is increasingly aware of this fact. The Senate Regulatory Reform Task Force developed a priority list of the top ten laws that need to be reformed and the Endangered Species Act was rated No. 1.

In response to public demands for endangered species reform Senator Slade Gorton has introduced an Endangered Species Reform bill. This bill would do the following: reform the process by which species are listed; limit the Act's application to private property; allow the Secretary to decide the appropriate level of protection for an individual species; streamline the consultation process; and mandate that the Act cannot supersede other statutes or agreements.

Most western Senators and Congressmen are very serious about endangered species reform. We recognize that we can no longer afford to conduct "business as usual" when it comes to managing endangered species. The spotted owl controversy showed how the law can be twisted to extremes. Certain environmental groups often use endangered species as mere pawns in an effort to lock up public lands and halt development on private land. We need to stop playing games and decide which species truly need to be protected on a priority basis. We need to bring some common sense to the process or the public will no longer support thoughtful and necessary endangered species recovery efforts.

In Wyoming we have a great deal of experience with the Endangered Species Act, especially when it comes to grizzly bear management. I believe that we should now move forward with grizzly bear "de-listing" as rapidly as possible. If we are not ever able to de-list a species we might as well throw in the towel. We all know that grizzly numbers have increased dramatically. Some enviro groups will dispute that fact, but the professional wildlife managers have met with me and assured me that the grizzly bear population in Wyoming has reached the recovery goal. So I will continue to push for delisting of this threatened species within the next year. Unfortunately I expect that at least one radical environmental group will sue the Federal Government in order to stop delisting. So this is one area of the law that needs to be reexamined. We must ensure that the test for delisting is not so extreme that the mischief makers can hinder legitimate efforts to remove species from the list.

I have expressed serious reservations about wolf reintroduction over the years and I continue to have concerns about this program. While the wolf reintroduction effort is now going forward, I believe it is going to be a very expensive program with estimated costs of over \$6 million. I believe we are seeing a disturbing trend in terms of endangered species recovery efforts where environmental groups and some bureaucrats place a high priority on funding recovery programs for "charismatic megafauna" such as grizzly bears and wolves. These are very exciting animals and they stir the imagination of the public but they also drain money away from other important endangered species recovery efforts.

If you run—or raise money for an environmental group, you are not going to make the Wyoming false sagebrush your poster child. It is easier to raise money and emotions if you talk about restoring the majestic wolf to its rightful place in the Yellowstone ecosystem. There are a number of important endangered plants and animals that are not being adequately protected because of programs such as the wolf reintroduction effort that simply sucks up most of the bucks. The fact is that there are thousands of wolves in Alaska and Canada and hundreds of wolves in Minnesota. This isn't a situation where we are in danger of losing a whole species. We are spending millions of dollars to restore a sub-population to a specific area. During times like these when we are experiencing shortages in Federal funding for a number of programs, it makes little sense to be spending so much on a recovery effort such as the wolf reintroduction program.

One of the concerns I have articulated in the past with regard to wolf reintroduction is the need to ensure that we do not have unnecessary closures of public lands in the name of wolf protection. We have experience in Wyoming with the grizzly bear recovery effort and we have seen what can happen with public lands closures. In the not too distant past, we saw Yellowstone Park officials close over one-sixth of Yellowstone Park in the name of grizzly bear protection. This closure was an unnecessary action and it only served to alienate the public and erode support for that particular recovery effort. We have received assurances in the past that any public land closures related to wolf recovery efforts would be very small—perhaps no larger than one square mile. I am deeply disturbed, however, by the rhetoric I hear from some environmental groups that are calling for more massive public land closures in order to protect wolves. I can assure you that if we get into a situation where the Federal land managers attempt to restrict public access to large tracts of land in parks or national forests in the name of wolf protection there will be a severe and swift backlash.

We are learning that the Act may be too rigid in some areas. One example that comes to mind has to do with the inability of Federal wildlife managers to allow wolf hunting as a population management tool. In the case of *Sierra Club v. Clark*, the wolf managers in Minnesota were not allowed to use hunting as a management tool because the language of the law provides that hunting can only be used in limited instances and only as a last resort. We need to correct that. The professional wildlife managers have been talking for years about the possibility of conducting a limited hunt for problem grizzly bears, but that probably would have been challenged successfully in court. We should recognize what the professional wildlife managers already know, that in some cases hunting may be a very valid management tool, even for a threatened species.

I also have certain concerns with regard to private property rights protection. If wolves do leave Yellowstone Park and cause livestock losses, this will certainly raise private property rights issues. It may be that the Federal Government will have to develop a compensation fund in the future. This is because a private fund may not provide adequate compensation for the taking of private property caused by a Federal action such as wolf reintroduction. This is something we will need to review very carefully as we consider private property rights legislation in this session of Congress.

I remain very much alarmed about the serious effects wolf predation will have on our very valuable wildlife populations. I have long advocated the establishment of baseline population numbers for deer, elk, moose and big horn sheep in the Yellowstone area in order that we may rapidly detect the effects of wolf predation on big game herds. I am disturbed that hunting and recreational opportunities could be negatively affected by wolf predation. We know from experience in Alaska that wolf predation coupled with a hard winter had decimated moose populations in some areas. So I think we will need to be vigilant in monitoring the combined effects of climate and wolf predation on wildlife populations in the Yellowstone area in the future.

I am encouraged that wolves in Yellowstone will be classified as an "experimental population." This designation should allow much greater management flexibility than would be the case if they had been designated as "threatened" or "endangered." There has been a great deal of criticism of the Endangered Species Act and endangered species recovery efforts—and for very good reason. The use of the experimental population designation will be a test that will determine if the Endangered Species Act can actually work as the proponents say it can.

Congress will be monitoring this situation closely and we will be holding endangered species oversight hearings over the course of this year. If it appears that the experimental population designation does not allow the management flexibility we were promised, this will call into question the Administration of the whole Act and we could expect amendments to the Endangered Species Act to remedy any short-

comings we identify with regard to the experimental population designation. We do not need to repeal the Act but we do need to enact some significant reforms if we are to continue to foster a serious and credible endangered species protection effort.

In closing, I would like to thank my three good friends, Senators Craig Thomas, John Chafee and Dirk Kempthorne for initiating these endangered species field hearings, I commend them all. I think these are important issues that need to be discussed in a responsible manner. Hearings, such as this one, help the public, bureaucrats and other lawmakers to understand the complexity of endangered species and public lands issues that are so controversial in the Western States. I trust they will also generate some common sense legislative solutions which we may put to good use as we reauthorize the Endangered Species Act.

Senator KEMPTHORNE. With that, let me welcome you to the hearing, Governor Geringer. You have a tremendous State here, much that you can be proud of, and we recognize that your leadership has played a key role. So Governor, we look forward to your comments.

STATEMENT OF HON. JIM GERINGER, GOVERNOR, STATE OF WYOMING

Governor GERINGER. Thank you, Mr. Chairman, and welcome to Wyoming with the land of wide open spaces, blue skies, and common sense. We hope that you get a dose of every one of those.

Senator KEMPTHORNE. That's why we're here.

Governor GERINGER. That's good. Senator Chafee, I was blessed with traveling through your fine State. I was surprised to see an exit sign that says "Wyoming, next exit." There's apparently a small village in Rhode Island, about 300 people, I understand, named "Wyoming." But for the moment I needed to think.

So Craig, perhaps Shirley Basin is not as large as you think.

Mr. Chairman and Senators, welcome again to Casper, and thank you for the courtesy of an invitation to address this public hearing.

I'm speaking to you today as the Governor of Wyoming to specifically address the Wyoming perspective for changes in the Endangered Species Act. But I want to also address the perspective of the 18 Western Governors as well.

My remarks are taken from the policies of the Western Governors as developed through non-partisan and non-parochial meetings. In fact, most of these are embodied in the National Governor's Association.

John Talbott, who's our director of the Wyoming Game and Fish Department, whom you will hear from later, chaired the staff working group that assembled much of the position paper. I will address some specific Wyoming concerns as well.

In general, all the Governors have long advocated increased flexibility in the administration of Federal programs, and have called for greater control for the States. Congress has certainly heard the Governors' call and has moved to restore the States' rights.

The movement to reform the relationship between the States and the Federal Government has its roots in four significant factors. First of all, our citizens are convinced that the cost of government administration needs to be reduced.

Second, our citizens are convinced that government programs must be made more effective.

Third, our citizens are frustrated with the quality of service and inflexible bureaucracies.

Fourth, there's a sense by our citizens that they've lost control of their government, and that legal structures are unresponsive to community needs and individual rights.

Now, while those factors affect the full range of issues between the national administration and our States, they particularly apply to the present Endangered Species Act. The Western Governors endorse the basic principles behind the Endangered Species Act.

We do not advocate that the Act be abolished. On the contrary, the Governors recognize that species and habitat protection can be enhanced if there are appropriate changes to the Act, and I will cite three main areas of my concern to address those points.

The first will be an increase in the States' role. The second will be with streamlining or improving the Act. The third will deal with land owners and water users.

First of all, on increase the States' role, the basic principles that we advocate preserve the Act's goal of conserving species while enhancing implementation. We draw that on lessons learned since the drawing of the enactment back in 1937.

One of those lessons learned is that better cooperation between the States and the Federal Government is imperative. The States already have broad authority as Trustees both in their own Constitution and by general agreement that the States have a role over fish and wildlife, and certainly possess better information about the species and their habitats than a number of Federal agencies.

But specifically in increasing the States' roles I urge you to make States full partners under the Act. Recognize that the States do have primary authority over fish, wildlife, and plants that might be considered for listing.

Keep the States fully informed of any activities under the Act. We don't like to read in the newspapers any more than you do.

Enable the States, at their choice, to assume the lead over various portions of the Act. Allow the States to suspend the consequences of a listing decision by developing conservation agreements to prevent the decline of species.

Place greater reliance on State expertise during the listing process. The Governors actually are recommending that if a State recommends against proposing a species for listing, that the Federal Cabinet Secretary should be required to conduct substantive peer review, and has to rebut a presumption that comes out in favor of the State's position.

Now, funding and misapplication of available funds have undermined the Act's implementation. Increased funding or new revenues must match the design of the reauthorized Act and the increased role of the States, and the States must be allowed to set recovery priorities. It also needs to be funded properly. If the funding is not available, grant the flexibility through a setting of priorities and through increased roles of the States so that the funding can be properly applied and no monies applied through either implementation or wrong priorities.

Now, in improving the Act, the second main goal that we would have as Governors, the goal of recovery for a given species and the delisting of recovered species must receive greater attention. Don't just list. Actually have a plan for recovery.

Lessen the onerous and the ineffective practices of the Act that have generated opposition to endangered species protection. But specifically, the Petition process has been abused.

There needs to be a more rigorous burden on the petitioners to show that a listing is actually justified, and then raise the standard for the required information to list any species. I will emphasize again: Make recovery of the species a principal focus of the Act, instead of just the listing.

Make recovery plans and conservation agreements binding on their participants. Increase management and cooperation by enabling all participants to achieve partnerships directly in participation and developing recovery plans and conservation agreements.

Create a process that allows species to be delisted and down-listed as each goal of the recovery and the objectives of the recovery plan are completed.

The third deals with increasing assistance for land owners and water users. We need to bring fairness and certainty to land owners so they're not intimidated by having an endangered species on their land, and penalized through inadvertent actions even if they're official, and who actively conserve species and allow people to take pride in their stewardship.

Expedite habitat conservation plans with land owners and water users, and provide relief for the small resource owners, the people on 5 acres or less, for instance, who really, by the actions on their land, were not even going to impact the continued existence for a species.

Provide relief for the small resource owners, and give them assurance that if they enhance the habitat they're not going to be penalized for any action they take so long as the goal of recovery and the goal of enhancement is met. Those three areas of the certainty to resource owners will certainly go a long way to preserving and protecting what we originally intended with the Act.

Mr. Chairman, the Western Governors have placed their recommendations in the form of a draft bill. The policy is translated then immediately into draft legislation, and it saves you the peril of doing it incorrectly.

I'd be happy to furnish you with a copy of the draft, and I would ask you, restrain yourselves from cherry picking from the Governors' position. Don't just say, "We would like this part and not that part."

I urge you to adopt that legislation in its entirety, because many compromises were made. People gave and took; they understood the benefit of partnership. Even the Clinton administration has tried to appear conciliatory by adopting some of the major points of the Western Governors' plan, but it has only selected those things that they favor in terms of a national publicity.

Let me close with an illustration of how absurd the current Act and the inadequacy of priorities as has affected the Endangered Species Act in Wyoming. The State of Wyoming, through Wyoming Game and Fish Department and the cooperation of little private land owners, developed a model recovery plan for the black-footed ferret.

I'm certain, Senator Chafee, you were able to observe some of that habitat. The State was a full partner in developing the final

rule of the recovery. The State contributed a significant portion of the funding, and there are now 400 black-footed ferrets in the world.

Now, by contrast I'll talk about the wolf. My issue is not with the wolf. The reintroduction was an exercise in bureaucratic arrogance and a pathetic application of priorities.

The final Environmental Impact Statement for wolf reintroduction required the development of a final rule that would prescribe management of wolf recovery by the States, but in fact the Department of Interior totally excluded the States in the preparation of the final rule.

Immediately upon adoption of its own rule, U.S. Fish and Wildlife Service proceeded with the capture and release of wolves without any State management plan being approved. Secretary Bruce Babbitt personally carried one of the wolf cages into the release area in Yellowstone Park with the full attention of the media, but without even the common courtesy of notifying the Governors of the three affected States.

The whole concept of partnerships that's embodied in Section 10(I) of the Act was rejected through these pompous actions and disdain for the States' rights. But that's not the end of the story.

The gray wolf is hardly endangered by comparison to the black-footed ferret. There are 70,000 gray wolves on the North American continent alone, while there are only 400 black-footed ferrets in the entire world. The wolf has received the personal attention of the Secretary, along with a commitment of \$13 million for recovery funding.

Again, by comparison, the funds for the black-footed ferret were rescinded and the U.S. Fish and Wildlife Service even broached the possibility of having the Black-Footed Ferret Working Group draft a plan for euthanasia, that is, to kill the remaining ferrets because there were no funds available to proceed with reintroduction.

Mr. Chairman, it's time to react to the call of the people who want accountability from their government and leadership that's fair. The changes advocated by me and the rest of my western colleagues would restore the confidence of our citizens in their government and require fairness and competency in administration of the new Endangered Species Act.

Senators welcome again to Wyoming, and thank you for the courtesy and your kind attention.

Senator KEMPTHORNE. Governor, thank you very much.

Now let me introduce the Honorable Barbara Cubin, U.S. Representative from the great State of Wyoming.

**STATEMENT OF HON. BARBARA CUBIN,
U.S. REPRESENTATIVE FROM THE STATE OF WYOMING**

Ms. CUBIN. Thank you, Mr. Chairman. Welcome to you and Senator Chafee, and certainly our own Senator, Craig Thomas.

I do welcome the opportunity to testify here today in my hometown of Casper, and I'm also very delighted at the grass roots support that this hearing has. It shows people in Wyoming really do care about what happens.

We are good stewards of our land and our wildlife, and I think the attendance here today demonstrates that. This issue is cer-

tainly an issue that touches our lives daily, and it greatly impacts our personal freedoms.

But before I get into my regular testimony, I wanted to tell Senator Chafee that while I was in Groton, CT, for the christening of the USS Wyoming, I met a couple from Wyoming, RI, and the lady's name was Georgia. So we thought that was quite a coincidence.

Senator CHAFEE. Her mother's name was Virginia.

Ms. CUBIN. I didn't go that far.

Senator KEMPTHORNE. She was born in New Jersey.

Ms. CUBIN. Oh, I'm sorry I started this.

Senator THOMAS. I don't have one. Go ahead.

Ms. CUBIN. Just 1 short month ago I held a Private sea Property Rights Task Force hearing in Sheridan to discuss the impacts of Federal regulations and Federal actions on private property owners, and the need to provide compensation for property which is taken or diminished in value as a result of that action.

I think any Endangered Species Act that we pass must take that into consideration. We also had a hearing in the Resources Committee in the House where Secretary Babbitt came to testify.

As you know, the House of Representatives passed a "takings" bill through the full House and sent it on to the Senate. But during the hearings that we had with Secretary Babbitt he told us he opposed the "takings" bill, but that he would support, that he favored a "takings" provision in each individual Act, whether it's the Endangered Species Act, whether it's Clean Water, Clean Air, or whatever.

So I think that "takings" is something that we do need to factor into each and every Act if we think we can hold the Secretary to his word. At the task force hearings here in Wyoming, I was frankly amazed at the number and examples from the witnesses that provided information about the cold and cruel realities of dealing with government agencies that believe their sole purpose in life is to protect the right of species, endangered or not, while totally disregarding private property rights and the owners.

I want to make it clear that I want a strong Endangered Species Act. I want an Endangered Species Act that is enforced and that is enforced permanently. I want one that is based on a scientific model; one that describes what is an endangered species.

The Governor brought up wolf reintroduction. While there are 70,000 wolves on the North American continent, we spent \$13 million introducing them into the Wyoming, Montana, Idaho area.

Now, does that really constitute an endangered species, or is an endangered species one that is truly facing being extinct? I think this is a definition we have to come up with in any Act that we pass.

What, again, as the Governor stated, and I think this is pretty common throughout all testimony, what are the requirements for listing a species, what are the requirements for re-listing? We simply cannot have the slipshod process that we have had in the past.

Unfortunately, I don't think a few simple revisions of the Endangered Species Act will address all of our problems, whether they are related to property rights or to personal freedoms. I personally favor repealing, not abolishing, the existing Act, and I think it

should be replaced with an incentives-based Act with a low regulatory level.

I say this for one reason, and I think it's a very strong reason. We've all read the Endangered Species Act, and on its surface it doesn't appear to be such a bad document.

The problem has come with all of the Court Decisions that have expanded what the original intent of the law was. If we don't repeal the Act, then those Court Decisions will stay in place.

As I said, the Court Decisions many times are what have caused the problems. So I think that is something that we at least need to consider.

If we do not repeal the Act itself, then we need to go into those sections that have been the most troublesome and, and make sure that these Court Decisions are overridden, because the Judiciary should not be passing laws, as we all know.

Just as the Government cannot provide shelter for all the homeless, or guarantee welfare for all the poor, Americans cannot be obliged to create and protect habitat for every single species and subspecies. We need to define, will we be protecting species and subspecies? If subspecies, how far down the chain? But we as a government can provide incentives for citizens to voluntarily save our endangered species. One such approach has been crafted by Congressman John Shadegg of Arizona. I strongly support his efforts to move forward with this in the House Resources Committee.

Ever since I've been in the Congress I've been working on the Endangered Species Act. I've attended an ESA hearing in Vancouver. I've attended one in Arizona and almost every place I've been, the testimony has been the same.

There have been examples of grievous misconduct, what I would consider misconduct on the part of government agencies in just running over the pride of, the rights of individuals. One particular example of where the incentive-based Act would be helpful was brought to your hearing in Sheridan by a man named David Cameron.

He's a self-described environmentalist. He's a Montana rancher, and a former professor of biology and genetics, and he became interested in the Montana grayling.

This fish had for some reason disappeared from much of its former habitat, and Dr. Cameron decided to look for a suitable site for reintroduction. By the way, he also in his past work had worked to increase numbers of species that he thought as a scientist were diminishing.

So he looked for a suitable site, and lo and behold, he discovered one that would be suitable and appropriate on his own ranch. So he was about to proceed with reintroduction of the grayling when he learned that the U.S. Fish and Wildlife Service was seriously considering listing the Montana grayling as an endangered species.

He immediately stopped what he was doing after about 4 years of work because he knew if it was listed as an endangered species, then the rights to the use of his property would be curtailed. In fact, he might not even have been able to graze his own cattle on his ranch if he introduced it.

I think that's a real good example of where the Government could have worked with the land owner, who in this case is a pro-

fessional, and introduced a species that truly was diminished in numbers. So I think incentives and working with the land owners instead of acting in a punitive manner would certainly be helpful.

Clearly it is illogical and it is unfair to make a few individuals, that is the land owners, bear the burden of biological diversity. Now, I've heard it said that, you know, we can condemn land for the good of the public, whether it's for highways or whatever, but this is a whole different situation, because in this situation it is truly a very few people who bear the burden when the value of their property is taken or diminished. We can protect the species and we have to do it through partnerships. I will be working hard to promote that approach to endangered species recovery.

I'd like to provide a response to Senator Chafee's request to answer the question: "How do we work together to resolve these conflicts?"

First of all, we really have to simply start listening to one another. As Senator Thomas said, "We have to believe that each other's goal truly is to protect endangered species."

We have to open the dialog and work together. Otherwise this will never, this will never happen, and it will never be effective. Thank you for the opportunity to testify.

Senator KEMPTHORNE. Thank you very much.

Governor Geringer, let me mention that Governor Levitt came by my office a week to 10 days ago. You've worked closely with him on the Western Governors Task Force. He presented me with the draft of the legislation that you had referenced.

I appreciate that greatly and will look at it. It is the result of a bipartisan effort, but it does reflect what the States are saying.

We've heard in hearing after hearing, regardless of where people have been on the reform ESA, that the States must have a much stronger role. I thoroughly agree with that, and it would be a key part of the legislation we bring forward.

Let me ask you this question: in light of that, with the keener role for the States, do you feel that your State and the other States have the resources in place to accept greater responsibility?

Governor GERINGER. Mr. Chairman, we have the resources in place to accept the responsibility. The question is, where do the resources emanate from to actually fund the recovery?

I would say that there need to be a primary responsibility from the Federal Government to allocate funds for recovery, but recognize it should be done in a more effective way than it's done now, and that's how the States can play a primary role.

Recovery must be done through incentive-based policies. If an individual land owner or a community feels enthusiastic about restoration and recovery of the species, that leverages funds to the recovery process. So the partnership needs to extend to funding as well.

The States obviously do not have the capacity to take over everything from the Federal Government without the funding. Don't give us the mandate without the funding.

If there are to be restrictions on the funding, give us as much flexibility as possible. That will enhance the probability of good partnerships that can be built with others in the communities and, and the private land owners as well.

Senator KEMPTHORNE. All right, Governor, thank you very much. Representative Cubin, I certainly agree with much of what you have said. I look forward to working with my colleagues in the House as we move forward on this.

Ms. CUBIN. Thank you.

Senator KEMPTHORNE. Senator Chafee, do you have any questions?

Senator CHAFEE. Thank you, Mr. Chairman.

Governor, we had the privilege yesterday of seeing some of your folks from Wyoming Game and Fish, and they certainly were very talented and were able individuals, and I came away greatly impressed.

I think throughout this you'll see that the subcommittee, and indeed the members of the full committee, are dedicated in trying to turn more over to the States, but we get back to this funding problem that you mentioned.

Dollars are tight everywhere; in certain programs they're being reduced. Indeed, the funding for the Endangered Species Act was substantially reduced—well, by "substantial" I mean some \$12 million. I think it was from a \$68 million budget, and so that presents us with problems.

You want some money if you are going to do this. I can't blame you.

Governor GERINGER. Well, and Senator, I guess the issue you're addressing is if the States want greater responsibility, can they do it without funding, greater funding? They can't.

But if there is a limit on funding, give us the flexibility to the greatest amount to allow the priorities. The current situation, whether it's \$37 million or \$69 million, and almost 2,000 different species listed for recovery, there isn't enough money to address the current listings that are out there. So there has to be a process of refining the listings.

I think the money can be allocated to proper areas, with a system of priorities of determining which gets the funding. An endangered beetle obviously is going to get less funding than the wolf, simply on the romantic appeal for the wolf.

There needs to be a way to set aside some of that emotionalism, if you will, and allow for a recovery plan that deals with any of the species that are endangered, giving the highest priority for those that have the highest chance for recovery.

So the States are willing to take some hits on funding, but give us some flexibility with it and the authority to leverage that so we can get away from a lot of paperwork and put the money into the recovery.

Senator CHAFEE. Well, I think that's a good idea. I think if the Federal Government would just give the States some money, and not entangle it with so much paperwork, as you say, we'll probably get a lot more bang for the buck than under the existing system.

By the way, I certainly would like to see, if you have a copy of the Western Governor's proposal I'd be delighted to look at that.

Governor GERINGER. Senator, I will mail it directly to you.

Senator CHAFEE. All right, that will be great.

Governor GERINGER. I know you like to come to a State, be presented with all the information, and then wonder how you're going to check all that back for luggage.

Senator CHAFEE. All right. thank you very much.

Representative Cubin, we appreciate your views.

I was interested, Governor, when you said that the Western Governors want to keep the Act. Let's make this thing work better than it currently is.

Certainly that's my goal, and I believe the goal of everybody on this committee.

Governor GERINGER. Senator, we accepted your challenge earlier than you thought by saying, "Let's not just talk about it. Let's do something about it."

We assembled all the people who had an interest in the Act, this was not exclusive of any one group, and brought these people together to discuss the problems, potentials, and difficulties, and said, "What's the best way to reform the Act?"

So the approach taken by the Western Governors was to do more than just talk to get away from the divisive public rhetoric that seems to be surrounding the Act right now, and see what can be done substantively and most effectively. Anything we can do to help you with your process, we would love to help you with.

Senator CHAFEE. One of the things yesterday when we were watching the black-footed ferrets and meeting some of the land owners was this: they had great confidence in you, the State folks, and there was some trepidation with the Federal Government.

I use that word "trepidation" in a gentle way.

Obviously that's important. If we're going to get something done, if we can get it done through those who the land owners have confidence in, obviously we're going to make a lot more progress.

Governor GERINGER. Senator, in advocating for the States, we would put ourselves up for the same measure, and saying if the States can deliver, certainly there would be an opportunity later to revise the allocation of funds and responsibilities.

But as the Wyoming Game and Fish over a period of time demonstrate their capability, their willingness to work with other people, people who might originally be confrontational, come together, and find common ground. That type of demonstrated ability I think will go a long way in implementing whatever Act is finally come out of Congress.

Senator CHAFEE. I think our challenge in Washington is acting along those lines, but also making sure we provide some dollars. We've all got to work on that.

Governor GERINGER. We'll help you as best we can.

Senator CHAFEE. Thank you.

Senator KEMPTHORNE. Thank you.

Mr. CRAIG THOMAS.

Senator THOMAS. I'd just thank Governor Geringer for being here. We hope to work closely with you, Governor, and you, Barbara, and the folks in the House to get something passed.

Senator KEMPTHORNE. Barbara, if you would like to move up here to the front, let me call forward the second panel. The air conditioning is not working today, so anyone that needs to take the coat off, you are, more than welcome to be comfortable. The second

panelists should come forward—Mr. Dan Chu, Ms. Connie Wilbert, the Honorable Leah Talbott, Mr. Leo Bourret.

All right. Let me introduce, now, Mr. Dan Chu, who's the executive director of the Wyoming Wildlife Federation in Cheyenne, WY.

Mr. Chu, welcome. Let me utilize our light system.

STATEMENT OF DAN CHU, EXECUTIVE DIRECTOR, WYOMING WILDLIFE FEDERATION

Mr. CHU. Thank you, Senator Kempthorne. My name is Dan Chu. I am the executive director for the Wyoming Wildlife Federation.

I'd like to thank Senators Chafee, Kempthorne, and Thomas for this opportunity to comment on the effects of the Endangered Species Act here in Wyoming.

The Wyoming Wildlife Federation is the largest wildlife non-profit advocacy group in our State. We represent hunters, anglers, hikers, and all other recreationalists united by the deep commitment to protect and enhance wildlife habitat and protect our right to responsibly access and enjoy public lands.

We communicate with sportsmen, ranchers, local, State, and Federal entities to ensure our great State maintains healthy habitats for all to enjoy. Today I'd like to address how the Endangered Species Act has protected and enhanced our healthy habitats, and offer suggestions on how to strengthen efforts, recovery efforts through cooperative partnerships between Federal, State, and local people.

Abundant wildlife, clean air, and better habitats are our natural heritage. Healthy habitats provide shelter, forage, and water to game and non-game species.

In fact, when biologically based wildlife management is applied to healthy habitats, sustainable yields of economically important species result. For instance, our own Game and Fish Department sells hunting license numbers every season to provide the maximum take of game animals while ensuring a stable population capable of providing a good hunt the following year.

However, if a habitat is unhealthy and out of balance, certainly species will decline greatly in number. The Endangered Species Act recognizes this species an indicator that habitat health is degrading, and provides scientific standards for listing the species as threatened or endangered. Thus, the Endangered Species Act, with long-term benefits of wildlife and people.

Here in Wyoming, the Endangered Species Act has been a success. It has improved and protected crucial and unique habitats, directly benefiting hunters, anglers, and recreationalists.

For instance, establishing grizzly bear habitat recovery areas has improved habitat for many economically important species such as moose, elk, deer, and fish within those recovery zones. By focusing on habitat health, the Endangered Species Act is beneficial to both endangered and non-endangered wildlife.

The Endangered Species Act supports economic development in our State. Wildlife is big business.

The majority of last year's record \$1.7 billion came from wildlife enthusiasts who flocked to our State to hunt, see, and observe our wildlife. These revenues directly support local economies.

Hotels, motels, gas stations, and restaurants all over the State depend on tourism dollars. Charismatic threatened and endangered species, such as the black-footed ferret, grizzly bear, and gray wolf have attracted people from all over the world to Wyoming.

Public outreach programs by our Game and Fish Department and the Division of Tourism have led people across the Nation to associate Wyoming with the black-footed ferret. In fact, last year's official State of Wyoming Economic Almanac pictures the black-footed ferret on the cover.

Successful recovery of an endangered species often depends upon the voluntary cooperation of private land owners with State and Federal wildlife personnel. Most land owners in Wyoming enjoy seeing wildlife on the property, and obviously these land owners should be encouraged and rewarded for their efforts.

Incentives to promote habitat process such as conservation easements, also habitat interests would demonstrate to these land owners the economic value of protecting wildlife habitat on their land. This proactive approach to protect, enhance, and restore wildlife habitats can prevent species from reaching critical numbers where they may become listed. In the long run, measures focused on improving and protecting existing habitats are less costly than many measures such as reconstructing severely depleted habitats.

We believe that for the Endangered Species Act to be successful in fostering more cooperative efforts between Federal agencies and local communities, our U.S. Congress and the President must allocate more Federal funding for ESA recovery and implementation plans.

Ultimately, funding for implementation of the Endangered Species Act should remain primarily Federal. The benefits of recovering a species, especially on public lands, benefits many people who live outside the recovery area.

Therefore, it is reasonable to ask the American people as a whole to fund species and habitat efforts. The reauthorization of the Endangered Species Act is one of the most important legislative actions wildlife enthusiasts will witness this year.

The immediate and long-term benefits of maintaining healthy habitats and a diversity of plants and animals cannot be overstated. Without quality habitat on public and private lands, the State of Wyoming would suffer economically, and we the people would lose a quality of life unmatched in our Nation.

The Wyoming Wildlife Federation has a long and successful history of cooperating with a number of interested parties, and we urge all of these parties to work together to protect our natural heritage by your diversity. We all have a basic responsibility to ourselves and our children to conserve the habitats that are the basis of life on Earth. I'm grateful for the opportunity you have given me to comment on these matters, and I hope this testimony has been helpful.

Senator KEMPTHORNE. Yes, Mr. Chu, thank you very much. Your formal statement will be made a part of the record, so if you want to then, as Dan did, highlight the areas, what you want to stress.

To all of you that are here today, we will keep this public record open for a full week from now, so if you hear something that you would like to further expound on, or you'd like to give us your sug-

gestions, please send those to us, because all of it is going, is to go into the record as we work on this reauthorization.

With that, let me introduce Ms. Connie Wilbert who's the chairman of the Northern Plains Regional Conservation Committee of the Sierra Club from Laramie, WY.

STATEMENT OF CONNIE WILBERT, CHAIR, NORTHERN PLAINS REGIONAL CONSERVATION COMMITTEE, SIERRA CLUB, LARAMIE, WY

Ms. WILBERT. Hello. I'm Connie Wilbert. I'm here today representing the Wyoming Chapter of the Sierra Club. My background is in wildlife biology.

Most recently I worked for the Wyoming Game and Fish Department as a habitat biologist for several years until last summer when my son was born. I am a Wyoming native. I was born and raised in Riverton, WY.

I learned to love the open spaces and abundant wildlife of Wyoming as a child. That love, coupled with a deep respect for this remarkable land, has only grown stronger over time.

It's important to note that there are many people in Wyoming like me: People who have lived here for years and who love the natural wonders of this State. Many Wyoming residents recognize the value of Federal regulations that help us maintain the quality of life we so value.

According to your invitation to speak at this hearing, you'd like to hear our views of the effects of the Endangered Species Act on life in Wyoming. I strongly believe that the ESA has had a positive and valuable effect on life in Wyoming, and I'd like to review several occasions to illustrate this.

The Wyoming Toad Program is an excellent example of how the ESA can work on private land. The Wyoming Toad is an endangered species found in only two small locations in the Laramie Basin, both on private land.

To protect these toads under the ESA, in 1992 the Environmental Protection Agency proposed restrictions on a variety of chemicals, including Malathion, in potential toad habitat in the Laramie Basin. Ranchers routinely spray Malathion to control mosquitos. A task force consisting of ranchers, agency personnel, and scientists developed an ultimate plan to the outright—

Senator THOMAS. Connie, could you pull that a little closer? I can't hear you. Maybe the other one.

Ms. WILBERT. Is that better? OK. The EPA paid for the searches which were conducted everywhere before Malathion was regularly applied. When no toads were found, all potential chemical restrictions were lifted.

At no time was the routine suppression of mosquitos halted, even temporarily. Property owners did not experience any restrictions on the use of their land or their chemicals.

Equally importantly, this cooperative effort has furthered the protection of the Wyoming Toad. We now can devote our energies to protecting the two small areas where toads exist.

Because the plan was developed and implemented cooperatively, an atmosphere of mutual trust developed among most people who were involved in the project. In the future the recovery team will

be able to work with willing land owners to introduce new populations so the toad may be removed from the endangered list.

The Wyoming Toad Program clearly demonstrates that the ESA is viable if the local community and Federal agencies work together cooperatively. In fact, the process worked so well in southeastern Wyoming that the EPA plans to use the Wyoming Toad Project as a prototype for similar situations in other Western States.

This spring Wyomingites celebrated the return of the gray wolf to its native home in the Yellowstone ecosystem. The U.S. Fish and Wildlife Service, working with the affected States, decided to reintroduce wolves under the experimental, non-essential provisions of the ESA, to allow more management flexibility.

While we didn't agree with that decision, it does demonstrate the ESA is flexible enough to accommodate concerns with the effect the Act might have on development activities.

Economically, wolf reintroduction is already benefiting Wyoming. This summer the northeast entrance of Yellowstone National Park has experienced a 22-percent increase as visitors have streamed into the Lamar Valley hoping to see wolves. So reintroduction has been good for wolves and good for Wyoming's economy.

The fact that grizzly bears still exist in and around the Yellowstone area is mainly due to the ESA. The ESA has brought black-footed ferrets back from the brink of extinction. The ESA has led to increased populations of peregrine falcons and bald eagles in Wyoming. All of these species make Wyoming a richer and more satisfying place to live.

Quality of life is critical to Wyoming's future, and wildlife is a part of that quality of life. The Sierra Club recognizes that there are several areas where the ESA can be improved.

We advocate amendments that address incentives for private land owners, and increases the role of science in the ESA process. I have addressed each of these proposals more fully in my complete comments, and will be glad to answer questions about them.

We also strongly urge increased funding for implementation of the ESA. Recovery could be greatly accelerated with more appropriate funding levels.

In closing, I believe that the ESA has been of great value to the State of Wyoming, both economically and environmentally. I hope your committee deliberations will reflect that reality, and I thank you for coming to our proud State.

Senator KEMPTHORNE. Ms. Wilbert, thank you very much.

Ms. WILBERT. Excuse me, Senator. I'm sorry. I have a letter that I'd like to submit in the Record that I address in my written comments. Is this the appropriate time to do that?

Senator KEMPTHORNE. Yes, that would be fine. Thank you very much.

[A letter for the record submitted by Ms. Wilbert follows:]

WYOMING STATE LEGISLATURE,
Cheyenne, WY, January 6, 1994.

BRUCE BABBITT,
Secretary of the Interior, Department of the Interior, Washington, DC.

MOLLIE BEATTIE,
Director, U.S. Fish and Wildlife Service, Washington, DC.

DEAR SECRETARY BABBITT AND DIRECTOR BEATTIE: We are deeply disturbed about the Final Grizzly Bear Recovery Plan, which we believe lacks scientific credibility and will not lead to the recovery of the threatened grizzly bear. We are particularly disappointed that the final plan is largely unchanged from earlier drafts, despite detailed scientific critiques and specific concerns raised over the past 3 years.

Unfortunately, the plan establishes recovery criteria that could lead to delisting the grizzly bear with essentially the same distribution and abundance that qualified it for Threatened status in 1975. The basis for the decision to list the species, according to the U.S. Fish and Wildlife Service (USFWS) was: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, sporting, scientific, or educational purposes; (3) the inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting its continued existence.

Since that time, virtually every factor listed above has continued, or has been exacerbated by human development and activity. For example, the number of visitors to Yellowstone and Glacier National Parks has increased dramatically since 1975. The number of clearcuts, roads, and trails in grizzly bear habitat has increased exponentially since 1975. Despite these facts, in the recovery plan the Fish and Wildlife Service fails to address and propose remedies to the very failures which led to the listing of the species.

This plan is deficient because it is not based on scientifically credible data or analysis concerning four fundamental issues: (1) the population objectives for a recovered population; (2) the current number of grizzly bears in any given bear population; (3) the current population trends of grizzly bears in any given bear population; and (4) how much and what type of habitat is necessary to sustain a recovered population of grizzly bears.

Of vital importance is the requirement of specific road and access restrictions which are related to the quality of habitat for grizzlies—which have been omitted in the final plan. There is ample information currently available to develop and institute meaningful road standards.

We believe that because of these serious deficiencies discussed above, the U.S. Fish and Wildlife Service should withdraw this Plan. Furthermore, until these problems are corrected, we request that all efforts by Federal agencies to delist the Northern Continental Divide and Greater Yellowstone populations be halted immediately.

Because of time constraints, we have asked that Dr. Mark Shaffer sign this letter on our behalf. Some of us may be available to meet with you personally to discuss these issues and concerns in greater detail. We respectfully request a meeting to discuss this issue.

Dr. Peter Brussard, University of Nevada, Reno.

Dr. Tim Clark, Northern Rockies Conservation Cooperative, Jackson, WY.

Lance Craighead, Montana State University.

Dr. Dan Doak, University of California, Santa Cruz.

Dr. Andy Dobson, Princeton University.

Dr. Paul Ehrlich, Stanford University.

Evan Frost, Greater Ecosystem Alliance, Bellingham, WA.

Dr. Barrie Gilbert, Utah State University.

R. Edward Grumbine, Sierra Institute, University of California, Santa Cruz.

Dr. Brian Horejsi, The Wildlife Foundation, Calgary, Alberta, Canada.

Dr. Chuck Jonkel, Ursid Research Center, Missoula, MT.

David Mattson, University of Idaho, Moscow.

Dr. Lee Metzgar, University of Montana, Missoula.

Dr. Dennis Murphy, Stanford University.

Dr. Reed Noss, Society for Conservation Biology.

Dr. Craig Pease, University of Texas, Austin.

Matthew Reid, Great Bear Foundation, Bozeman, MT.

Dr. Dan Simberloff, Florida State University.

Dr. Michael Soule, University of California, Santa Cruz.

Signed, on behalf of the above,

DR. MARK SHAFFER,
The Wilderness Society, Washington, DC.

Senator KEMPTHORNE. Now the Honorable Leah Talbott, Albany County commissioner from Laramie, WY.

**STATEMENT OF LEAH TALBOTT, ALBANY COUNTY
COMMISSIONER, LARAMIE, WY**

Ms. TALBOTT. I'm glad I'm following Connie, because I have the other side. I am Leah Talbott, County commissioner in Albany. I live in Laramie, WY.

I appreciate the opportunity you have provided for me to tell you my views on the Endangered Species Act and the problem it poses for me and the people in Wyoming. Chairman Kempthorne's letter of August 7 inviting me to testify said the subcommittee wanted to hear about the Endangered Species Act's, "effectiveness in conserving species and habitats on which they depend."

The subcommittee realizes that the habitats on which these species depend is generally private land from which we try to make our living. We pay the taxes on those lands, we survive the long winters, dry summers, hopefully having enough forage for your livestock, and remain in the agricultural business.

The demands for conserving of that habitat for these species is at the expense of my species—my family, and my friends. The first year we sprayed for mosquitos, in 1976, our lambs gained eight pounds each, which would be an increase of a gross of about \$6 a lamb.

To me, the Endangered Species Act shows no reward for land owners. Without mosquito control, and the many mosquitos we have there, it looks like Old Faithful erupting over the tops of lakes in an evening when the mosquitos come out.

In our area of Albany County we have an endangered species known as the "Wyoming Toad." In 1993, U.S. Environmental Protection Agency advised the citizens there were 43 pesticides which no longer were permitted to use in 997,—and that's a correct figure. The figure you have there is different.—997 square miles of Albany County because of the Wyoming Toad.

With Rhode Island containing 1,212 square miles, you can see the impact that Wyoming, or Albany County had to face. The U.S. Fish and Wildlife Service, EPA, the State of Wyoming worked out an arrangement which allowed that the areas of private land could be searched for Wyoming Toads, with those areas where none were found being cleared for use of pesticides.

However, land owners had a fear, and still do, of what restrictions would be placed upon the use of their land had the toad been found. Albany County, the State of Wyoming, U.S Fish and Wildlife Service, and EPA all incurred costs in this program.

The Federal agencies say they're required by the Endangered Species Act to protect any endangered species. The law does not provide for the problem it caused to those of us who own a habitat on which the species may or may not be found.

The cost of the searches was \$100,000 in hard, identifiable cash, and much more was spent in indirect costs. Recently the Govern-

ment returned 1,000 Wyoming Toads which had been promulgated in the Cincinnati Zoo, and placed them in a lake in our county just 2 miles from our ranch.

My question is: How many Wyoming Toads does it take to remove the species from the endangered list? These toads are found in North and South Dakota, Minnesota, Canada, and Ohio, and were planted in six zoos throughout America.

How will the Government know when the toads are no longer in danger if they haven't told us what number they're trying to recover? We don't know that number.

The gray wolf is listed as endangered, but there are 50- to 60,000 in Canada, 5,000 to 6,000 in Alaska, and 1,700 in Minnesota. Why, then, is the Gray Wolf endangered?

What about the cost of jobs in the timber business in Oregon because of the spotted owl? This endangered owl is not only found in Oregon, but in many southwestern States. What makes them endangered?

Several land owners have refused to allow the Government to search on their property, and cannot use pesticide on their property as a result. Because there's a half-mile buffer zone, their neighbors cannot use pesticides on that portion of their property.

While the U.S. Constitution says that private property cannot be taken without just compensation, the Endangered Species Act is administered in direct defiance to the Constitution. What rights do private property owners have because the Wyoming Toad is listed "endangered?"

Because the EPA must provide the class of pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, which might harm a listed species, we have seen our county and the city of Laramie mosquito control programs hampered severely these past 2 years.

This poses a public health problem for our citizens and our livestock. One of my sons had encephalitis, and I can assure you his mother does not appreciate the Government's lack of concern for the problem.

No parent should have to go through what we did. We're grateful to God our son survived. But that \$100,000 spent on toad research could more beneficially have been spent on vector research—vector is a disease-carrying flying insect—on vector research and encephalitis control.

A county road project was held up 3 years because of a requirement for an underpass. It's not fixed yet. They want to put wings out under the culverts so that the toads can go from one field to another without being hurt.

The Endangered Species Act must be amended to provide for written agreements with land owners who are asked to provide the habitat for listed species. Those agreements should also indicate the amount of money that society is willing to pay to those that have the land.

Agreements are also needed too, with the county and city government for reimbursement for additional costs they incurred as the result of the requirements this Act imposed on taxpayers. Private property rights must be protected.

This Act cannot be held to be supreme over the Constitution. Evolution is one thing that has not been discussed and probably should.

Much more should be said, but I see my time is up. I thank you for inviting me. Thank you very much.

Senator KEMPTHORNE. All right. Ms. Talbott, thank you very much.

Now Mr. Larry Bourret. Mr. Larry Bourret is executive vice president of the Wyoming Farm Bureau Federation, Laramie, WY.

STATEMENT OF LARRY J. BOURRET, EXECUTIVE VICE PRESIDENT, WYOMING FARM BUREAU FEDERATION, LARAMIE, WY

Mr. BOURRET. Thank you, Mr. Chairman, members of the Committee. We appreciate the time to speak our concerns, and we especially appreciate you coming out here.

There's a great deal of evidence that the Endangered Species Act should be rewritten. The reform is vital to the interest of the species which deserve the protection, but the citizens who provide the habitat for those species also deserve protection.

There are three points which should be recognized. First, society has said it feels species should be protected; second, it's a well-known fact that biological species depend on habitat; and third, society needs to begin to compensate private land owners for providing habitat for the species society claims should be protected.

"The Endangered Species Act is not about species as much as it is about habitat," according to U.S. Fish and Wildlife Service Director Mollie Beattie in a June 25 speech.

The Act must be amended. These are my words now. The Act must be amended or recognized that most of that habitat is private property.

The Act should be used for protecting and not misusing. Those who say, "Don't amend the Act," are not affected private property owners or are not trying to develop property that is or may be habitat for listed species.

Species, subspecies, and distinct population listings have resulted in expenditure of funds on charismatic megafauna, while other truly endangered species might be disappearing. The Government lacks criteria for establishing priorities so that the scarce resources can be wisely expended. Priorities are not established based on science, protecting the most vulnerable species. There's an article in Casper's Star Tribune that quoted, two professors from Colorado State University. There was also the same version in the Environmental Impact Statement on the Wolf Introduction Program.

If you assimilate those figures that you find in those two documents, according to the Final Environmental Impact Statement, people would be willing to pay about \$7.70 to \$11 per person over and above the current entry fees going into Yellowstone National Park.

Additionally, they would, according to that publication, be willing to pay \$3.30 to \$4.94 just to know that wolves are being protected. The Colorado State University's professors would lead you to believe that the people would be willing to pay for only 16 species, not counting the other 939 species, \$507.59.

I guess I would challenge Congress to impose upon the taxpayers that kind of a bill and deduct it from their paycheck just to see if that's true or not. I don't think that it is true, and I don't think that the people would go into Yellowstone and be willing to pay these kinds of fees for these benefits that were included in the Final Environmental Impact Statement.

I think it's time to get down to facts instead of hocus-pocus. Expending money to recover species in a portion of its range when the species is abundant in another portion of its range is a waste of resources which could be better expended on species which are truly endangered or becoming extinct.

The definitions in Section 3(6) need to be amended, or remove the words, "or a significant portion." The results of such amendment would mean that such species should be endangered or threatened throughout the range before they could be included in the Act.

If the Act were properly written, the difference between "endangered" and "threatened" category would have meaning, and place those in danger of becoming endangered in the "threatened" category on an early warning basis.

One of the examples has already been given. The wolf is not in danger of becoming extinct, and we're spending money on it when the other species are not being protected.

Amendment of the definition of "species" is also needed. We would suggest it be amended to read as follows: "The term 'species' means a category of biological classification ranking immediately below the genus or subgenus, comprising related organisms potentially capable of interbreeding, and being designated by a binomial that consists of the name of its genus followed by a Latin or latinized uncapitalized noun or adjective agreeing grammatically with the genus name."

If the species is not in danger it should not be listed. If a species is listed it would protect the subspecies. Therefore, a subspecies should not be listed separately.

Under current law and interpretation hybrids are not supposed to be protected under the Act. Actual practice is completely different.

The definition of "take" includes the term "harm" which has been the subject of much controversy relative to habitat modification which might "harm" the species. The restrictions of modification of habitat clearly interferes with the use of private property.

If society wishes to restrict the use of private property for the benefit of endangered species and society, then society must develop a method of financially compensating property owners for their losses. Tax write-offs are of no benefit to someone who has no tax liability as a result of lower or non-existent income as a result of the Act.

Habitat modification restrictions also impact those who are dependent upon Federal lands or minerals in the Western United States. Taking 20 percent of the property under this Act is no different than taking 20 percent of the value for a road.

There are those who claim to speak for the public, and even the Government feels it is representing the public. Regardless of who

is actually spokesperson for the public, society cannot impose the burdens of the majority on the minority.

If habitat is needed, the Government, on behalf of society which is allegedly demanding protection of endangered and threatened species, must provide mitigation in the form of compensation for society's use of private property of individuals.

We would recommend: A, critical habitat should be designated at the time of listing of the species; B, the Act should require minimum scientific standards necessary to support listings and other decisions affecting listed species.

Is that light on?

Senator KEMPTHORNE. It is, sir.

Mr. BOURRET. My recommendations are at the end of my written statement.

Senator KEMPTHORNE. Thank you very much.

We ask that you no longer applaud for the folks that do speak, because it would allow us to move this on that much faster if you can hold onto your applause. You can commend your speakers afterwards, because they're all due.

Let me, with that, let me note that I must begin my questions now. I have asked the Keystone Center, which is a think tank, to put together a group, a very diverse group that could take this whole issue of incentives and to finally come forward with some list of incentives on what we did that would be managing incentives that we could offer to property owners.

Mike Albean joined me in making that request to the Keystone Center. They've now come forward with a report which was given to us at the last hearing we held in Washington, DC.

My question, then, to all of you, because many of you have referenced the Center, do you think these regulations to control actions on private property are necessary in addition to incentives, or could we go to an entirely regulation-free Endangered Species Act, as some people are suggesting?

So, Mr. Dan Chu, let me begin with you.

Mr. CHU. Thank you. I'd have to say that since we are a society as a whole, we do need some regulations to, to oversee what happens on private property. For instance, if I own some private property and somebody adjacent to me decided to dump toxic waste into a stream upstream from me, I'd hope the regulations would prevent that, because what that does is it eventually protects my private property rights. So I do believe regulation does protect private property rights.

Senator KEMPTHORNE. OK. Ms. Wilbert.

Ms. WILBERT. I also agree that we do need some basic foundation regulations from which to work. Different people have different levels of commitment, too, in this case the protection of endangered species.

We need some sort of basic underlying regulation, just like we need basic underlying regulations on which to build our communities. We all live with those all the time. It seems clear to me.

Senator KEMPTHORNE. All right. Thank you.

Commissioner.

Mr. TALBOTT. I would say only to a point. Only to a point, because if we knew there was something like that on our land, cer-

tainly we would tell these people that are in charge that it was there and they could come and do what was necessary.

We have so many regulations with this mosquito control thing now.

Senator KEMPTHORNE. All right, thank you.

Mr. Bourret.

Mr. BOURRET. I'll give you two examples. In the case of the black-footed ferret, which was put into the Medicine Bow area where Senator Chafee went, that was an experimental population thing. They worked with the land owners.

The regulations of the Fish and Wildlife Service indicate that in the case of the introduction of an experimental population they're to work with the land owners and, and come up with an agreement.

Ferrets are different than wolves, too. You have to recognize that. The ferrets pose no real problem other than the potential for regulation and additional restrictions on the use of these people's property.

In the case of the wolves, they didn't even contact people. They held public hearings and said that was adequate.

I think that if the Government really wants to work with the land owners they need to go out on an individual basis and reach written agreements with those people on just exactly what will be expected and what will not be done to them so that they give them a level of comfort for it.

If that happens, I don't think we're going to really see this work very well. In addition, I think that might preclude a lot of the lawsuits, because I don't think the courts would want to get involved in interpreting a contract as much as they would just a——

Senator KEMPTHORNE. I would follow then, that would give predictable stability to these land owners, but also would help them with regard to future loans from banks, because I know from testimony elsewhere, banks find it very difficult to loan when there's a question mark holding over the property.

Let me go back to Mr. Chu and Ms. Wilbert. As a final question, because both of you are advocates, is it fair, that with the added convenience of incentives to the Endangered Species Act we can revise and reduce the regulations that are currently in place?

Mr. CHU. I would agree that it's possible to revise those regulations in cooperation with local and State entities. For instance, the State Game and Fish Department is full of very good wildlife professionals that I think really understand on-the-ground applications for various endangered species recovery issues.

I think another point I want to hammer home is a lot of these times where the various habitat that needs to be protected crosses over public/private land boundaries, and what you have is often a mish-mash of public and private land. So I think it's still fortunate that you have an overall recovery plan for that area.

Senator KEMPTHORNE. OK, Ms. Wilbert, with the added convenience of incentives, do you believe that we can revise and reuse the regulations currently in place?

Ms. WILBERT. Yes, I agree that they can be revised.

Senator KEMPTHORNE. Thank you very much.

Commissioner, let me come back to you after the others have had an opportunity to ask the questions.

Senator CHAFEE. Go ahead.

Senator THOMAS. All right. Go ahead.

Mr. TALBOTT. When they came out with this referral, or saying you cannot use these 43 different pesticides until your land has been searched, and several land owners said, "We do not want our land owners searched because," and they knew they didn't have any, there was no water there or anything for a frog, and yet they were denied to use pesticide in any shape or form, and the neighbor for ½ mile around his land could not use it, I think these are wrong regulations.

Senator KEMPTHORNE. Commissioner, thank you.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

First of all, I want to say that I agree with Mr. Chu and Ms. Wilbert about that habitat's the key to this business. What we've got to do is do everything we can to encourage the preservation of habitat.

That's why I'm so interested in these incentives to get the private land owners to, to want to do it instead of, of looking at it as a fearful thing, as Ms. Talbott pointed out. I think that the people were, were frightened that the toads would be discovered on their land because of the consequences that came with it.

I'm a little confused about the cooperation and the results as, in connection with the toad. It was my understanding from a letter that I received, this was a letter from Representative Massie, who apparently was a member of the group that was put together in connection with the preservation of the toad. As I read this letter and as I listen to your testimony, Ms. Wilbert, this thing was a success.

Further, as I understand it from this letter, no spraying was prevented from occurring.

Ms. WILBERT. That's correct.

[Letter referred to follows:]

REPRESENTATIVE MIKE MASSIE,
House District 13—Albany County, Laramie, WY,
August 10, 1995.

Senator DIRK KEMPTHORNE,
Chairman, Drinking Water, Fisheries and Wildlife Subcommittee, Washington, DC.

DEAR SENATOR KEMPTHORNE: Last week, I learned that I was not selected to offer testimony on the Endangered Species Act (ESA) at the August 16th Environment and Public Works Committee's field hearing in Casper, WY. I request that the following written comments be included in the minutes of this hearing.

For more than 2 years, I have become quite familiar with the ESA in working on issues surrounding the preservation of the Wyoming Toad, an endangered species found in only two small locations in the Laramie Basin. To protect these toads under the ESA, the Environmental Protection Agency (EPA) issued a bulletin in late 1992 proposing to restrict the use of 43 pesticides in an approximately 1,000 square mile area of Albany County. This affected area included Laramie and the privately-owned ranch land to the west of the community. The agency believed that this area constituted the toad's habitat and thus could potentially contain more populations of the species.

Residents within this area did not use many of the chemicals on the restricted list, with the important exception of malathion which ranchers sprayed to control the Basin's rather prodigious mosquito population. The town of Laramie mostly employs other means, primarily biological agents, to control its mosquitoes.

The EPA requested comments on its proposed exclusion area and list of banned chemicals by May 15, 1993, but subsequently granted a 120 day extension, which permitted the Albany County Commissioners to form a task force to pursue two goals—to insure the protection of the Wyoming Toad and to allow the control of pests, including mosquitoes, in the Laramie Basin. The EPA later granted an additional extension until November 19 to allow the group to submit an alternative plan of action to the agency.

The task force represents many of the Albany County constituents affected by the EPA's proposed action. There are representatives from the ranching and conservation communities, the Wyoming Department of Agriculture and the Wyoming Game and Fish Commission, the University of Wyoming Department of Plant, Soil, and Insect Sciences and the Department of Zoology and Physiology, as well as an Albany County Commissioner, the mayor of Laramie, the director of the Laramie Environmental Health Department, the Albany County Cooperative Extension Service Agent, the supervisor of the Albany County Weed and Pest District, and representatives of EPA and the U.S. Fish and Wildlife Service (FWS). Lou Schilt, Albany County Commissioner at that time, was the group's chair. Presently, Stephanie Whitman, director of the Laramie Environmental Health Department, and I share that duty.

For the first 6 months of the group's existence, we worked to devise an alternative approach to the protection of the Wyoming Toad that would also minimize the impact of the EPA's proposed restrictions. Based upon the work of the scientists on the committee, the task force better defined the habitat of the Wyoming Toad and buffer zones associated with the use of the 43 chemicals. This expertise allowed us to reduce the affected area by more than $\frac{2}{3}$, from the 1,000 square miles cited by EPA to approximately 300 square miles, and also permitted the refinement of some buffer zones to better fit the method of application of the material. We also devised a GIS map with several overlays illustrating the habitat areas, mosquito spray zones that employed malathion, and lands that had already been searched for the toad.

During some of these initial meetings in 1993, the FWS informed us that a piece of land in toad habitat must be searched once during two summer seasons, twice altogether. Thus, early in our planning process, we understood that two searches would be required. A trained scientist must lead the search teams, and the method of the searches must adhere to FWS standards. If no toads were discovered during these searches, the FWS would declare the searched area free of toads ("cleared") and no restrictions would apply. If toads were discovered, a FWS spokesperson emphasized at a subsequent public meeting that the Federal agency would work closely with the land owner to address his concerns, including removal of the toad if the land owner did not want the toad on his property.

Since the EPA had promised not to implement the restrictions for the 1993 summer season, the task force immediately began to devise a plan to conduct the two required searches for the toad during the summers of 1994 and 1995. Thanks to grant funds from the EPA, we devised a plan to form two or three search teams, comprised of volunteers and paid workers, to conduct these searches. We also proposed a series of public meetings in which task force members would inform local residents of our plans and provide an opportunity for them to comment and ask questions.

We then submitted this work to the EPA, asking them to approve the reduced toad habitat area and the refined buffer zones. Since we had a pro-active plan to search for the toads and since a large majority of the ranchers were willing to approve the search of their property, we also requested that the EPA delay implementation of the restrictions until after the summer of 1994. If the agency consented, we knew that we could conduct the second searches during the late spring of 1995, before malathion spraying commenced. Thus, all areas that the FWS declared "cleared" after the second searches would experience no interruption of mosquito spraying or the use of the other chemicals on the restricted list.

We believed that this last request was critical in order to achieve the task force's goals, for any effort to recover the toad depended upon the cooperation of the private land owners, since very little of the Laramie Basin is Federal land. Failing to delay the implementation of pesticide restrictions would alienate many of the ranchers, encouraging them to refuse the searches and resist any efforts at subsequent re-introduction of new populations of the toad. Also, the task force's scientists concluded that one more year of malathion spraying, after one search had been conducted, would not endanger any toads that may not have been discovered yet.

Because of a threatened lawsuit from the Biodiversity Legal Foundation in Boulder, CO, which believed that the Federal Government should have already imposed the restrictions, the EPA was reluctant to grant this last request. After a meeting

with representatives of local, county and State governments and Mike Sullivan, then governor of Wyoming, the EPA decided to adopt all of the task force's plan, including the delay in implementing the restrictions. The Federal agency further agreed to provide grant funds to the task force to hire a consultant who would assist in organizing and conducting the searches. These funds, which totalled nearly \$100,000 over 2 years, included money to hire local college and high school students to help conduct the searches, which resulted in a welcomed paycheck and a good biology lesson.

Thanks to the reassurances provided by the Federal agencies at the public meetings and to the persuasion provided by the ranchers on the task force, a large majority of the people who owned land in the toad habitat area agreed to the searches. Some of them expressed their resentment that the searches had to be conducted, and a few even questioned why the toad should be preserved, but their cooperation was critical to the successful completion of the task force's plan.

We executed the plan with only one hitch. During June 1994, just before the spraying of malathion, the FWS decided that all of the potential toad habitat within the spray area must be searched once before any dispensing of the chemical. The agency was trying to avoid an imminent lawsuit that could have imposed the restrictions immediately rather than later in the summer after the spraying season. This created some confusion and stress, but all the areas were searched and the spraying occurred as scheduled.

As the task force's work progressed, many of the doubts created by EPA's initial proposed action were eliminated. When the EPA provided funds for the second season of searches, the only question that remained was whether or not we would find any toads outside of the two known populations during the second searches. Like the previous year, none were discovered, and the second search of properties within the toad habitat and spray areas was completed by the third week of June. The FWS recently sent land owners letters notifying them that their properties were "cleared" (several had already been issued in 1994). Most of the remaining parcels within toad habitat but outside the spray area were searched by the beginning of August. Thus, a vast majority of the affected land has been "cleared."

In summary, at no time was the routine suppression of mosquitoes halted, even temporarily, in the Laramie Basin as a result of the presence of the Wyoming Toad. Property owners did not experience any restrictions on the use of their land or the chemicals they use. In fact, the EPA never issued the order banning the use of the chemicals because of the progress being made by the task force in searching for any remaining populations of the toad. Their involvement on the task force not only kept the lines of communication open but created an atmosphere of mutual trust among most of the members.

Just as importantly, our efforts have furthered the protection of the Wyoming Toad. We now know where they exist and can devote our energies to protecting those two small areas. Also, the recovery team may be able to work with some willing land owners to introduce new populations in order to remove the toad from the endangered species list.

While the consultant must still submit his final report to the task force next month, it appears that the group has accomplished its two goals. The task force's 2 years of work demonstrate that the ESA provides the flexibility needed to protect threatened and endangered species while addressing the reasonable concerns of private property owners. This act is viable if the Federal agencies have the foresight to work with local groups affected by the ESA and if a local community is devoted to preserving the diversity of its wildlife and is willing to work with the Federal agencies.

In closing this rather lengthy letter, I wish to note that of all of the endangered species found in Wyoming, the toad is the only one that dwells almost exclusively on privately-owned land and within a few miles from one of the State's largest towns. The citizens in and around Laramie have dealt with the ESA as much as any community in Wyoming. We found a way of making it work.

I request that this letter be distributed to the other members of your committee. I have already sent copies to a few of them. If you or anyone else wish to discuss any of my points further, please do not hesitate to call me (w: 307-766-5096; h: 307-742-5383). Thanks for your time and consideration.

Sincerely,

MIKE MASSIE,
State Representative, District No. 13.

Senator CHAFEE. But Ms. Talbott has a different view, and she indicated that spraying was prevented. I don't want to get back

and forth on this, but it seemed to me that it was, in a model effort if the, if the objective of the exercise is greater cooperation between the Federal Government and the State, it seemed to me as I read this material—and I may be wrong—but as I read this material, that this toad project was the essence of that: It was total cooperation with the State of Wyoming Game and Fish, and so forth, and so on.

Did, is that your impression, Ms. Wilbert?

Ms. WILBERT. Yes. If I could just say a couple of things here, in relation to something that Mr. Bourret said, in this situation the Federal agencies involved, the U.S. Fish and Wildlife Service and the EPA, from the very first public meetings that were held in Laramie, made it clear what was expected of the land owners.

They made it clear that two consecutive searches would be required before land would be cleared. They made it clear that if toads were found, what the consequences would be to the private land owners.

They made it clear that there were alternative forms of mosquito control, that they would help the land owners apply those alternative biological controls that would not hurt the toads. The U.S. Fish and Wildlife is on record in a public meeting as saying that if after all these other efforts failed and a land owner had toads on their property and could not live with it, they would remove the toads.

This is all in the public record. This is in the record of the minutes of these meetings, as is the regulation, that mosquito spray was not halted. There was at no time any interruption in mosquito control of this whole project.

I guess my real suggestion, if you really want to look into this, is to write to Mr. Massie, who incidentally is the chair of that Task Force, or the coordinator at this point, and call him for a written record from those meetings.

Senator CHAFEE. Well, again, I don't want to get back and forth in connection with the toad. All I'm saying is that one of your objectives here is to have greater cooperation between the Federal Government and the State.

The Governor testified, give the States greater responsibility. I believe in that, and it seemed that this, this was the essence of that. Now, Ms. Talbott, do you disagree that this thing didn't work out that well? For instance, Mr. Massey says, "In summary, at no time was the routine spraying of mosquitos halted, even temporarily, in the Laramie Basin as a result of the experience of the Wyoming Toad."

Mr. TALBOTT. My answer to that was it was delayed. They'd said the spraying could not be done after June 16 because they would be too many after that. We no longer can use Vatex, which was used for larva.

We have to use Malathion, which is not quite as effective, which has to be use on fliers. So if you wait until you get a lot of fliers, then they have already laid the eggs in the water and you kill the fliers now and the larva hatches out and you have more fliers again, and, until such time as you have complete control of it.

So the dateline they say wasn't stopped. No, we had no later than June 16.

It was after June 19, which, in case you have to get your airplane down. So you have a week or 10 days in between the time that you have another group of fliers coming out.

That in itself would answer the question. It was not a complete mess, but it wasn't a complete success either.

Senator CHAFEE. OK, fine. Thank you very much, Senator Kempthorne.

Senator KEMPTHORNE. All right. Thank you very much.

Senator Thomas.

Senator THOMAS. Mr. Chu, I get the impression that you feel as if there doesn't need to be any change at all in the law. Is that a fair analysis?

Mr. CHU. Senator Thomas, in my statement I did mention that we think an incentive program should be expanded.

Senator THOMAS. Specifically what would you do.

Mr. CHU. We think that having more cooperative extension-type of either with the Federal and State agencies to educate land owners about the importance of habitat. You know, there may be habitats that they aren't even aware of that are important to a particular species. I think that's one way to.

Senator THOMAS. But what would you do as an incentive?

Mr. CHU. I think one possibility is probably giving them possibly tax credit. Another possible incentive would be to work with them in consensus groups, federation works on these coordinated resource management groups, and to provide actual funding for those groups to work together on various properties.

Senator THOMAS. You mentioned the black-footed ferret. The newspaper the other day in Cheyenne had a rather long story on it. It wasn't a particularly successful report. How, how long would you continue to spend money on the black-footed ferret?

Mr. CHU. Well, it's really not up to me to say. I'd defer to the State Game and Fish Department.

Senator THOMAS. Well, I understand. My point is, if it isn't a very successful program over time, if you have trouble with it, do you, or do you treat everything the same and spend as much as you can on every species, or do you set priorities?

Mr. CHU. You have to set priorities. I think those priorities should still be based on biological consideration that arise from the U.S. Fish and Wildlife Service recommendations, in cooperation with State Wildlife regulations.

Senator THOMAS. Ms. Wilbert, you indicated that you felt strongly that the science does not allow for the delisting of grizzly bears.

Ms. WILBERT. That's correct.

Senator THOMAS. I think I could provide some science that says it is time. What science do you use?

Ms. WILBERT. A person can always find an expert to stand up and say, "I'm an expert and I agree with this person here."

But from all the reading that I've done, the balance in my opinion is clearly on the side of those many scientists, many internationally known biologists who concur that the evidence does not exist at this point to support delisting of the grizzly bear, for a whole variety of reasons.

Senator THOMAS. Do you think there ever will be a delisting?

Ms. WILBERT. I think there can be if we get appropriate habitat protection in place and the bear is allowed to recover. We need to have better evidence that there are enough bears and there's enough habitat to support them over the long term.

Senator THOMAS. So it's difficult, though, to set a specific criteria for recovery; is that correct?

Ms. WILBERT. It's difficult for me, yes. I'm not a bear expert.

Senator THOMAS. Well, but Mr. Craig Hayed is, and he's also a professional bear handler. Do you think his view would be different than someone who is perhaps less involved?

Ms. WILBERT. Yes, I imagine it would be.

Senator THOMAS. Well, then what do you use?

Ms. WILBERT. I would try to use the most reliable group of experts whose opinion I could find.

Senator THOMAS. It's troublesome, you know.

Ms. WILBERT. It is troublesome, I agree, but we do have to try to work these things out. I am firmly on the side of trying to base these kinds of decisions on the best scientific evidence we can get.

Senator THOMAS. I agree with you, but it's very difficult. I suspect maybe we need some peer review or something, because you can go to these hearings, as we have, and on both sides of the arguments each of them has the evidence of their own scientists.

So we say we want to do it scientifically, but that doesn't resolve it, because there's two sets of science out there.

Mr. Bourret, some say that if you provided "takings" compensation, that would be the end of the endangered species program. How do you react to that; that it would simply become too expensive and eventually would not be able to function?

Mr. BOURRET. Mr. Chairman, Senator Thomas, the figures that I've used previously and are in my written statement about the value of these would indicate that people place a high value on them. We're spending far more than some people are saying we're spending, because agencies other than the Fish and Wildlife Service and the Marine Fisheries people are spending money on this. In fact, they're spending just a portion of it.

I think that the solution to the problem is to get out of this hocus-pocus that we're in by listing subspecies and subspecies and subspecies, and to take out the portion that says you're going to protect them in all or a portion of their significant portion of their range.

If we take that out we start saving money because we're not spending money on those that are not truly endangered or threatened. If we take the subspecies out and don't spend money on those, we can spend money on the species, which is where we ought to be zeroing in on in the first place.

I think if we're going to use this law to restrict people's ability to use their property, I think it ought to cost the taxpayers an awful lot of money, because we should not as society put the burden on a few people.

Senator THOMAS. Ms. Talbott, if the toads find residence within 2 miles of your operation, would that make an impact on how you function?

Mr. TALBOTT. The toad has been found within 2 miles of our place, and it does not make a difference, because they picked them

up out of there, transplanted them into another lake maybe 15 miles from there. There were between 150 and 200 of those toads found.

They said, "Oh, they're endangered." So they come in with long plastic gloves soaked in alcohol and picked them up and put them in yonder.

Two of them is all they found at that lake because they disturbed them. Why don't they leave them? Does that answer your question, or am I getting too emotional?

Senator THOMAS. No, I'm saying just for whatever reason you had your property there and the toads were close by, I'm trying to see if being close, if there's a border or perimeter around the toads that affects—

Mr. TALBOTT. They did have, or they do have a perimeter around that lake. They do not spray for half a mile.

We've protected them any way, shape, or form. They can't say that the spraying of the mosquito endangered or killed those toads.

They were not. We had protected them, and we still will. If they were on our place we would do the same thing.

We've been in this, mosquito control thing since 1978, and we've adhered to every rule and regulation they have ever thrown at us. We will respect their views. We will try not to endanger that toad.

But when they pick them up and take them to six different zoos so that some scientist come up with some kind of hormone that makes them breed faster and better and everything, that's how come they put a thousand of them in that lake within 2 miles. What's that going to do our spraying program? We'll still protect it.

Senator KEMPTHORNE. Senator Thomas, thank you very much.
Representative Cubin.

Ms. CUBIN. Thank you, Mr. Chairman.

This question I'd like to ask all the members of the panel. We know that species have become extinct ever since life began. I want to know if you think if critical habitat is being destroyed by the actions of man, then we will have a responsibility to preserve the species.

If the critical habitat is being lost due to forces of nature, do you think we would still have the same obligation?

Mr. CHU. I think that that brings it down to essential question of how do you determine between the two? I believe that we do have a responsibility at this point not, in time to preserve and protect as many endangered species as we can.

I think the reason for that goes beyond the cause for them being endangered, but the possible benefits that may arise from those species, be they medical benefits or benefits down the road that we don't even know about at this point in time. So I believe that it's sort of analogous to an ounce of prevention equals a pound of cure.

Ms. CUBIN. So you think, then, that maybe Mother Nature, if the destruction of the habitat is due to forces of nature, then you think that Mother Nature doesn't do that for a reason? In my opinion, natural things happen for a reason; and I can't imagine preserving every species that was ever on the face of the earth. I just can't. But I'd like to hear the other panel members.

Ms. WILBERT. OK, I'd like to ask you if you can give me a specific example of what you're talking about? I'm not quite sure I understand what you're talking about.

Ms. CUBIN. For example, if there's an earthquake and it changed the flow of a river or a stream and endangered a fish or a toad. These things do happen. I'd consider that a natural force that might cause extinction or cause damage to the critical habitat, as opposed to mining, ranching, or whatever.

Ms. WILBERT. OK, my own personal opinion is that I don't think we should interfere with significant catastrophic—we can't anyway. I mean, if the course of a river changed the habitat in that river, if you're talking about an aquatic species would be so radically different and we do not have the knowledge to resurrect what would have been changed there. That's the basis of evolution, these kind of natural forces on species.

I think that it's a little bit trickier when you get into a situation where there may be something that appears to be a natural force, like for example, significant erosion in a particular area, but the cause of that, the underlying cause may be related to human activities, maybe even some distance away.

So I think, you know, there's black cases and white cases. There's an area in between where it's a little hard to put your finger on exactly what's going on.

Ms. CUBIN. That answers the question very well. So, so in general you'd say that man's actions ought to be taken into consideration, rather than protecting every single species, which would be different from what Mr. Chu represented.

How about you, Ms. Talbott?

Mr. TALBOTT. My last paragraph in my written statement was, quote, "Evolution is one thing that has not been discussed. Much more could be said concerning this."

We no longer have the dinosaur nor the flying lizards nor prehistoric man nor Neanderthal man. I think with time and evolution things will change. I'm sure that we can try and save the toad or the black-footed ferret, but eventually in centuries to come things are going to be changing anyway.

Ms. CUBIN. Larry.

Mr. BOURRET. Mr. Chairman and Congresswoman Cubin, over time man has done some things to do away with some organisms, polio and small pox, so we do what we think is good for man. If you take our problems, we have wants and we have needs, but we also have to consider the means to pay for those.

If we have too many wants and needs, there will never be enough money to do all of this. I'm going to give you a couple of examples. They're in my written statement.

One is on the Florida panther. Years ago they brought up panthers from South America and those hybridized with Florida panthers. Florida panther is decreasing in numbers, so now the Fish and Wildlife Service is bringing in Texas cougars to mate with those to allegedly maintain the gene pool for Florida panther.

Now, to me we're looking at kind of a hopeless deep pit there that we can put a lot of money into, and I don't know if we can accomplish anything.

The other is the red wolf. It's hybrid with coyotes. I don't know what it is we're protecting, but we're spending a lot of money doing some things that are highly questionable.

I think that we, there is not enough money to do some things that some people would want us to do, and that's the key to what your people are going to have to decide. The whole thing's going to depend on the budget, and there's where you need to look, because there is not enough money to satisfy everybody's wants and needs.

You won't probably even get the, you know, to the needs, but you also have the, on the table, the stacks and stacks and stacks of wants, and you can't do it.

Ms. CUBIN. If we're trying to preserve nature, whether it's critical habitat or a species, and then using synthetic hormones to do that, somehow it takes away from the natural process to me. But I don't know.

Mr. BOURRET. Mr. Chairman, we need a set of priorities, and they're sorely lacking in this case.

Ms. CUBIN. OK.

Senator KEMPTHORNE. Thank you very much. You were very helpful in your perspective, and we very much appreciate it.

Let me ask, now, the third panel. That would be John Talbott, the Honorable George Enneking, Mr. Michael Purcell, and Mr. Richard Tass.

All right. Ladies and gentlemen, let me, let me just quickly read the names that are on the board here. These are the individuals that will be invited to give their testimony at the conclusion of this.

Mr. Harold Fray, Kirk Koepsel, Tom Throop, Marion Klaus, Michael Tokonczyk, and I apologize if I do not pronounce this correctly, Howard Ewart, Nicky Groenewold, Mary Lou Morrison, Dru Bower, and Herman Strand.

So again, following the last panel, why, we would invite you to come forward and in 2 minutes give us your best shot with regard to the Endangered Species Act.

With that, let me introduce now Mr. John Talbott, who's the director of the Wyoming Game and Fish Department from Cheyenne, WY.

STATEMENT OF JOHN TALBOTT, DIRECTOR, WYOMING GAME AND FISH DEPARTMENT, CHEYENNE, WY

Mr. Talbott.

Mr. TALBOTT. Thank you, Mr. Chairman. Also my thanks to Senator Thomas, Senator Chafee, and Representative Cubin for being here today.

As a State wildlife agency we're intimately familiar with both the positives, and negatives of the Endangered Species Act. My agency's been involved with some of the more contentious endangered species issues. A few of which you've heard today, including the ferrets, toads, wolves, and grizzly bears.

As the number of candidates and listed species grows, I predict that the conflicts and disputes surrounding the management and recovery of these imperiled species will eventually, will grow proportionately. Perhaps many of these arguments are unavoidable, and perhaps not.

I was fortunate to be selected by Governor Geringer to participate with a working group for the Western Governor's Association to develop amendments to the Endangered Species Act.

Our purpose was: First, to preserve the intents of the Act while increasing the roles and responsibilities of the States for threatened and endangered species recovery; second, streamlining administration and implementation of the Act; and third, providing incentives to land owners for participation in species recovery and habitat protection.

I believe we have accomplished our task, and I'm hopeful that Congress will view our efforts favorably when you begin deliberations on reauthorization later this session. As a wildlife agency administrator, there's a wide array of issues I could bring to this subcommittee regarding the role of the States and recovery of threatened and endangered species.

However, I will limit my comments to three areas of concern: funding of ESA activities; State responsibilities under the Act; and State involvement in the administration of the Act.

Funding: Like most government bureaucrats I guess I'm here with my hand out asking for money, but bear with me, if you will. The cost of recovering a threatened or endangered species to an agency such as mine is significant.

These costs include not only cash outlay for equipment, services, facilities, and personnel, but also diminished emphasis and expenditures on other high priority programs as our priorities are diverted to endangered species. Because funding to the States for participation in endangered species recovery is woefully inadequate, much of the cost of recovery is being borne directly by the State and its citizens.

I'd like to provide you with two examples. The Wyoming Game and Fish Department will expend approximately \$350,000 for grizzly bear management activities this fiscal year.

Of that amount, the U.S. Fish and Wildlife Service will reimburse the State for less than \$30,000 under our Section 6 Agreement, or less than 10 percent of the cost of the program. The Act provides that 75 percent of the cost of these programs should be reimbursed under Section 6 Agreements with the State.

The black-footed ferret, as our Governor's already mentioned, is the most endangered mammal in North America. With the exception of a few individuals which have been reintroduced in the wild, most of these animals are housed in captivity.

This captive breeding population provides offspring for reintroduction sites throughout the West. Earlier this year we were informed by the Service that funding for the entire program was being curtailed, and that reintroduction efforts would not be funded through this fall.

The States, once again involved with the recovery of the ferrets, have since developed a cooperative agreement to continue reintroduction efforts without the benefit of Federal funds for this program.

Wyoming Game and Fish Department continues an active effort for recovery of the peregrine falcon. In fact, the peregrine is being proposed for delisting, and yet we received no funding for this program from the Federal Government.

Simply put, without and increased level of funding for threatened and endangered species recovery, the States cannot afford to participate. As the number of listed species grows, so does the drain on our budgets to protect these species and their habitats.

Other equally important programs will be impacted, and our ability to address the needs of species not currently on the list but suffering significant declines will be severely compromised. The entire Nation and its future generations benefit from these programs and should be financed from an appropriate source.

Finally, I would encourage the subcommittee to establish funding priorities such that species on the brink of extinction, like the ferret and the Wyoming Toad, receive priority over those species whose populations are locally down but whose continental populations continue to thrive. While the wolf recovery is an admirable goal, it should not be done at the expense of other species more deserving of our attention and money.

Involvements: Current administration of the Endangered Species Act does not allow for an appropriate level of involvement of the States in ESA activities. Revisions to the Act are needed to ensure a greater level of active involvement by the States.

States with species protection programs approved by the Secretary should be given the option to assume primacy for implementation of certain aspects of the Act depending upon each State's capability and resources, as long as the goals of the Act are being met. I recognize I'm running out of time so I'll close here quickly.

I'd like to close my testimony with an observation. The ESA was intended as a tool to recover threatened or endangered species, not as a means to simply compile a list of species in need of protection.

Unfortunately, we have created quite a list while in the past 20 years we have actually recovered very few species. Some will argue this is because the Act does not go far enough in terms of imposing the necessary restrictions to protect species and their habitats.

I would argue the opposite is true. The lack of an implied partnership through funding, involvement, and shared responsibility means a lack of commitment by all the many interests needed to guarantee a species' survival. This lack of commitment assures that our lists will grow longer, and successes fewer as time passes. Commitment will only come if all affected interests who share the burden of threatened and endangered species recovery can share in the formulation of solutions and strategies for that recovery. Unilateral approach to this problem will not succeed, especially if it only provides disincentives for participation.

A true partnership which includes incentives, however, is in the best interest of the participants and the 900-plus species currently demanding our attention.

Thank you very much, Mr. Chairman.

Senator KEMPTHORNE. Mr. Talbott, thank you very much.

Now the Honorable Frank Philp, the Wyoming State Representative from District 4, Shoshoni, WY.

**STATEMENT OF FRANK PHILP, WYOMING STATE
REPRESENTATIVE, SHOSHONI, WY**

Mr. PHILP. Thank you. My name is Frank Philp and I represent House District 34. It's a rural district in the Wind River Basin about 100 miles west of here.

House District 34 and the State Legislature, representing them, I serve on the Agriculture, Public Land, and Water Resources Committee and also the Education Committee. I also serve as chairman of the American Sheep Industry Association Endangered Species Committee. My family owns and operates a sheep and cattle ranch there in Wind River Basin. Thank you for this opportunity. I'm happy that you've come to Wyoming, and certainly welcome you to our State. I'm happy to have this opportunity to share my views on the effects and the requirements of the ESA on the State of Wyoming and how I feel that the Act could be reformed.

The effects of this Act are far-reaching with impacts on the State and local economies, private property, and water rights. I have concerns about the effectiveness of the Act in conserving species, their habitats, as was the intent of the Act, and about the Federal, State, and local roles and responsibilities.

The impacts of the Endangered Species Act are far-reaching. In fact, they reach far beyond the intent of the original Act.

Regulations in conjunction with the Act have gone far beyond what is reasonable. Livestock producers aren't able to protect their animals, which are their private property, from attacks by endangered species. In fact, one rancher in Montana was fined for shooting a grizzly bear that was actually attacking him.

So it goes far beyond the intent of the Act. Associated with that, I think that it can be no more successfully put than when Secretary Babbitt said at a conference that, "I'm certain Members of Congress who passed the Endangered Species Act do not fully understand the American West."

Well, reauthorization offers an opportunity to reestablish Congress' understanding of the Act and to express its understanding to Secretary Babbitt and other Federal administrators. There is an opportunity to establish common sense in the implementation of the Act, and I urge you to reassess that intent, the impact, and even the need for the Endangered Species Act.

Congress is exhibiting great foresight by scrutinizing the Endangered Species Act during reauthorization. With all the identified negative impact and doubtful benefits of the Endangered Species Act, please use this opportunity to implement needed change.

I urge you to evaluate the very need for the Act. I realize that repealing the Act is probably not a politically acceptable alternative, and so I do offer some recommendations for changes to the Act.

I hope that it would include our respect for private property and personal rights, recognize the value of human life and personal safety in a way that courts cannot misinterpret congressional intent.

I have constituents that are afraid to hunt, camp, and fish in national forests in areas where grizzly bears are appearing. There have been no tragedies so far, but it could happen, and I think it's something Congress needs to recognize.

I hope that we can restore States' rights to manage their resources in the State, especially the protection of States' water rights and the rights of a State to manage its wildlife. Incentives and compensation, I think, are a very important part of any plan.

Involvement of State and local government, the private sector, and citizens in developing standards, criteria and implementation to adequately balance biological, economic, and cultural concerns. I hope they use a common-sense approach.

Review of the legislation should be mandated in the legislation to provide either a reauthorization process, as we're having now, or a sunset provision. The original intent of the Endangered Species Act may have been admirable, but the implementation of the Act has run amuck.

The ESA has gone far beyond the original intent. The management is burdensome and punitive. There's disregard of individual and States' rights.

The Act is misused by the Federal Government to seize control of resources rather than protect endangered species. In spite of the high cost to the States and individuals, the Act has been ineffective. Many of the species claimed to have been saved by the Act actually may have been saved by other means. We can certainly do better to balance economic and cultural concerns.

Surely the people of the United States of America can come up with a plan that works to conserve species and yet preserves the rights and freedoms that we all enjoy. Thank you.

Senator KEMPTHORNE. All right. Representative Philp, thank you very much.

Now we have the Honorable George Enneking, County Commissioner from Region 8.

STATEMENT OF GEORGE ENNEKING, IDAHO COUNTY COMMISSIONER, GRANGEVILLE, ID

Mr. ENNEKING. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, my name is George Enneking and I currently chair the Idaho Association of Public Land, Public Land Committee, and the Idaho Board member of the Western Interstate Region of Counties. I'm a member of the National Association of Counties Public Land Steering Committee and Natural Resource Payment Subcommittee.

I'm here today representing the Idaho Association of Counties' perspective on needed changes to the Endangered Species Act. The Public Lands Committee of the Idaho Association of Counties strongly supports amendments to the ESA which would, would, would require furnished detailed social and economic impacts to counties and communities; the Forest Service and BLM could be responsible to the natural resource communities; fiscal accountability and responsibility; protection of private property rights; and State and local government involvement in listing decisions.

In the early part of this year, the Pacific Rivers Council filed suit because individual forests had failed to consult with the National Marine Fisheries Service about how these forest plans might affect the salmon. An injunction was issued and that closed six national forests to all activities.

Fortunately for the citizens of Idaho communities, the injunction was stayed and the economic impacts were never realized. If the Pacific Rivers lawsuit injunction had gone forward to protect salmon habitat, it would have caused enormous financial hardship for individuals whose livelihoods are connected to Federal lands.

Unfortunately, the social costs to local communities were realized. No individual wants to live in an unpredictable environment where it is impossible to plan for the future, yet this is precisely the environment that many local communities are faced with under the Endangered Species Act decisions such as the Pacific Rivers lawsuit.

Idahoans do not know if they should invest in their businesses, whether they should buy homes, whether they should sell homes and move, whether they will have a job, all based on factors totally out of their control. This causes deep-seated anger at agencies who are perceived as causing this unpredictable environment.

Not only is the ESA undermining the stability of communities, but its effectiveness in preserving habitats and species is questionable. Todd Maddock from the Northwestern Power Planning Council estimates that the National Salmon Recovery Plan will cost up to \$1 billion a year after the turn of the century.

Dr. Daryll Olsen, who conducted a study for Benton County, WA commissioners, projected that \$500 million to \$1 billion could be saved on recovery for the salmon, and in most cases the results would be negligible for the salmon. It is obvious that the taxpayers are spending considerable sums of money to save the salmon, and yet the runs continue to decline.

This does not appear to be a legitimate expenditure of public funds when the cost far outweighs any benefits. If science is the answer regarding the salmon, then we should see increasing salmon runs because, but this is not the case.

Many people question the basis on which a species is listed. In the era of hiring scientists to support your interest, it is difficult to sort out who to believe. In addition, it is difficult to gain cooperation from the public when the basis of decisionmaking is questionable.

There's another element that affects the science. Science is convoluted with the political process when value choices have to be made, and this affects how science is used.

Having said that, if the decision to go forward with the action, the ESA needs to provide parameters for making sound decisions so that a listing is not used in a way to address other land management grievances. Efforts must be taken to prevent listings, because under the current system the rules change with each listing.

It is frustrating for someone to learn to live with one species and then have the rules changed with the listing of another species. It seems that it would be more effective to make every effort to conserve habitat to protect the species, rather than trying to protect the species after the fact.

Another curious aspect of the ESA is reintroducing wolves at the cost of \$7 million, when it was established that animals are moving into Idaho, Montana, and Wyoming on their own. Many people wonder how an animal can be listed as endangered when large populations can be found elsewhere. The revisions to the ESA

should exclude reintroduction of a species. Fish and Wildlife needs to realize that we live in a dynamic area that may not adjust to reintroduction.

Perhaps the largest problem that needs to be addressed is how ESA needs to protect private property rights. The ESA, as in other instances where individuals are compensated for loss of their property, so should private property owners be compensated under the ESA.

Additionally, it is a more productive solution to seek voluntary agreements from land owners, and to provide incentives to land owners to protect species than to be involved in contentious litigation.

I'm running out of time.

Senator KEMPTHORNE. Too, again I remind everybody, we have your formal comments, so in the question-and-answer period we're probably going to zero in and ask about them.

Mr. ENNEKING. I'll just conclude, Mr. Chairman.

Because of the patchwork of ownership that exists in the West, it is unrealistic to expect any solutions to occur unless all individuals become stakeholders in the protection of the species. We oppose the listing of individual species and the repercussions that are piled on top of one another as they are listed by Federal agencies.

We advocate a better approach to land managers managing our resources in a balanced and sustainable way that once existed in the West. I also feel that the Act should also provide a clear intent from Congress, not left up to agencies as to where we're headed with an Act, rather than let agencies write rules and regulations, and then we wonder what the intent of Congress was. With that, Mr. Chairman, thank you very much.

Senator KEMPTHORNE. All right, commissioner, thank you very much.

Now Mr. Michael Purcell, who's the director of the Wyoming Water Development Office in Cheyenne, WY.

STATEMENT OF MICHAEL K. PURCELL, DIRECTOR, WYOMING WATER DEVELOPMENT OFFICE, CHEYENNE, WY

Mr. PURCELL. Thank you, Mr. Chairman, and welcome to Wyoming.

Senator KEMPTHORNE. Thank you.

Mr. PURCELL. I serve as the Governor's representative on several interstate water panels as they relate to endangered species, and in particular, Section 7 consultations throughout the West.

The Department of the Interior has proposed watershed management plans as a means to protect and recover endangered species. The State of Wyoming is presently involved in two multi-State basin-wide water management plans. The species and habitat of concern in these programs are in Colorado and Nebraska. However, Wyoming, being a headwater state, participates in the program due to our well-founded concern that the conclusions may impact our ability to use our water resources. The primary purpose of Wyoming's involvement in these programs is to achieve certainty for our water users.

The Department of Interior uses the Act to leverage water for species recovery and habitat improvement. The strength of the Act

and the lack of any reasonable quantification of the water needs of the species and habitat have placed huge clouds of uncertainty over the respective river basins.

Our participation in these programs can best be characterized as frustrating. The administration of the programs are supposed to be partnership based on the consensus of the participating States and the U.S. Game and Fish and Wildlife Service.

However, it is clear that the States are not true partners. When the States require more authority under the programs, the Service simply states that the Endangered Species Act does not allow the delegation of its authority under the Act.

Therefore, the States are participating in inequitable partnerships whereby they are expected to provide money and water where the Service establishes the rules. In my written testimony I've discussed Wyoming's involvement in the proposed Central Platte River Basin Endangered Species Recovery Implementation Program.

Federal policy relative to the endangered whooping crane, least terns, and piping plovers, and critical habitat in Central Platte River Basin and Nebraska have impacted water management objectives, caused interstate conflict, and cost millions of dollars over the last 20 years. It is interesting to note that during all this conflict it appears that the birds have been doing quite nicely without additional water.

The numbers of terns and plovers are increasing. However, it should be pointed out that neither the tern or plover are native even to the Central Platte River.

The existence of the whooping crane is much more dependent on their habitat in Texas and Canada than in Central Platte in Nebraska. A few whooping cranes use the area to refuel during their spring migration from Texas to Canada.

There have been only 23 confirmed roost sightings of whooping cranes on the river from 1942 to 1993, some 51 years. The question becomes, why are the States being coerced into providing money and water to obtain Federal actions that are essential to their economies if the species are recovering in their existing habitat and whooping cranes are not using the river? Part of the answer relates to the fact that many of the economic impacts and resulting benefits of the various proposed recovery plans have never been quantified. Unfortunately, the rest of the answer lies in the fact that the ESA provides too much unbridled authority to the Department of the Interior.

I would offer the example of the land owner in the Central Laramie Basin, a tributary of the North Platte area hundreds of miles from the designated critical habitat in central Nebraska. This land owner wished to construct a pond.

He was denied, at least initially, the necessary Section 7 consultation non-jeopardy biological opinion unless he replaced his depletion, an estimated 2-acre foot of water, from the results of that fish pond. Two-acre foot of water would fill this room about half full. In making that determination, the Service had to conclude that a 2-acre-foot depletion in south-central Wyoming would have jeopardized the continued existence of the species and adversely af-

fects the critical habitat hundreds of miles away. This is quite frankly impossible.

This example is a demonstration of the Service using the Act to establish precedence, rather than dealing logically with common sense in an individual situation.

Attached to my written testimony is that of Mr. Fassett, who represents the State on our interstate panel on the Upper Colorado. The underlying and not so subtle theme of my testimony, as well as Mr. Fassett's, is that if the Federal Government truly wishes the States to participate in interstate watershed management plans, the ESA must be modified to allow equitable and effective State and Federal partnerships.

Without some authorities and the recovery processes, the States are simply holding their wallets and turning their water resources over to the Service, an agency that has thus far shown quite an appetite for both money and water.

I want to thank you for allowing me, and I want to thank Senator Thomas for arranging my participation. Thank you.

Senator KEMPTHORNE. Now, Mr. Richard Tass, a commissioner from Johnson County.

Mr. Tass.

STATEMENT OF RICHARD TASS, COMMISSIONER, JOHNSON COUNTY, BUFFALO, WY

Mr. TASS. Good morning. Thank you. As I drove into town this morning I enjoyed listening to the Governor give the weather forecast. Probably only in Wyoming that can happen, and makes absolutely the quality of life here.

So, so Mr. Chairman, members of the committee, and staff, my name is Richard Tass and I'm a County Commissioner from Johnson County, WY. I have been asked to appear for Sweetwater Commissioner Linda Taliaferro, who was called away on a family emergency. I am here today to address my concerns and those of many of my fellow commissioners across the State regarding the reauthorization of the Endangered Species Act and, and its reauthorization for the State of Wyoming. To date Wyoming has been somewhat spared the more noticeable intrusions. I believe this has as much to do with our vast land mass and limited population as it does with the so-called benign nature of the Act.

But make no mistake, the impact of the Environmental Species Act will be felt eventually in every county across the West. Wyoming will not escape the reach of the ESA.

Let me give you some real-world examples from other Western States. Kern County, CA, has over 27 species that are listed by the State or Federal Government, along with another 41 as candidate species.

Due to the large number of species and the need to address multiple listings, over 1.2 million in private and public funds have been used developing the Metropolitan Bakersfield and Kern County Valley Habitat Conservation Plans. The projected net loss to the agriculture interests due to the ESA implementation in this area alone will exceed \$73 million annually.

One would be hard pressed to find a county that could absorb such an economic dislocation. I cannot imagine any of our 23 coun-

ties in Wyoming being able to take such a blow. I can assure you, Johnson County could not.

There are more examples where a replacement bridge crossing the Snake River has been delayed because of the snail habitat, signalling an assignment of a lesser value to people and their livelihoods than is right. Look at what the debates and impacts on the northern spotted owl did to families in the Pacific Northwest.

Will the same type of results be in store for the people who live in Johnson County and the rest of Wyoming? With the Supreme Court's Decision in *Sweet Home vs. Babbitt* case, private lands are now being included in the ESA.

No longer will private interests be able to ignore the impact of the Endangered Species Act, because now they and we will be affected. Mr. Chairman, my concerns on the impact of the ESA on Wyoming and the rest of the West are magnified by the fact that we have much land in many, many areas with very few people with limited assets with which to take up the struggle to preserve their way of life and their livelihood.

Rural America must be given a greater voice in the Endangered Species Act. Other than the outright abolishment of the Act, I suggest we need greater involvement by local Governments in the planning and management decisions affecting the listing process under the ESA.

Every step must be taken to recognize that many rural counties have limited resources which they must use to put people and, and socioeconomic, cultural, and historical aspects of their lives into the decisions associated with the implementation of the Endangered Species Act. Habitat conservation plans should conserve the human habitat as well as those of other species.

Moreover, plans for the ESA must clearly state reasonable goals so that relisting of the species can be done simpler and quickly when those goals are met. All stakeholders must be at the table when critical decisions about people, property, and business are concerned.

The current Act excludes too many, empowers too few, and allows bureaucrats from Washington to decide the futures of thousands of people, scores of communities, and a way of life they have come to enjoy and rely upon.

Mr. Chairman, if we cannot mitigate the losses of the implementation of the Act through good stewardship, better planning, and better management, and if the Government insists on meeting strict goals of the Endangered Species Act, then it seems only fair to compensate those whose real, who's lost real value when the Act is imposed upon them.

We must be prepared to make private and public land owners whole if we are ever going to expect to develop support for goals of the Endangered Species Act. Mr. Chairman, on behalf of the residents of Wyoming, please, many of the residence of Wyoming, please make your effort on reauthorization of the Endangered Species Act one that recognizes the history and the future of the people of Wyoming. Please make sure the investments they've made in Wyoming are not forgotten.

Thank you very much for your time and the opportunity to be here.

Senator KEMPTHORNE. Thank you, commissioner.

With that, Senator Chafee, would you like to begin the questions?

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Talbott, throughout all of this we've had the thrust, that there should be more cooperation with the States and have the local people involved.

"All stakeholders must be at the table when critical decisions about property," said Mr. Tass, and I think we all agree with that here.

However, obviously we've got to have some money in the Federal Government end of it. How, when you're a partner with the Federal Government, do you? I can understand the expenditures in connection with the black-footed ferret where you're running a propagation center down there in—what is it called? Sybille—

Mr. TALBOTT. Yes, Sybille Canyon.

Senator CHAFEE. Yes. Just outside of Cheyenne, is it?

Mr. TALBOTT. Yes.

Senator CHAFEE. What, could you give me an example? You've mentioned the grizzly bear, that your State, has to spend \$350,000 now. How does that come about. Just briefly, what do you expend it on?

Mr. TALBOTT. OK, in the recovery plan those populations have to be monitored for distribution, viability, mortality, and a number of other things. We're, we're still conducting some research on food requirements and survivorship on females and cubs a year.

Primarily most of those dollars go into actual overflights, tracking telemetered animals, trying to view new animals for our population numbers determination.

A great deal of money is spent on conflict resolution. We have a person hired whose sole responsibility is to deal with conflict resolution. That satisfies such things as depredations on livestock, depredations on lodges, any number of things where, where grizzly bears typically get in trouble.

Additionally there's, there's a great deal of time and money spent on just handling nuisance bears. Most of the bears that we relocate require us to go in, trap that bear, and move the bear with a helicopter.

We bear that expense. Pardon the pun. But the, it's fairly expensive: about \$495 an hour to pick up a bear in a trap and haul it into the wilderness someplace and, and release it.

So, and, and because the ecosystem is so small and the number of release sites so limited, and contrary to maybe what you've heard about, earlier about a lack of bears, there are so many bears in the system right now that there is literally no place left to put them.

Senator CHAFEE. Yes. All right. Many of the witnesses have recommended that the Endangered Species Act be amended to provide encouragement for conservation programs preventing the species from becoming candidates and from thus becoming threatened or endangered.

Does anybody have any—and obviously I presume you all endorse more Federal funds if we're going to do this; is that right?

Mr. Enneking, you said at the bottom of Page 2 of your testimony, "This Act should be made more effective, make every effort to conserve habitat." You were mentioning the conservation of the habitat there.

I take it that you're conscious of the limitations of the Federal funds and would like to see more Federal funds, is that right, in this Act?

Mr. ENNEKING. Well, Senator Chafee, yes, that is true. I think the answer to your question, though, is if, if we do this as a collaborative effort between Federal, State, and local, and we at the local are in tune of what we're trying to do, that is, if we buy onto a program of some, saving some species, then I don't think we're going to see a problem of money. I think money then would flow from local people, from, from local government, a collaboration of effort.

If we're always doing things from top down and, and Big Brother is coming to us and saying, "Hey, this is a problem here. This is what we're going to fix," and then you ask us for some money, then we, we're talking about a Federal mandate.

Mr. Chairman, you are very well aware of how we feel about Federal mandates. I think that the solution here, is a collaborative effort where we get the people in tune and working together to arrive at a decision. When we do that, then people are more in tune to how we're going to do that.

Senator CHAFEE. Well, I agree with that. My time's up. I certainly agree with that, although everything isn't going to work out all right all the time.

There are going to be crunches, as we mentioned before, harkening back to the toad situation, where it seemed to me the alternate was done in involving everybody. You all folks were involved, Mr. Talbott, the local people on the scene, the land owners, and, and yet when all was said and done Ms. Talbott came there and said she didn't think it worked out that well, or she had problems with it.

So these things, no matter how much effort you put into them in trying to get involved, it doesn't necessarily mean things are going to be perfect. At some point you've got to move ahead, I guess is the point.

Mr. ENNEKING. Mr. Chairman, if I may address that for just a second, Mr. Chairman.

Senator KEMPTHORNE. I was going to use that as the key to move ahead.

Mr. ENNEKING. I'm sorry.

Senator KEMPTHORNE. If I may, I just want Senator Thomas to have his say around.

Senator THOMAS. I shall be very short. Thank you very much, all of you. Just one, and I know it's awfully hard, and particularly Mr. Talbott and Mike, we talk an awful lot about this arrangement between Federal Government and State Government.

I guess it additionally works, but it seems like what we do is we tend to want to shift the responsibility to the State but maintain the decisionmaking and, and perhaps some of the money. How do we design a partnership arrangement? Do you have a general notion about that?

Mr. TALBOTT. Mr. Chairman, Senator Thomas, I believe I do. The ferret program and its revolution, when we initiated the captive breeding program and we actually had ferrets available to release, and we were writing the proposed rule for a non-essential experimental ranch production in Shirley Basins that effort went forward with the land owners. They were sitting there and helping draft that rule: our people were there, the Federal people, the livestock interests, the oil and gas interests, the power transmission interests.

Everyone was involved in that process, and the end result was we ended up with a reintroduction program that had minimal impacts on everyone.

Contrary to that would be the wolf reintroduction during which, for whatever reason, the States were not allowed to participate in that development of that rule. So the controversy continues over how successful that program will be, how the States will react, how the Wyoming Game and Fish will react, and what we're supposed to do with a State management program, which we're still unclear.

I think when everyone is given the ability to sit down, and essentially that authority is granted the State, with some oversight by the Federal Government, much like the Western Governors recommend in terms of a periodic audit, simply transfer primacy to the States, let them involve everyone. If things are not going well, the Secretary certainly retains the final say.

Senator THOMAS. So primacy, the technique we've used in other things, you think might be used there?

Mr. TALBOTT. Absolutely.

Senator THOMAS. But interestingly enough is that both of these examples you've used took place under the same statute, so you say, "Well, how are we going to change that?"

Mike.

Mr. PURCHELL. No. 4, Senator.

Please understand, my comments are going to be related to what essentially is a real hardball negotiation going on right now. The States of Colorado, Nebraska, and Wyoming have needs from the Federal Government. We need our water contracts renewed.

We need our special-use permits renewed. We're in the process of seeking a way to get long-term commitments from the Federal Government that we will get those renewals.

What is being asked back of us in return is allocating water and money for the recovery of these birds in Nebraska. These have been very tough discussions.

Primary to those discussions is the issue of governments; is if you set up a program, how would you in fact govern it?

Habitat conservation plans don't go far enough when you're dealing with three States and the Federal Government. The concept that had been tossed around, was it related again to maybe a Joint Powers Board on a Federal level where the Federal representatives and State representatives give the people the votes in the allocation of these resources and the determination of sufficient progress toward meeting goals.

That's what the three States are seeking, and have been told, quite frankly, by the Fish and Wildlife Service, to get that type of

authority to the States there would have to be amendments to the Act.

Senator THOMAS. Thank you.

Senator KEMPTHORNE. Mr. Purcell, testimony that you provide today reminds me of what I've heard from Cheryl Chapman of Idaho, and of ours. With Wyoming and Idaho both being headwater states that have concerns for downstream uses that affect them directly, it's not surprising.

I hear complaints that the Federal Government has not been quantifying its water requirement. Is it enough that we reform the Act to provide water accountability and recovery plans, or is there something more that's needed?

Mr. PURCHELL. I don't, I don't consider, there hasn't been enough quantification and on, and I guess I'd have to say we all understand political science, but I think quite frankly now we're in the arena of political hydrology and biology.

Oftentimes it corresponds to meet the notions of, with needed peer review; some Federal hydrology and biology information; independent peer review; and then the decisions based on, on that independent analysis.

But without having some quantification of what you're going to try in terms of water or land, that uncertainty, quite frankly, is used as a power technique within the negotiations.

Senator KEMPTHORNE. All right. Commissioner Enneking, you're suggesting the Forest Service and the Bureau should have a larger role in endangered species management. Currently they have to assure the Fish and Wildlife Service that their actions did not cause jeopardy to a listed species.

How would you give Forest Service, BLM, a greater role?

Mr. ENNEKING. Mr. Chairman, I don't think that we should have four or five agencies, for example, or two agencies doing what they can do, for instance, that one can come in and overrule the Forest Service. I believe that authority should be given completely to the Forest Service or the BLM, whatever agency is involved, and, and do away with the third or fourth or fifth agency, whatever comes into play.

Somehow what we're doing is just overlapping one agency over another and stall the whole process, as I see it.

Senator KEMPTHORNE. All right. Mr. Talbott, do you agree with that?

Mr. TALBOTT. Mr. Chairman, our experience has been, and I certainly agree with Mr. Enneking, but if, if States and, and Federal agencies who participate, let's assume that they do participate in recovery planning process, I think most of the issues, at least Federal activity with potential impacts to endangered species, can be addressed in the recovery plan and then simply pro forma an activity related to those activities itself.

If anything outside of that, there's no need to review these projects individually when we all know what they're going to be beforehand.

Senator KEMPTHORNE. Do you mean that the Forest Service, with all the biologists that they need to have, then a consultation with Fish and Wildlife Service; Fish and Wildlife Service then can deter-

mine whether jeopardy has been established, or can we rely on the Forest Service to make those type of decisions?

Mr. TALBOTT. Mr. Chairman, that's a tough question. That, I would say there would have to be some standards in the guidelines, at least, implemented which, on those projects which can be reviewed.

Obviously there, are influences on anyone in terms of making some of these determinations. Certainly we've dealt with some of these in the past.

But, by and large, I would say the qualifications of the Forest Service biologists on the ground are certainly sufficient to make a lot of those determinations without service review.

Senator KEMPTHORNE. Does anyone else on the panel wish to comment on that aspect?

Yes, Representative Philp?

Mr. PHILP. One of the problems that I hear is the length of time that this consultation process takes, and particularly in the oil and gas industry, which is tremendously important to our State and to our tax base, is that it takes so much time, and that oftentimes they're required to come up with studies and those sorts of things on their own. Somehow that process needs to be streamlined.

Senator KEMPTHORNE. All right, Mr. Purcell.

Mr. PURCELL. Yes. Your checks and balances are good, but I think you need to reevaluate. Because to a certain extent, when you have three or four or more Federal agencies involved, if in fact they're all saying the same thing, it gets to be counter-productive, and you've lost your very basis for having so many agencies involved.

I oftentimes think perhaps the Clean Water Act, Endangered Species Act, it might be better off if there was one agency and we go to battle with that one agency. In fact, if we don't like what that agency's doing, come to our delegation and explain what is going on. But—

Senator KEMPTHORNE. I will mention that at different occasions I have sat down with a variety of Federal agencies all at the same table and on specific occasion, asking them, "Which of you is the lead agency?" getting a different response from each of the Federal agencies, not only demonstrating that there is a problem, but demonstrating they're just as frustrated as we are.

Now, Mr. Enneking, you wanted to make one final response. Thirty seconds.

Mr. ENNEKING. Now, Mr. Chairman, I've lost the thought.

Senator CHAFEE. Could I just ask one quick question, Mr. Chairman?

Senator KEMPTHORNE. Sure.

Senator CHAFEE. Mr. Talbott, you pointed out as a perfect arrangement the black-footed ferret program, is that right, where everybody's working together? The power company, the Fish and Wildlife, and so forth, were all involved. So that was a success story in the organization of it, I take it from what you said.

Mr. TALBOTT. Yes, Senator.

Senator CHAFEE. I must say, seeing it from the ground it was very impressive. Now, what about the toad program? It seemed again you had everybody involved.

Did you think the ingredients and the contacts and the consultation that you did there was the right way to do it?

Mr. TALBOTT. Senator Chafee, in that situation, we were simply dealing with a species that was already present. Without the ability to go there, a rulemaking process to adapt a program to fit the need of the local people there, I think demonstrates how things can go wrong.

I think there were certainly some successes associated with the toad, but we still have a long ways to go.

On the other hand, we got to make the rules before we put the ferret there. There's a pretty significant difference in those two situations. The ferret received threatened status under non-essential environmental, versus the toad in fully endangered status, in terms of what flexibility you have in terms of dealing with habitat and application of pesticides.

Senator CHAFEE. Should you think even without some of these regulations and given greater flexibility, that you could have done it in a better fashion?

Mr. TALBOTT. Mr. Chairman, I believe so. You know, there are a lot of wonderful examples out there, particularly in California, about an increased emphasis and, in, and I guess relaxed attitude toward habitat conservation plans.

The Wyoming Toad lends itself very well to a habitat conservation plan, if approved. However, they're a very cumbersome item to get past when you must involve the Weed and Pest offices, the commissioners, the livestock producers, the conservation community, and everyone else to develop a plan. There are some things we need to do out there to protect the interests of the private land owner. At the same time we need to protect the interests of the toad, and the two can be compatible.

What's happening with amphibians and their decline worldwide? Is there anything that we can do to save the toad? That's something that we haven't been able to answer.

Senator KEMPTHORNE. Mr. Tass, We've talked about incentives, and one of those incentives that may be helpful is a property tax credit. What effect would a property tax credit have in Wyoming?

Mr. TASS. Well, I can't give you specifics, but our county right now, is struggling very hard to try to make the budget balance. I would imagine anything that would be done to lessen the income to the counties would stress us even more.

Our tax base has been based basically on minerals. With the declining value of oil, our taxable resources are diminishing quite a bit. If you would do more of that, it would put more stress on us.

Senator KEMPTHORNE. Would you just as soon the Federal Government not provide a property tax credit?

Mr. TASS. Well, it wouldn't help us. I can assure you of that.

Senator KEMPTHORNE. Would your experience be, for example, in the inheritance tax? Would that have less impact on the county?

The WITNESS. It would have less impact, to the county, but I don't know as it would be that much help to me on the ranch I'm on.

Senator KEMPTHORNE. All right. OK, excellent. Again, excellent panel. Thank you.

Now I'd like to invite forward Mr. Steve Thomas, Mr. Tom Christiansen, Mr. Jack Turnell, Mr. John Winter, and Mr. Terry Schramm.

Mr. Steve Thomas, Wyoming field representative for the Greater Yellowstone Coalition, Cody, MT.

Mr. Thomas, welcome. What did I say? Yes, Cody, WY.

Senator CHAFEE. That's what the sheet says.

Senator KEMPTHORNE. No, it's Cody, RI.

OK, Mr. Thomas.

STATEMENT OF STEVE THOMAS, WYOMING FIELD REPRESENTATIVE, GREATER YELLOWSTONE COALITION, CODY, WY

Mr. THOMAS. Thank you, Mr. Kempthorne and Senator Thomas. Senator Thomas and I go back a long ways when I was a commissioner. We're no relation. I'm sure he probably doesn't claim me, but we go back a long ways from when I was a commissioner.

In any event, on behalf of Greater Yellowstone Coalition we thank you and your committee for giving us an opportunity to speak to you.

We view the Endangered Species Act as one of the more important pieces of legislation crafted and adopted anywhere in the world. Without the ESA we may very well have lost such important and magnificent species as the grizzly bear, bald eagle, black-footed ferret, peregrine falcon, and many others.

Without this Act our children and their children might never have seen our national symbol, the bald eagle. How would we explain that we allowed such a thing to happen?

Even without the success of the ESA, there remains much work to be done in the protection of species and habitat. Indeed, the need for the ESA increases as our own population demands upon the environment continue to grow.

I have enclosed copies of a working paper titled "Endangered Species Listings and State Economic Performance" written by Stephen Meyer from the Massachusetts Institute of Technology, Department of Political Science. I believe the key points to be gleaned from this document are that there seem to be a large number of anecdotal kinds of examples, kinds of examples of the ESA running roughshod over economic development, and that the numbers do not support these anecdotal examples.

You may read this paper for yourself, but I would like to draw your attention to Pages 14 and 15 under the heading "Concluding Observations," and particularly to Page 15 in the third paragraph, and I quote, "In fact, for every tale about a project, business, or property owner allegedly harmed by efforts to protect some plant or animal species there are over one-thousand stories of virtual 'non-interference.' In reviewing the record of 18,211 endangered species consultations by the Fish and Wildlife Service/National Marine Fisheries covering the period 1987 [to] 1991 the General Accounting Office found that only 11 [percent] resulted in the issuance of formal biological opinions. The other 89 [percent] were handled informally—that is to say the projects proceeded on schedule and without interference. Of the 2050 formal opinions issued a mere 181—less than 10 [percent]—concluded that the proposed

projects were likely to pose a threat to an endangered plant or animal. Most of these 181 projects were completed, albeit with some modification in design and construction. In short, more than 99 [percent] of the projects reviewed under the Endangered Species Act eventually proceeded unhindered or with marginal additional time and economic costs.”

So as you can see, the ESA is, in fact, not causing the widespread economic disasters that the anecdotal examples would portray. I would further argue that this demonstrates a need to strengthen the ESA.

Indeed, there appears to be an almost automatic approval of projects by the agencies. We believe that most of the anecdotal stories are far outweighed by the facts mentioned above and by the success stories of the grizzly, the bald eagle, the peregrine falcon, not to mention many plant species that have very important medicinal uses. You have all heard of taxol from the Pacific Yew tree, which is one of many, many examples.

Finally, let me address my home State of Wyoming. We here are fortunate to live in a State that has an abundance of wildlife and natural resources.

In fact, we share some of the more famous ESA successes including the bald eagle and peregrine falcon. Many of us are proud of those success stories.

Many of us owe at least part of our economic success to our wildlife. As you may know, tourism is one of the top two industries in this State.

Many communities owe their economic survival to tourism, which directly depends on such things as wildlife. I was in business for 12 years in Jackson, WY, and I spoke with literally thousands of tourists every year.

At least part of the reason most of them came to Wyoming was to see our wildlife, and especially such species as the grizzly. I was asked hundreds of times each year, “Where can we go to see a grizzly bear?”

It is the thrill of a lifetime for a family on vacation to see a grizzly bear. Without ESA they may never have that opportunity, which means they might not come to Wyoming.

The additional benefit of protecting habitat for such species as the grizzly is that so many of our big game species use the very same habitat. The economic value of big game hunting alone has been estimated by the Wyoming Game and Fish Department to be \$32 million to this State, while tourism as a whole contributes \$1.7 million to this State’s economy.

As you can see, we are talking big money for Wyoming, and wildlife accounts for a large portion of that sum. This is not even considering that this beautiful, pristine habitat that is being protected is one of the other reasons that people come here.

Senator CHAFEE. That’s \$32 million in a year?

Mr. THOMAS. Yes, sir.

Speaking of people coming here, how about that wolf? The Lamar Valley up in Yellowstone, and particularly the northeast entrance, has shown a 22-percent increase in traffic counts over 1994. Three thousand more vehicles went through that northeast gate this year in the month of June alone.

Now, the wolf cannot take all that credit for increasing business, but a good part of it is directly attributable to the wolf. Again we are talking big money for the communities in the Greater Yellowstone area.

There has been much wringing of hands and gnashing of teeth about the so-called horror stories of heavy-handed enforcement of the ESA, but we should look at the actual facts, as we did on the national level. The public record from the Wyoming office of the U.S. Fish and Wildlife Service demonstrates that in the past 5 years they have not blocked any action on private land in Wyoming due to the ESA. They have conducted 1,751 consultations and issued 14 jeopardy decisions, representing less than 1 percent of all cases. All of those 14 cases regarded the depletion of water to the Colorado River system, which can jeopardize four endangered fish downstream.

In every one of those cases, a reasonable and prudent, easy alternative was worked out, and each party was able to proceed while also helping to conserve the fishery. In general, the Wyoming USFWS office estimates less than 10 percent of their issues deal with private land.

Earlier in my testimony I mentioned the grizzly bear as an animal that has positive economic impacts. There are those who will attack the ESA based on the grizzly bear.

They contend that the ESA is flawed because the grizzly has not been delisted. We contend that the grizzly should not be delisted because there has been inadequate habitat protection for its survival.

This does not mean that the ESA process is flawed. It requires good science to be used. We are contending that the science does not support delisting. We are not arguing the ESA process itself.

You will also hear of grizzly problem on the Togwottee Pass allotment. First, let me stress that the Togwottee Pass area is public lands, not private. It is historical grizzly habitat, and is identified as Management Situation 1 Recovery Zone.

Furthermore, the bears historically have caused few problems in this area. Poor range management, inadequate livestock distribution, and poor forage have contributed to higher depredation rates in the recent past. This year only one calf depredation has occurred on the Blackrock/Spread Creek Allotment since it is a good forage production year.

This clearly demonstrates the need for adequate habitat protection. In any event, we believe the grizzly bear owes its very existence to the ESA, and as a symbol of the American wilderness, has very positive economic and ecologic effects that far outweigh any negative implications.

Big money far outweighs anything we sold, and will over time. Cody is crazy. They're selling, all they're selling is, is wolf T-shirts, wolf paraphernalia. The business people are going crazy.

There's other industries in the State other than agriculture, and some of these endangered species that are at odds with agriculture are very important with other businesses, and we have to reach a wall somewhere in there.

I see my time is about up. I would just say that in summary, in the Nation, and Wyoming in particular, the record clearly indicates

that the ESA has few, if any, significant adverse impacts. So what's the problem?

Are a few extremely narrow special-interest groups going to rule the day, or is your decision going to be based upon the public record? It is my belief that the ESA is an extraordinary example of this Nation doing something to protect its wildlife heritage.

In Wyoming, for instance, there was 1,751 ESA consultations. Not one on private property resulted in the stopping of a project, not one.

So we would, we would urge you to reauthorize, and indeed strengthen the Act. We feel that our generation, our children and their children would appreciate it very, very much. Thank you.

Senator KEMPTHORNE. Mr. Thomas, thank you.

With that, Mr. Tom Christiansen, president of the Wyoming Chapter of the Wildlife Society, Green River, WY.

STATEMENT OF TOM CHRISTIANSEN, PRESIDENT, WYOMING CHAPTER, THE WILDLIFE SOCIETY, GREEN RIVER, WY

Mr. CHRISTIANSEN. Thank you. On behalf of the membership of the Wyoming Chapter, Wyoming Chapter, I thank you for inviting our testimony regarding reauthorization of the Endangered Species Act.

The Wildlife Society is an international non-profit and scientific organization founded in 1937 to serve professionals in all areas of wildlife ecology, conservation, and management.

Over 9,000 resource, scientific resource managers and other resource professionals belong to the Society. It affirms conserving diversity, productivity, and sustaining all of wildlife resources for the benefit of society in general.

The Wyoming Chapter of the Society consists of 180 wildlife professionals, employees of both public service and private industry. The Wyoming Chapter includes members that are experts in all aspects of wildlife management, including endangered species, and I have consulted with those in preparation of this testimony.

The Wyoming Chapter of the Wildlife Society believes that by preventing the extinction of species and populations, the people of the United States ensure that their environment remains healthy and capable of supporting the natural diversity characteristic of stable, functioning ecosystems. In turn, these healthy ecosystems supply humans with their lives and livelihood. We recognize that extinction is an integral part of the evolutionary process that continues to shape life on earth. But we consider current rates of extinction are far above natural levels, dangerously high, and are largely due to human action.

The Endangered Species Act of 1973 and Amendments represent a safety net for the protection of rare plants and animals in the United States. There are three key components of the ESA which must be maintained for the Act to remain effective. No. 1, decisions must be based on sound and objective science. No. 2, economic considerations must be used judiciously and should not be allowed to overshadow the scientific and biological foundation of the Act. No. 3, habitat conservation must be an integral part of the Act, for species' survival is inextricably linked to the existence of the habitat.

These principles must be incorporated in the following recommendations:

(1) Require independent scientific peer review of all proposals to list species, and all draft plans to recover species. The "threatened" or "endangered" determination should remain a biological judgment about the future viability of a species.

Economic considerations should not preclude the scientific determination of a species' biological status. However, the Chapter does not support the imposition of additional study requirements and review procedures that would unnecessarily increase costs, delay results, and allow increased bureaucratic and political interference with species recovery. I'll be happy to further address that in the questions.

(2) Include habitat degradation in the definition of "harm." The loss of the habitat is the leading cause of species endangerment. Habitat is directly linked to the welfare of species, and therefore habitat protection is a prerequisite for endangered species conservation.

(3) Delineate and conserve habitat that supports multiple species by creating a Wildlife Diversity Act to be used in tandem with the ESA, to strengthen species protection before economic activities need be curtailed severely. A primary goal of the ESA is to protect the ecosystems upon which endangered species depend.

Scientists generally acknowledge that ecosystem protection must play a key role in endangered species conservation. Ecosystem conservation protects multiple species which depend on the same habitat.

By creating wildlife diversity legislation, which takes a comprehensive and land scape-wide approach to species conservation, species listing may be prevented altogether. The ESA alone is a safety net, one upon which society relies too heavily.

In so doing, the symptoms of accelerated extinction are addressed without seeking a cure for what causes species to become endangered. We must act sooner to prevent the costly need to list species as threatened or endangered.

(4) Streamline and expedite both the listing process and recovery plans, emphasizing biologically effective and realistic goals. Many species are being listed too late in their declines to provide a reasonable chance of recovery.

This delayed action is creating a pool of potentially permanently endangered species. At the same time, the adoption, implementation, and eventual phasing out of recovery plan actions upon successful species recovery is often slow and cumbersome.

Creating "survival habitat," as defined by the National Research Council in its report, "Sciences and the Endangered Species Act," at the time of listing could prevent a species from going extinct before a recovery plan is implemented. On the other end of the spectrum, it is often difficult to down-or delist a species and lessen regulatory protections once a species has recovered.

In Wyoming there has been some evidence of this regarding recovery of bald eagles, peregrine falcons, and grizzly bears. Bureaucracy, politics, and public opinion have shaped decisions perhaps more than science.

(5) Economic considerations should not preclude the scientific determinations of a species' biological status, nor should they unduly influence formation of recovery plans. Because many of the ecological benefits of a species are unknown, listing decisions and recovery-plan actions should not be based on cost benefit analysis. Audits conducted by the Federal Government and others have consistently shown that less than one-tenth of 1 percent of the projects reviewed under Section 7 of the ESA have been terminated as a result of endangered species concerns.

The Wyoming Chapter supports expansion of the goals of the Act to include attainment of both economic and ecological sustainability, rather than short-term economic gain at the expense of accelerated resource depletion and unnecessary ecological damage.

The Chapter also supports inclusion of language reflecting and clarifying the current goals of the interagency consultation process, which include consideration for economic viability and attainment of individual project goals, while minimizing harm to listed species.

Positive impacts, economic impacts of endangered species are not often acknowledged. An example of a positive economic value can be found here in Wyoming.

Immediate past president of our organization, Mr. Tom Segerstrom, is a classically trained biologist who worked in public service as a wildlife biologist until his entrepreneurial spirit convinced him there was demand for a wildlife-related private-sector business. Thus he founded the Great Plains Wildlife Research Institute and has been conducting wildlife research using laypersons who pay the Institute for the opportunity to more intimately study wildlife than offered through a more traditional sight-seeing tour.

The threatened and endangered species of northwest Wyoming, including bald eagles, peregrine falcons, and grizzly bears, are important subjects of Segerstrom's enterprise. Tom was the logical choice to present our testimony today because of his unique perspective, experience, and eloquence, but his business is too successful to allow him the time away to testify.

(6) Increase the support for partnerships and information sharing between Federal, State, local, and foreign governments, private individuals, and corporations. Open communication promotes trust.

This recommendation would help address concerns we express, as well as those of critics of the ESA who seek dramatic reform at the expense of the purpose of the Act. I think I can also provide you with examples.

If these partnerships result in increases of authority or responsibility, the agencies or programs affected should receive adequate funding to fulfill that responsibility. Specific examples in Wyoming where this has not occurred include management of black-footed ferrets, grizzly bears, and wolves, which have been directed to the State without sufficient funding to accomplish the task.

Our final recommendation is to develop voluntary incentive programs for protecting endangered species, as has been an issue all morning. The Chapter supports improved funding and simplification of programs such as habitat conservation plans when analyzed at the regional levels to evaluate cumulative impacts, and conservation agreements, which offer incentives for voluntary cooperation in reversing declines of listed and candidate species.

The Chapter does not support payments to individuals or entities to offset the costs of mandatory compliance with the law or its implementing regulations.

To sum up, in last week's paper Senator Thomas is reported to have stated that he hoped testimony from the Wildlife Society would provide insight on how to incorporate unbiased science into the process of reauthorizing the ESA. We hope our testimony will be of value in this regard.

But we would also urge the subcommittee to seek to implement those recommendations made by the National Research Council in its Science and the Endangered Species Act, the upshot of which is that the Endangered Species Act is firmly grounded in science with the only recommended changes aimed at improving its effectiveness in species and habitat conservation.

We have appended a copy of Executive Summary of this document to our testimony. Although Congress solicited their study in a bipartisan request and they already have the document available, we have appended a copy of the Executive testimony as part of our official testimony.

Thank you for the opportunity to testify today and participate in this and other wildlife-related issues.

Senator KEMPTHORNE. Appreciate that. Thank you.

Now Mr. Jack Turnell, Pitchfork Ranch.

**STATEMENT OF JACK TURNELL, PITCHFORK RANCH,
MEETEETSE, WY**

Mr. TURNELL. Thank you, Mr. Chairman and Senators. Thank you for asking me to testify.

My written testimony gets into specific changes I'd like to see in the ESA. However, I think today in 5 minutes, philosophy is all I can hope to cover. In my life, I've earned the title of "Green Cowboy" for some reason, and so from that I'd like to first explain my background. I'm manager and president of the Pitchfork Ranch of Meeteetse, WY.

Our ranch has a long history of improving wildlife and habitat. From the early 1900's on we've raised antelope, helped the survival of wild game, and so forth. Many species were in danger of being extinct at that time.

In the 1970's and 1980's we again closed the area due to low game numbers. In 1981 the most endangered mammal in North America, the black-footed ferret, believed to be extinct, was discovered on our ranch and surrounding areas.

I was very involved in that recovery effort. This could have been a very big problem for our ranch and for the ferret's recovery. Fortunately, the black-footed advisory team that was formed was able to reach consensus on management goals.

I remained on that team for 14 years. The success was rooted in grass-roots problem solving, not in government rules, regulations, and enforcement. Obviously, whatever the ranch had done in the past was, was good for the ferret because we had the only black-footed ferrets.

The habitat area had oil development area in it, it had seismographing, fishermen, horses, hunters, campers, you name it, but yet it thrived there.

I've also been involved with forming Riparian Association in Wyoming to protect watersheds, lakes, and wetlands and promote watershed development. This is my philosophy.

This is where grass-roots people come to consensus, education, cooperation. That's what's wrong in this case.

It's not the Act, and I don't want to get into the Act and so forth. It's the Endangered Species Act, and many other Acts, have created confrontations, economic loss, takings of property, and division within this country.

The philosophies of agencies, government and other groups to such things as the ESA have at times, disrupted families, companies, communities. Not just the ESA Act, but other Acts have affected communities such as Dubois where they almost died economically and then decided tourism would be great for whatever reason. Now the fight is not over ESA; it's over zoning and planning and development.

So it's a vicious cycle. Our Park County valuation probably has dropped from \$750 million to \$275 million due to oil companies moving out. They're moving out because they have to confront Endangered Species Act, environmental assessments, taxes, archeological sites, so on.

We've driven our land values up. We have to pay the taxes that the mineral industry doesn't.

Most land owners will not cooperate to find and identify endangered species, wetland, riparian areas due to the things in these various Acts. This is causing lack of trust, and this lack of government in the conservation movement.

I believe that 90 percent of my business associates are resource users, and we must work toward clean air, clean water, resource use that protects the environment, and saving the various species. Forcing people does not work well.

Montana, Wyoming, and Idaho were opposed to wolf introduction as a whole. However, they were ignored. That does not work.

We have conflicts with grizzly bears on our ranch, and are losing calves and cattle, and breaking into our cabins. Our kids can't go out and do the things they used to do.

These need to be addressed in management plans and goals that have apparently disappeared. I think there are solutions, but this philosophy has to change. The Endangered Species Act must offer incentives that we've talked about. Money wasn't the incentive. It wasn't with the ferrets.

It cost us around \$50,000 for that little bugger. So the incentive was that it was there and we believed in all the wildlife.

Being part of it needed help, and we helped it. It was successful because we worked with the Wyoming Game and Fish primarily to make it successful, and we had input. That's the reason we won that battle. Whether it's successful, I don't know.

Those are the incentives. It's the threats that are the incentives. The Government and scientists should help educate and identify the reasons and goals behind the various species of the management.

The Act must move toward grass-roots incentives and management. The Coordinated Resource Management Approach is a good example of building consensus.

Disarm the Federal Government and the Federal agents. I think that would help our attitude. When we see them coming down the road with rifles it is not very reassuring; and search warrants issued sparingly.

You need to identify and search for the endangered species through local effort and cooperative effort. Put efforts of identification and management of species in the hands of community, individuals, resource units, and the University.

The Federal Government can help when asked to set basic minimal guidelines. As not being managed through local or State effort using the above philosophy, then the Federal Government could develop the management plan.

The Act must take into account that the world population is growing and we need resources for housing, food, jobs, et cetera, and to maintain our lifestyle. This must be planned.

In conclusion, we cannot protect the environment, wildlife, plants, et cetera, or we can protect the environment, wildlife, plants, et cetera, but we need a new plan and philosophy. If you think about the evolution you heard about this morning, where we're sitting right now was once an ocean, was once, you had the Ice Age, was once a tropical area with dinosaurs and other species, and then became a volcano area that destroyed all of these plants and animals.

The last 50 years is what we have to deal with. We should take care of the plants without being inconsiderate on the long-term plans, and schemes of things.

I would just say, if everybody in this room would set aside their different views on this, and their stickers and plaques. I never wear them unless it says that we can undoubtedly pull together and come up with a plan that would work just exactly like a black-footed ferret. Thank you.

Senator KEMPTHORNE. John, thank you.

Mr. John Winter, Two Ocean Outfitters from Moran, WY.

**STATEMENT OF JOHN WINTER, TWO OCEAN OUTFITTERS,
MORAN, WY**

Mr. WINTER. Thank you, Senators. I appreciate the opportunity to be here today to give some testimony. I understand I'm representing my enterprise, I guess, namely the outfitting industry.

My name is John Winter. I live about 40 miles north of Jackson Hole on the Buffalo River just outside of Moran, WY. I own and operate the Two Ocean Ranch and outfitting operation there. We live right in grizzly bear habitat, so we do have a real appreciation for the bear.

It is amazing to me when you come out of the mountains what goes on down here. I tend to forget what the real world is like, I guess, when I'm in the hills.

I got this call to come to this meeting. I was real glad I could. But I realized real quick that I was out of touch. But I'm getting educated, and I appreciate being here.

It is encouraging to see you folks and the efforts you are making with regards to the Endangered Species Act. There is a problem there. It is being realized.

So I appreciate your efforts. I guess that's why we elect you folks.

I would applaud Representative Cubin's comments, and Governor Geringer's comments today. They were very appropriate.

Senator Thomas, we've got a lot of faith in you, and we look forward to working with you in the future.

In review of the S. 768 information that I received, it talks about partnerships and working with the Federal agencies, as I have done for several years. "Partnerships" was a byword, and I would caution you to, as to how you use that word, "partnership."

It's been my experience that partnerships go real well as long as it's in favor of the government agency. Whenever something changes for them, partnerships kind of go out the window and the private enterprise is left holding the bag.

The Government has to keep its word. The case in point is the grizzly bear.

At first, when the grizzly bear issue came up, it was grizzly numbers. Since that time things have changed tremendously. Now it's habitat. That's not all bad. We're trying to increase numbers, and I think the grizzly bear situation is a great American success story. It's due mostly because of the efforts of private enterprise, hunters, fishermen, local involvement. The Government needs to take a look at itself, the agencies, and whoever is involved, and realize that they are in the human race, also. Even we may need government employees to do this or that, but they need to realize that they do work for the local economies.

During the wolf hearings there was a statement made—and I don't think it was Secretary Babbitt who made it—but it was said that no plan could be successful without the help and support of local communities. Without strong-arm tactics. I really believe this.

As I said before, the grizzly bear is a prime example of that. We look forward to dealing with the problems as they come up, only in a central fashion, as you are trying to accomplish here.

I want to indicate one thing: With an outfitting industry in 1994, a follow-up study of the outfitting industry was conducted wherein it was determined the outfitting operation was a \$91 million industry. The original study conducted in 1988 showed that the industry was operating at 60-percent capacity.

Based on my experience, that percentage of activity has not changed appreciably even though politics within the State is the primary reason for that. This industry does have a main impact on the State's economy.

I'll just close by stating that the outfitting industry is, in fact, an agent for Federal and State agencies, since outfitters are charged with providing a service to the general public for these agencies. They're expected to do it safely and at the same time protect the resources.

We accept that challenge and, and look forward to making these endangered species, if in fact they are, another success story. Thank you.

Senator KEMPTHORNE. Mr. Winter, thank you. I came here to get educated, also, and a lot of good insight's been given today. So I appreciate your input.

Terry Schramm, who's from Walton Livestock Company, Jackson, WY.

**STATEMENT OF TERRY SCHRAMM, WALTON RANCH COMPANY,
JACKSON, WY**

Mr. SCHRAMM. Thank you, and I appreciate that. Since I'm last, I kind of risked that you guys are going to sleep, and so I worked real hard on this. Since I don't have a staff or secretary or typewriter—

Senator KEMPTHORNE. How is it? Is it good?

Mr. SCHRAMM. I'm not particularly satisfied with it.

Senator KEMPTHORNE. Well, when you're done we'll all hold up your numbers for you.

Mr. SCHRAMM. My name is Terry Schramm, and I've been a cowboy on the Blackrock Spread Creek Allotment for 16 years. The Walton Ranch and, and Moulton Ranch are the permittees.

The Walton Ranch puts about \$400,000 into the local economy, as well as houses, and employs five different families.

The Waltons have been running cattle on this allotment for 36 years, and the Moultons have been up there for over 75 years. For the past two summers our ranching operation has suffered substantial losses due to grizzly predation.

Even though they are located in Situation 1 habitat, we feel that removing the allotment would only be a bandage approach to solving the problem, as there are other cattle allotments in every direction except to the north, and as well as our allotment borders private property that has cattle on it.

We were a responsible and legitimate, pre-existing user of the forest prior to the ESA and prior to the Situation 1 Habitat designation. We feel that if no bear control mechanisms are in place, the ESA habitat designation has unfairly and effectively served us an eviction notice without a hearing, as the economic viability of our ranch is in jeopardy.

The allotment is approximately 137 square miles and is located on the extreme southern edge of the recovery zone. If no bears are dealt with in the recovery zone, then does that mean that all bears will be dealt with outside of the recovery zone?

As in much of the West, Teton County is 97 percent federally owned, and without this grazing permit we don't have a viable economic ranching operation because private land is unavailable and there are no alternative allotments available.

Our ranch has been put into a conservation easement so it will stay a ranch forever to protect open space, wildlife habitat, as well as to preserve the rapidly declining historical and cultural aspects of Jackson Hole.

In the 16 years that I've been on the allotment I've always had grizzly present, with acceptable livestock losses and relatively few problems. Historically, our losses are between 2 and 3 percent.

In the past 2 years I lost 141 head of calves, approximately 9 percent, to all causes, including a high percentage to grizzly predation.

In 1994 a study was implemented and eight grizzlies were trapped, and the evidence of up to five more were observed on the allotment. In 1995 three different grizzlies have been trapped.

To a total to this date on our allotment there's 11 grizzlies and 22 black bears have been trapped on an 88,000-acre allotment. So I think that's significant.

We've co-existed with the grizzly bear for a long time, and feel that the situation is getting out of control. We're not asking for annihilation of the grizzly population, but expedient removal of a couple of habitualized, predatory bears.

The restrictive nature of the ESA and the Situation I habitat, along with the threat of litigation from certain well-meaning special-interest groups, completely stifles the agencies to use common sense and reason.

Case in point, in 1992 a large male grizzly was trapped for killing livestock. The bear was collared and released. This bear has habitually killed cattle in 1993, 1994, and is still killing cattle on the allotment as I speak.

I should be up there taking care of my cows. Our fate lies in the hands of bureaucrats, and these problems are going to present a challenge that is inevitable in the near future with an expanding grizzly population.

How we deal with problem grizzlies and resolve conflict is going to be the key to human tolerance and ultimately the success of the grizzly recovery. Agriculture has had a long-standing cooperative working relationship with all the land and wildlife agencies to bring about many of Wyoming's wildlife success stories, but the balance seems to be lost in the restrictive nature of the ESA.

The people who have lived with it for generations feel that the bureaucrats are now working for the predator instead of the people. ESA works on a premise of fear instead of cooperation, fear of losing our private property rights, our grazing permits, and our right to protect our livestock, all of which our livelihoods depend upon.

The current system promotes a "shoot, shovel, and shut-up" mentality. After 4 years of lost livestock, extreme management headaches, and total frustration, I can truly understand why.

But I refuse to let an unjust system make an outlaw out of me, and I will continue to cooperate with all the agencies to ensure grizzly survival as well as our own.

Thank you.

Senator KEMPTHORNE. Thank you. We've assigned you a 9.6.

Senator THOMAS. Yours had the biggest impact.

Senator KEMPTHORNE. OK, Mr. Schramm, let me begin with you, then. Who has the authority and the responsibility with regard to a request for removal of a nuisance bear? Add to that, is there a difference between a bear protected by the ESA and one that has recovered?

Mr. SCHRAMM. Who has the authority to remove a nuisance bear? Well, I've been involved in this for 4 years, and I would like to see the bear turned over to the States.

It's a lot easier for me to deal with one agency than the multi-headed dragon of rule-by-the-Committee, the IGBC, which is made up of Forest Service, the Park Service, the Fish and Wildlife Service, the Game and Fish, all the agencies involved. It is extremely difficult to try to get any kind of solution out of a committee like that.

The difference between one—what was the other part of your question?

Senator KEMPTHORNE. One that's under the ESA versus one that's recovered under State control.

Mr. SCHRAMM. I don't particularly understand the question, but I, under, under the ESA they're just, they just say the bear has priority over us. Obviously after 4 years of one particular bear killing cattle every year and is still there, I just feel that there's something seriously wrong here.

Senator KEMPTHORNE. Mr. Winter, why do you say that Government only gave lip service to public comment in the case of the wolf studies?

Mr. WINTER. I meant, Mr. Kempthorne, it seems to me that there's a lot of facts given during those hearings, and didn't seem to me that any of the facts that had come from—might be the Professor in Utah State or the University of Utah, I don't know which—and did a study in Yellowstone Park about resources and, and possibility of putting wolves in there, and to my knowledge, very little of what he had to say meant anything.

The majority of the people in Wyoming that I have been in touch with and at these hearings have heard were not in favor of introducing, and I say "introducing" the wolf, not "reintroducing," because we don't think that they were reintroducing anything. We think we already have some native wolves here.

But it was just obvious, and the Governor even alluded to that today, that things were done without working with the State; people that, who have on-the-ground knowledge, first-hand knowledge of, of the real situation.

Senator KEMPTHORNE. All right. Thank you.

Mr. Thomas, I noticed in the paper that you quoted from Steve Meyer—

Mr. THOMAS. Yes, sir.

Senator KEMPTHORNE [continuing]. You also stated, "Counties, cities, and towns are much more sensitive to single employer or single industry effects," and we've been hearing from a number of people in these communities who live in communities where there's only a single industry, whether it's timber, mining, whatever, these people would agree with Dr. Meyers that their very future is being affected by the Endangered Species Act.

We need to take that into consideration as we talk about the reform of the Act, communities that may be single-industry based. I think we should involve the local State Governments, particularly in listing process. I would, and I would, may have no problem with, with involving these entities in any processes.

Senator KEMPTHORNE. Final question, Mr. Thomas. Do you feel this has been a balanced hearing?

Mr. THOMAS. Honestly I believe agriculture industries have been overly represented here. The commissioners who testified have both been directly involved in agriculture, and I think there's other business interests that should have been represented here also, such as my former business.

Senator KEMPTHORNE. Do you mean that with the Endangered Species Act there's just two sides to the issue?

Mr. THOMAS. No, I do not believe that at all. As a former elected official I realize there's a lot of, you're incurring a lot of this stuff, and I realize the difficulty of you all.

No, I do not find there's just two sides.

Senator KEMPTHORNE. Tom, do you feel it's been a balanced hearing?

Mr. CHRISTIANSEN. Well, I think that certainly the plurality of the opinion was that there needed to be some changes. If "balance" means that there should have been equal numbers of comments strictly pro and strictly con, no, I'd say not.

But perhaps the comments today reflected Wyoming's point of view. But I'd also say this is a national issue.

Senator KEMPTHORNE. But you see, we don't come into this thinking that there is a pro and a con. It's multi-faceted.

There's no way we could have drawn up and said, "There will be ten speakers that will say 'pro' and ten that will say 'con.'"

The effort's been to have diverse groups come forward and tell us what's working and what isn't working. Should we make any changes?

So that's, that's been the endeavor of this hearing, is to allow folks with different views to tell us what they think. So, Mr. Winter, do you think it's been balanced?

Mr. WINTER. Mr. Chairman, I think that it represents Wyoming. I think you've done well to get the opinions you have.

Senator KEMPTHORNE. Jack, your thoughts?

Mr. TURNELL. Mr. Chairman, I guess I view things differently than most. I don't view this as a "pro" or "con" ESA. I think we're all here for the same reason; and so therefore I think you received different views from Wyoming.

I would hope that it's not adversarial sort of a situation. I hate those kinds of things.

I'm a consensus builder, and that's what I'd like to see come out of this, even though it's for you to make the laws. I'd hope this group has learned something here today about working together and thinking that's potential, and then sitting down and making them happen.

So as far as a balance, it hasn't entered my mind until this moment.

Senator KEMPTHORNE. Terry.

Mr. SCHRAMM. Senator, I think we have to make this thing work, and, and I worry more about the social aspects of the Endangered Species Act than anything else. I see these wildlife issues as tearing the fabric apart of this society.

I think one family is pitted against the other. I think one region of the country is against another.

I don't know how you promote these threatened and endangered species like the grizzly bear, and raise them to a revered status, and, and then expect the small, faceless rural population of Wyoming to stand a chance against their larger urban neighbors. I see that's becoming a major issue in this country. We're, just sitting around yelling and screaming at each other, but pretty soon we're going to be throwing sticks and stones here unless we can work together and get this thing straightened out.

Senator KEMPTHORNE. All right. Thank you.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. I think this, I think you have assembled a fair balance of witnesses. I think it's been extremely helpful to me. We've had those in our various end of the

spectrum, and I think the presentations have been very fair. I want to note that with you, Mr. Chairman.

Mr. Thomas, what would you say? What, what do you think we ought to say to Mr. Schramm?

Here he's losing livestock. He indicated that he's willing to go along with a loss of 2 to 3 percent, but now he's up, I think he said as high as 7 percent, and it just becomes intolerable for his business. What, do you think we ought to do?

Mr. THOMAS. I'd say, first of all, that the situation managements, Situation 1 Management Recovery Areas for grizzly bears represents less than 1 percent of their former range. If the grizzly cannot roam freely on that, less than 1 percent of the former range, where can they roam? I would also point out that it's entirely public land.

Having said that, however, I recognize from having been in business myself that you can't take hits like they're taking and continue to stay in business. I would like to hope that there's a way that this could be resolved, not to the detriment of the bear. But I think we have to keep in mind we're talking about these kinds of areas. We're talking about a species that has been reduced in this ecosystem to such a small portion of its former range, and in the country as a whole to less than 1 percent of the former population of the grizzly bears, and if there isn't some lines drawn somewhere they will not be able to recover.

Senator CHAFEE. You mean you think that because of the, you know, you've got to have enough bears to make an adequate population gene-wise to survive?

Mr. THOMAS. Yes. That's correct. Yes, sir.

Senator CHAFEE. OK, let's, follow that along. We're saying to Mr. Schramm either he's got to continue to take these losses, or he's got to get his cattle out of this allotment area. Then what's he to do?

Mr. THOMAS. Well, I'm not——

Senator CHAFEE. I'm not trying to put you on the spot, but I mean, here we are. We've got a real-life situation that Mr. Schramm points out. I just don't know what we can do, other than to——

Well, I don't think he can survive, make a living with, with losses like this. I'm no expert in cattle, but I assume 7 percent loss——

Mr. THOMAS. Certainly the previous 2 years I would suspect he could not survive. This year there has been much less depredation.

I heard last year one calf, Terry told me before the hearing, the next one, two, and so the numbers are down, and it's primarily due to it being a good forage year. I think therein lies part of the situation.

It's demonstrated that the bears were not habituated to the calves or to cattle when there's a good forage year. There's not a problem.

Maybe that's what we should look at, is improving and continue to improving the range on that allotment.

Senator CHAFEE. What do you say to Mr. Schramm?

Does that give you solace?

Mr. SCHRAMM. Not particularly. You know, there, I've been involved, and I'm on the ground. I know as much about this as anybody.

A lot of people formulate a lot of opinions about what's happening. I can tell you that one of the major bears that was killing cattle on my allotment last year mauled a hunter, and the hunter subsequently killed the bear.

That has helped alleviate a lot of my problems, and that only backs up what I've been saying, is: They've got the bears that are killing the cattle, and we won't have the BLM coming to assist, and this guy did. So my losses are down this year.

Senator CHAFEE. He did it the hard way.

Mr. SCHRAMM. Well, he paid the supreme price, you know. He got about \$52,000 worth of medical expenses.

Then the other male bear that's been killing cattle on me for years, the one I mentioned in my report, is that he just showed up on the allotment about 10 days ago. He just pulled in on the allotment. He's radio collared. He walked in, killed a calf, and has put my cattle herd in total disarray as far as management. I just don't know how to deal with it.

Everybody at ESA says, "Well, you just have to put up with it or else just quit."

Well, I, we're not ready to quit, Senator, I will assure you.

Senator CHAFEE. Thank you, Mr. Chairman.

Senator KEMPTHORNE. All right. Thank you, Mr. Chafee. Thank you very much.

Senator Thomas.

Senator THOMAS. Steve, do you have any suggestions? Do you think the law is as it should be, just leave it as it is?

Mr. THOMAS. Senator Thomas, no, we would support at least the majority of suggestions. I'd suspect that you all have a copy of the Wildlife Federation's numerous suggestions on reforming the Act. If not, I have a copy here. We would support those kind of reforms.

Senator THOMAS. I see. You've indicated that there are few, if any, significant adverse impacts. Do you think Pitchfork Ranch has done a pretty good job of working with the species?

Mr. THOMAS. I do, yes.

Senator THOMAS. But Jack indicated they've had substantial economic impacts in terms of what people are doing there, minerals and so forth. It seems to be a little different view as to the impact.

Mr. THOMAS. Well, the point of my testimony was that when you look at the Nation as a whole and the State as a whole, it's insignificant in that fashion. It's not insignificant to some individuals, but I think those are more anecdotal situations and broad-sweeping types of problems that, you know, hundreds of thousands of people. That was the point of my—

Senator THOMAS. Well, I thank you very much, all of you. I think we made a great contribution, but I think we'll have some more.

Senator KEMPTHORNE. Senator Chafee has an additional question.

Senator CHAFEE. Mr. Turnell, first I want to say it was a pleasure to have the opportunity to visit with you yesterday evening. In your testimony here you've indicated you've spent over 14 years working on the recovery of the black-footed ferret, and I'd just like

to ask you what motivated you to devote your time and energy to save this animal, which has no medicinal reasons, no pharmaceutical benefits to it? Why bother?

Mr. TURNELL. I don't know. That's a difficult question to answer. I guess 20 years ago I didn't have these feelings for ferrets and the environment and so forth.

While in the early days working with the ferret, a light went off in me, I guess, that hasn't stopped, that showed me that there was a way to, to make something better or safer seeing, and do it in cooperative effort with, with traditional adversaries.

I never had a kind word before that for people within the conservation movement. Now I have many friends. Some testified here today.

We don't agree on everything, but it seemed not only a means to bring down those barriers. Also it was, it was a tradition in my wife's family for instance, to bottle-feed antelope and raise them, because they were almost extinct in the early 1900's. They shipped them all over the country. Some people might even think, even some of my rancher friends, that I've lost my marbles. But I think that any species that we can save, whether it's important or not, has a value.

That value I can't explain to you. It's in us in the West. It's in my neighbors, my ranching neighbors, farm families.

They love the wildlife, even though you hear they don't over the media. That's totally incorrect. We constantly fight to rebuild the wildlife populations, but we don't get credit for it.

The same with the ferret. It was a good thing for the industry. We cared about it. Why, I can't totally answer that, Senator.

Senator CHAFEE. Well, I think you've given a very eloquent response. I want to thank you, Mr. Turnell, thanking all of the witnesses here today.

Mr. CHRISTIANSEN. I have to say one thing regarding your question regarding requirements. I offered some insight on two of the things that you asked specific people to address—how do we do this scientifically, and I offered to, to do that. Also, what are specific examples of incentives? I offered to do that, but it seems like because I offered that, I was not asked that. So in terms of your fairness, I now have a question on it.

Senator THOMAS. You have it in your statement, do you not?

Mr. CHRISTIANSEN. No, not those two particular examples. These came to my mind as—

Senator THOMAS. Well, we would be glad to take your information.

Senator KEMPTHORNE. Sure. Tom, go ahead, right ahead.

Mr. CHRISTIANSEN. Yes, I think in regards to the input of science in the process, although I mentioned this document that was put together by the National Research Council, therein lies your answer to how to do it with science. It's not using an individual expert, because we're, we are human.

We're subject to the same human philosophy of several interests as everyone else, but in this particular study that was, as I said, requested by Congress, the committee's membership included experts in ecologies, systematics, partnerships, operation, risk, and

decision analysis, legal experts, legislative and administrative history of the environmental and Endangered Species Act.

So that's how you do it. You get a lot of people together. You don't rely on Joe Schmoe's expert, OK.

Senator KEMPTHORNE. Which is the model, I think, too, that the Keystone Center wrestled in coming up with incentives.

Mr. CHRISTIANSEN. Yes. My other example is more lengthy, and I won't go into it because of that, but we have put together a partnership in southwest area around Rock Springs and the Keystone Center, that we're trying to prevent a species from becoming listed, and everyone can see the benefits of that. I think we should try to preempt that. Thank you.

Senator CHAFEE. Well, that's the pre-listing effort. I think, I think, I think, I commend you for what you're doing.

Once the thing's listed, the efforts to save it are so difficult and so challenging. So the best thing we can do is prevent the thing from becoming threatened or, or obviously endangered.

Senator KEMPTHORNE. Thank you all. Good discussion. Appreciate it.

Let me now invite those whose names were drawn. Let me invite you in the order your name was drawn.

I'll call the first five, and if you would come up and take your seat at the table. Harold Fray, Kirk Koepsel, Tom Throop, Marion Klaus, Michael Tokonczyk.

The agreement is that 2 minutes that you get to use, give us your best shot on the Endangered Species Act. So if you would, when I acknowledge you, if you will give us your name for the record, please.

STATEMENT OF REV. HAROLD R. FRAY, JR., CASPER, WY

Reverend FRAY. I'm Harold Fray. I'm the Minister of the First Congregational Church here in Casper.

I want to assure you I'm not here to say, "Thus saith the Lord." If I did, that would take away all your fun, you know, of holding committee meetings like this.

Senator Thomas, you indicated that wisdom comes from whatever scientist you're talking to. I think, though, I find little disagreement that today we need to recognize the organic matter of the interdependence, interrelationship of all species, and we're not really sure what all that means. We're just beginning to develop that.

We're going to find some surprises. One of the most recent ones that came to me was the dependence in the rain forest of a species of both propagating plants and things like that which were environmental dependents of the rain forest on this path.

So as we preserve species, we're really seeking to preserve an ecosystem on which we're all dependent.

Having said that, we're in a context in our culture of a great deal of conflict, and we've got a cultural context that we must move against. For instance, we are in a context of an economic throw-away culture. That is, we produce products with the hope that they'll soon be obsolete so that the wheels can turn again and industry can get moving.

In a more dangerous level, we've thrived in a time when there are some willing to throw away other groups and saying we have no need of them. In that context, also, we must recognize the importance of species.

Perhaps there's some wisdom to be drawn, and it's not surprising I draw upon the Bible where it says in The New Testament, the eye cannot say to the ear, "I have no need of you," or the hand to the foot, "I have no need of you." We do need each other.

We're all on this earth together, and in the displacement processes the environmentalists cannot say to the rancher, "I have no need of you," or the other way around. We're going to make it together or we're not going to make it at all.

Perhaps you remember from your childhood a little ditty which will provide a little levity. When Mr. Noah built his ark he said it was his duty to save the bees, the birds, the bugs, but why did he want to save the cootie?

Some of you are going to be asked, "Why are we going to save this species?" Well, we're going to save it because of this inter-relationship that we have.

Therefore, I look upon you, and maybe you haven't thought of yourself this way, you are the Noah committee of Congress right now to decide some very important issues, and I wish you luck.

Senator KEMPTHORNE. Harold, thank you very much.

Reverend FRAY. I have something, if I could just add a paper put out prior when they had their proof, "Preserve Planet Earth," they produced some papers which are a larger context. They've put it out.

Senator CHAFEE. Thank you for everything.

All right, Kirk.

STATEMENT OF KIRK KOEPSSEL, NORTHERN PLAINS OFFICE, SIERRA CLUB, SHERIDAN, WY

Mr. KOEPSSEL. My name is Kirk Koepsel, and I'm from Sheridan, WY. I work for the Northern Plains Office of the Sierra Club. Since you're probably aware——

Senator CHAFEE. Could you repeat who you are?

Mr. KOEPSSEL. My name is Kirk Koepsel. I work for the Northern Plains Office of the Sierra Club in Sheridan, WY. I'm a strong supporter of the Endangered Species Act.

I'd like to respond to a couple of the ideas that were presented today. One of the main themes discussed was the need for State control of the Endangered Species Act. I question whether this is really appropriate. The State of Wyoming has shown really a reckless disregard for the wishes of the public, as well as for the Endangered Species Act in some of the actions that they've taken recently, and I want to share a couple of those actions with you.

For example, the State Legislature this year passed a bounty on wolves. The Federal Government spent \$13 million to bring wolves into the Yellowstone ecosystem, and the State of Wyoming, the State Legislature passed a \$1,000 bounty to remove those wolves from the same area. It was only with the Governor's veto that this bounty was kept from being established.

The State has also become, or has increased dramatically the amount of State land being sold. In 1990, only 26 acres of State

land were sold. This year we've already had over 31,000 acres of our State lands sold to the highest bidder.

A third issue is that, is that the public comment period is actually much better at the Federal level than for people wanting to participate in State issues, that the public has a much, is much more able to participate in Federal action than they are in, in the State actions here in this State.

So I think with the amount of money that the Federal Government is putting into this program, that it's important that they maintain, that you maintain some Federal oversight of this program. States like Wyoming have just shown to, that they have a real tainted history in dealing with endangered species issues in the past.

I just want to bring up one last remark in conclusion, and that's that we hear our State, oh, if I recall here, the State of Wyoming complaining quite often at the cost of managing programs such as the Endangered Species Act, things like the grizzly bear program. But the Federal Government actually contributes \$7 million, or 25 percent of the Wyoming Game and Fish budget, so it's Federal funds.

Most of the funds that do go to Endangered Species Act that are State funds go for depredation reimbursements rather than for managing the programs. I just wanted to make sure that was real clear. Thank you.

Senator KEMPTHORNE. OK, Kirk, thank you very much.

Tom.

STATEMENT OF TOM THROOP, EXECUTIVE DIRECTOR, WYOMING OUTDOOR COUNCIL, LANDER, WY

Mr. THROOP. I'm Tom Throop from Lander, WY, executive director of the Wyoming Outdoor Council. I appreciate the ability to testify.

As well as along with encouraging the preservation of species, we must acknowledge that for 22 years the ESA has been this State and this Nation's No. 1 tool in protecting bio-diversity and bringing back from the brink of extinction a number of species in Wyoming.

The ESA, frankly, has been an incredible success story: the bald eagle, the peregrine falcon, the black-footed ferrets, the grizzly bear, the Wyoming Toad.

Though there's been a lot of hyperbole, this success has come with no real demonstrable impact on private property acts rights in Wyoming. In addition, the ESA enjoyed public support in Wyoming and nationwide.

We should increase State role and reduce the Federal role with, of course, the exception of funding, but it's important to note that in Wyoming, not only is there no ESA-kind of statute or program or regulation; also not only is there no NEPA kind of process required where public notice and public participation is provided, but we still have a law on the books that has the gray wolf as predator that can be shot on sight.

As Kirk said, the legislature this year they put a bounty on wolves. It was vetoed by the Governor, but this year they put a bounty on wolves.

If Wyoming had its way we would eliminate the free roaming bison herds, and the one legislator that was chosen to testify had the case for repeal of the Endangered Species Act.

The primary conclusion that I think one could easily draw from the hearing today is that the law is not a problem; but the solution is finding ways to get agencies and get people together, funded cooperative solutions.

In Wyoming we hear a lot of philosophical discourse. We hear a lot innuendo. We hear a lot of hyperbole from critics of ESA, but we do not have one single concrete example in Wyoming where the ESA has caused economic hardship for anyone, or cost anyone any economic activity.

The one request I would have for Wyomingites that are critics of the ESA is to step forward and show concrete information demonstrating the problem in Wyoming with the ESA. The one request that I would have for Congress is to please make your decisions based on facts and not on rhetoric and not on emotion.

Senator KEMPTHORNE. Tom, thank you very much.

With that, Marion Klaus.

STATEMENT OF MARION KLAUS, SHERIDAN, WY

Mr. KLAUS. Good afternoon. My name is Marion Klaus, and I've been a resident in Wyoming since 1959. I was educated at the University of Wyoming in biology and I teach in the Life Science Department at Sheridan College.

I think Representative Cubin was making the point that extinction is a natural event, and indeed it is. I don't think anybody doubts that. The problem that she missed is that the rate at which extinction is occurring now is greater than it has been at any other time in history, including the time when the dinosaurs went extinct. The reason why the rate of extinction is so much greater now than it has ever been is because of the way we manage the land, the air, the water that makes up the habitat for all these species, not only ourselves. It's important that we maintain regulations of that habitat that are strong, that will provide a safety net for the species that would be lost without this. We don't know what all these species do.

We say, well, maybe, maybe we should spend money on something that is recoverable. Maybe we don't know what the ferret does, but we know that there are many genetic resources out there that we don't understand yet.

We know we've gotten antibiotics. We've gotten drugs that control cancer. We've gotten biological controls for mosquito larva. We've gotten drugs from fungi, and that is because we've kept the habitat.

Even though we key an endangered species, that species is an umbrella for the rest of the species that live in that habitat. I think it is very crucial that you consider that, and not reduce the effectiveness of the Endangered Species Act in the way in which both our public and our public/private lands are regulated.

Senator KEMPTHORNE. Marion, thank you very much.

Michael.

STATEMENT OF MICHAEL TOKONCZYK, LOGGER, HULETT, WY

Mr. TOKONCZYK. My name is Mike Tokonczyk. You were killing her pretty bad for a while. It's no longer.

I'm a logger from the Black Hills region, and I, this gentleman here just said there's no impacts. Last year in all of Wyoming, .07 percent of land in our national forest was allowed to be logged on.

Part of it is due to Wilderness Act. Part of it is due to Endangered Species Act.

To say there is no impact I think is misrepresentation. There's also been a lot of talk about how private property rights are being affected.

I don't own private property, and I make part of my living on national forests which are very affected by the Endangered Species Act. I do believe that there has to be some reforms to allow me to continue my job and provide my services.

Another part of my comment I'd like to ask you is part of a question, or my comment is a question: How did the Endangered Species Act get to be a super-Act that has power over the Taylor Grazing Act, the Sustained Eagle Act?

How can it be that this Act overrides the Constitution? When it comes to the Constitution and all these things, when it comes to private property rights and all this, how did it get this way? That's all I have.

Senator KEMPTHORNE. All right, it's a fair question, and it's one that we have been wrestling with. I might add we had, at one of our hearings, witnesses who had been part of Congress when it passed 22 years ago. They said that this is not the intent that it has gotten to today, much of it through regulation.

So we need to preserve what the original intent was, but to get it to a point that it's going to work. Reverend Fray, I would just mention to you that I said on a different occasion that extremists on both ends, those who, that they don't care, that it absolutely infringes on private property rights or puts entire families or communities at risk; those who we shouldn't even worry about lifting a finger, a human finger to help, the two extremes deserve each other on a disease-related land where in the geometry of politics they meet.

Senator CHAFEE. I'd just like to say one word to Michael about, the question comes up quite frequently about unconstitutional, and so forth. This Act has of course been tested constitutionally. The way our Constitution is interpreted, obviously, is by the Supreme Court, so I don't think it's quite accurate to say that it's unconstitutional or that we're trampling with the Constitution.

Mr. TOKONCZYK. If you were to take part of my value of the land, if I owned some, would that not be restricting the use of my property? Doesn't the Constitution guarantee me the right of my use of my property?

Senator CHAFEE. Well, that's the fifth amendment, and the Constitution has spoken with that.

Senator THOMAS. It is fair to say that that's part of the decision, though. Your point is a valid one. It's not unconstitutional, but it certainly concerns a lot of people. That's apparent.

Mr. TOKONCZYK. Well, I disagree with the ruling, then.

Senator KEMPTHORNE. Let me call the next group.

Howard Ewart.

STATEMENT OF HOWARD EWART, CASPER, WY

Mr. EWART. My name is Howard Ewart. I want to thank you for allowing me to comment on the ESA.

It is my opinion that the implementation of the ESA is totally out of control. Little or no consideration is given to cost of recovery programs or to the impacts that they will have on the citizens of the United States.

Humans, like timber workers, farmers, ranchers, hunters, miners, anglers, et cetera, are rapidly becoming endangered. The danger to many Americans is not from becoming extinct, but in losing jobs, losing recreational opportunities, loss of property values, loss of livelihood, having to pay more for essential items such as lumber and power, and many more things far too numerous to mention.

Almost all recovery plans for species of plants, birds, fish, and animals are detrimental to other species, including humans. One example of this is the use or misuse of water to attempt to recover an endangered species.

Water is diverted from use for irrigation and power generation in order to try to improve the habitat for the endangered species. When water is not available for irrigation, many species of bird, fish, and animals suffer because food and habitat conditions are reduced.

When land is designated as wilderness, most humans are excluded from using the land because only a few can hike into or use horses to access the areas.

When areas of timber are left unharvested for many years the land becomes almost useless to animals as no food can grow under the dense canopy of trees. The cost of recovery programs, both direct and indirect, are not considered.

Often the money spent by the Government is only a fraction of the total cost that fall on the citizens. My recommendation is that total cost and impacts on people should become part of any future recovery plan, and that the ESA should be reauthorized to require this. America cannot afford the ESA as it presently stands. We also must have ways to delist species. The grizzly bear is a prime example.

The recovery goal has been achieved for several years, but yet extreme environmentalists continue to object to delists. We can't afford to keep species on the endangered list forever. Thank you.

Senator KEMPTHORNE. Nicky Groenewold.

STATEMENT OF NICKY GROENEWOLD, NEWCASTLE, WY

Ms. GROENEWOLD. Well, thank you. It's Nicky Groenewold. I've never said anything in 2 minutes in my life.

Two—

VOICE. You tell 'em, Nicky.

Ms. GROENEWOLD. That was my mother.

Two words: Common sense. It's gone. Common sense says that the State should not be fighting the Federal Government, but that's not the way it works.

Common sense says that if the ESA funding is cut by \$12 million maybe we should send the wolves back to Canada and give the \$13

million that it cost to bring them down here where nobody wants them back to the ESA.

Common sense says if I have a rat on my farm and I dig him up and you shut my farm down, that's not common sense. There is no common sense in the ESA any more.

I think that's where part of the problem is, that we're fighting each other because nothing makes sense.

I have four children. I would like them to be able to take over my ranch when I'm—I'm never too old, I guess—but when I'm, when I want them to have it. I want to be able to give it to them and not to be hampered by all the regulation that the Federal Government is trying to lay on us.

I have a question for you two, Senator Thomas and Chafee. Terry Schramm said it all: "Do you know what the policy is? Shoot, shovel, and shut up."

That's a shame. We used to have to take care of the animals. Now if you've got something that you think is endangered, you follow the triple-S policy because you do not want the problem. I can't afford, as the person who discovered the ferret on his land, I can't afford a \$50,000 ferret.

Senator KEMPTHORNE. All right, Nicky. Thank you very much.
Dru Bower.

STATEMENT OF DRU BOWER, NATIONAL COALITION FOR PUBLIC LAND AND NATURAL RESOURCES, CHEYENNE, WY

Mr. BROWER. Yes, thank you. My name is Dru Bower, and I'm representing the National Coalition for Public Land and Natural Resources, which is representative of the broad variety of grass-roots efforts.

Mr. Chairman, Senators, consideration for reauthorization of the Endangered Species Act is one of the most crucial issues faced by the Congress as far as resource users and private property owners are concerned.

Protection of truly threatened or endangered species should be within our goals. However, reauthorization should also consider ways in which protection of such species will not destroy our way of life nor provide for methods to misuse the substitute for secondary goals unrelated to the primarily purposes of the Act. Our coalition represents an organized attempt to support environmental protection in concert with economic growth.

Our board has put together a resolution urging significant considerations as reauthorization is considered. Principal points, and I'll go through a couple of them, a recommendation list shall incorporate an economic impact assessment, a detailed recovery plan, including reintroduction cost, a complete file of scientific data; critical habitat designation which would occur at the time of list.

Compensation at fair market value should be provided for any land taken out of economic activity. Include a public involvement process to include local public hearings, publish public notices of such hearings, and full disclosure of all relevant information. Listing of subspecies shall be deleted from the Act. The report is replete with examples of misuses of the power and misuses of the intents of the ESA. Congress should take steps in the reauthorization

to assure that the original intent of the Act is adhered to, and that it, in fact, is not used as a surrogate for other goals.

By adhering to a process such as that suggested in our Resolution, some degree of nationality can be added to the process. This Congress is engaging in a difficult procedure to consider the reauthorization of a highly controversial statute.

Its deliberate should be done clearly to assure that any reauthorization provide for the protection of any truly endangered species, by also for the protection of private/public property rights, and also for our economic development. Thank you.

Senator KEMPTHORNE. Dru, thank you.

Herman Strand.

STATEMENT OF HERMAN STRAND, RANCHER, CASPER, WY

Mr. STRAND. Yes. My name's Herman Strand. I represent myself. I'm a rancher. I have a family ranch I own and operate outside of Casper.

Mr. Chairman, I speak in favor of reforming the Endangered Species Act to include some human and economic realities. I feel that the Act is flawed as written, and needs to be reformed to support the common sense I heard here before. I'd like to say I think we need to put some common sense into it. We're looking at, I believe I heard today, nearly 2,000 species of listed as either endangered or threatened. Our track record is, isn't very damn good.

I believe 5 or 6 have been actually delisted, so that's recovered, the delisting out of 2,000. Three of those was because we found more populations, not because we recovered the species or the habitat. Anyway, this doesn't sound to me like it's working very well. Obviously, I don't think that the Act is really about recovery.

It seems to me like it's more about money, power, and politics. It doesn't appear to be this cooperation that we're all talking about trying to get.

I don't know how we're going to get it. When you infringe on what I feel are my rights, cost me money, obviously I'm not going to be all in favor of it.

There probably are some ways we can go about this with a truly endangered species. Let's protect the truly endangered, like the ferret.

What are we doing messing with the wolf? There are 5,000 or 10,000 wolves in North America, we spent \$3 million on him. We've got a ferret that we've done a lot of work on. We're talking about dumping him.

So these priorities look to me like they're kind of backwards. The wolf, obviously, the grizzly bear, those are the kind of things that are going to have conflict of humans.

You're talking the ferret. Can you see the harm and conflict with humans with the ferret? No. I think the priorities are potentially out of line.

Also, they're continuing on the wolf. They want to put him into Colorado and New Mexico. It just doesn't make sense to me. But again, the common sense and the Act is gone.

The real cost, I think, has a lot more to do with individuals, private property owners and industry, than it has to do with what

funds are allocated to different agencies. The lack of opportunity to use your land is a great cost.

I see my time's up. Thank you.

Senator KEMPTHORNE. Herman, thank you very much.

Again, to all of you, we thank you for your input. All of you, I believe, received when you came in one of these handouts that has the address where you can send your additional comments.

We will keep this public record open so that we can receive those comments. If you need additional writing space, take all that you need. I want to thank Wyomingites for making us feel welcome here. I don't think there's a substitute for coming out of Washington, DC, and hearing it out here where these things operate, and just to hear it first-hand.

So I appreciate your testimony from all of the witnesses today. I want to thank Senator Chafee and his staff for their efforts in coming here, thank Senator Thomas for inviting us and making this hearing a reality, for all of his great help on the committee dealing with the Endangered Species Act, and to his staff for all of the efforts they did in making sure that this ran smoothly.

I also want to thank Don Basco, of the Wyoming Oil and Gas Commission, for the use of this facility. Let me just see if Senator Chafee or Senator Thomas has any closing comments.

Senator CHAFEE. Yes, Mr. Chairman, I'd like to join in with you in thanking all of these witnesses. These are extraordinary, the caliber of the presentations of the witnesses who won the draw.

I was thinking there's some ringers in here. Here you come up and everything's written out, and it's excellent. So I want to join in thanking each of the four panelists here and the five previous panelists that came through the draw, plus all the others who have. It's been very, very useful and, and I, everybody from Wyoming's done an excellent job.

Senator Thomas, I want to thank you for all your hospitality.

Senator KEMPTHORNE. Thank you, Senator Chafee.

Senator Thomas.

Senator THOMAS. Once more, thanks to all of you for coming. It's only useful to the extent that you come and participate and share your advice today, and continue to share them as this debate and discussion goes forward.

Particularly I'm happy to have you both here, and thank you for coming. I'm looking forward to working with everybody.

Senator KEMPTHORNE. Let me just acknowledge, too, one other person, our stenographer, court reporter, who without her we wouldn't have an accurate record.

So with that, we thank you all. This hearing is closed.

[Whereupon, at 1:27 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow. Material that was submitted but could not be reproduced for printing purposes, or was duplicative of statements already included in this publication, have been retained in committee files.]



STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR

STATE CAPITOL BUILDING
CHEYENNE, WY 82002

**TESTIMONY OF JIM GERINGER, GOVERNOR OF
WYOMING**
AUGUST 16, 1995

Good Morning, Mr. Chairman

Welcome to Casper and thank you for coming to Wyoming! And thank you for the courtesy of an invitation to address this public hearing.

I am speaking to you today as the Governor of Wyoming to specifically address the Wyoming perspective for changes to the Endangered Species Act. But I speak also from the perspective of the 18 Western Governors as well. My remarks are taken from the policies of the Western Governors as developed through non partisan and non-parochial meetings. John Talbott, Director of the Wyoming Game and Fish Department, whom you will hear from later, chaired the staff working group that assembled much of the position paper. I will address some specific Wyoming concerns as well.

Governors have long advocated increased flexibility in the administration of federal programs and greater control for the states. Congress has certainly heard the Governors call and has moved to restore the states' rights.

The movement to reform the relationship between the states and the federal government has its roots in four significant factors:

1 - Our citizens are convinced that the cost of government administration must be reduced

2 - Our citizens are convinced that government programs must be made more effective

3 - They are frustrated with the quality of service and inflexible bureaucracies

4 - A sense by our citizens that they have lost control of their government and that legal structures are unresponsive to community needs and individual rights.

Those factors affect the full range of issues between the national administration and the states but they particularly apply to the present Endangered Species Act.

The Governors endorse the basic principles behind the Endangered Species Act. We do not advocate that the act be abolished. On the contrary. The Governors recognize that species and habitat protection can be enhanced through appropriate changes to the act.

First - Increase the states' role -

The principles preserve the Act's goal of conserving species while enhancing implementation by drawing on the lessons learned since enactment in 1973. One of those lessons is that better cooperation between the states and the federal government is imperative. The states already have broad authority as trustees over fish and wildlife and possess significantly better information about species and their habitats. Specifically,

- * Make the states full partners under the Act
- * Recognize the state's primary authority over fish, wildlife and plants
- * Keep the states fully informed of any activity under the Act
- * Enable the states, at their choice, to assume the lead over various portions of the Act
- * Allow the states to suspend the consequences of a listing decision by developing conservation agreements to prevent the decline of species
- * Place greater reliance on state expertise during the listing process. If a state recommends against proposing a species for listing, the Cabinet Secretary should be required to conduct substantive peer review and thereby rebut a presumption in favor of the state's position.

In addition, under funding and misapplication of available funds have undermined the Act's implementation. Increased funding or new revenues must match the design of the reauthorized Act and the increased role of the states, and the states must be allowed to set recovery priorities.

Second - Improve the Act -

The goal of recovery for a given specie and the delisting of recovered species must receive greater attention. Lessen the onerous and ineffective practices of the act that have generated opposition to endangered species protection. Specifically,

- * Stop abuse of the petition process to list species. Place a more rigorous burden on petitioners to show that a listing action is justified, and raise the standard for required information to list any specie.

- * Make **recovery** of species a principle focus of the Act instead of just listing the species.

- * Make recovery plans and conservation agreements binding on their participants

- * Increase management and cooperation by enabling all stakeholders to participate directly in developing recovery plans and conservation agreements

- * Create a process that allows species to be delisted and down-listed as the goals and objectives in a recovery plan are met

Third - Increase certainty and assistance for landowners and water users -

Bring fairness and certainty to landowners and provide incentives for landowners and water users to proactively conserve species and to allow them to take pride in their stewardship.

- * Expedite habitat conservation plans with landowners and water users

- * Provide relief for small resource owners who conduct activities that do not threaten the continued existence of species

- * Assure landowners that if they enhance important habitat that they will not be penalized if at a later time, they return the land to its previous condition.

Let me repeat those three major areas for change -

- Increase the role of the states

Streamline the act

Increase certainty and assistance for landowners and water users

The Western Governors have placed their recommendations in the form of draft legislation. The policy is thus translated into the form of a bill for the Congress, saving you the peril of translating policy into legislation. I would be happy to furnish you with a copy of the draft amendments. I would urge you to not "cherry pick" from the Governor's position. The Clinton administration has tried to appear conciliatory in picking only what it pleases from the Governors position. To you as well as to the administration I say WE ARE NOT HERE TO YIELD TO YOUR PREFERENCES. YOU ARE HERE TO SEE TO THE PEOPLE'S INTERESTS!

Let me close with an illustration of the absurdity of the current act and the inadequacy of setting priorities between endangered species.

The state of Wyoming through the Wyoming Game and Fish Department and the cooperation of private landowners developed a model recovery plan for the black footed ferret, originally thought to be extinct. The state was a full partner in developing the final rule and recovery plan. The state contributed a significant portion of the funding. There are now 400 black footed ferrets.

By contrast, the reintroduction of the gray wolf was an exercise in bureaucratic arrogance and a pathetic application of priorities. The final Environmental Impact Statement for wolf reintroduction required the development of a final rule that would prescribe management of wolf recovery by the states. In fact, the Department of the Interior totally excluded the states in the preparation of the rule. Immediately upon adoption of its own rule, the US Fish and Wildlife Service proceeded with the capture and release of wolves without any state management plan being approved. Secretary Bruce Babbitt personally carried one of the wolf cages into the release area in Yellowstone Park with the full attention of the media but without even the common courtesy of notifying the governors of the affected states. The whole concept of partnerships embodied in Section 10(I) of the Act was rejected through the Secretary's pompous actions and disdain for states' rights.

But that's not the end of the story. The gray wolf is hardly endangered by comparison to the black footed ferret. There are 70,000 gray wolves on the North American Continent alone, while there are only 400 black footed ferrets in the entire world. The wolf has received the personal attention of the Secretary along with a commitment of \$13M for recovery funding. Again by comparison, the funds for the black footed ferret were rescinded and the US Fish and Wildlife Service even broached the possibility of having the black footed ferret working group draft a plan for euthanasia - that is, kill the remaining ferrets because there were no funds available to proceed with reintroduction.

Mr. Chairman, it's time to react to the call of the people who want accountability from their government and leadership that is fair. The changes advocated by me and the rest of my Western colleagues would restore the confidence of our citizens in their government and require fairness and competency in the administration of the new Endangered Species Act.

Senators, thank you for your courtesy and your kind attention.

STATEMENT BY REPRESENTATIVE BARBARA CUBIN

REGARDING THE ENDANGERED SPECIES ACT

WEDNESDAY, AUGUST 16, 1995

CASPER, WYOMING

Mr. Chairman, members of the panel, I welcome the opportunity to testify here today in my hometown of Casper about an issue that touches our lives daily and greatly impacts our personal freedoms.

Just one short month ago, I held a Private Property Rights Task Force hearing in Sheridan to discuss the impacts of federal actions on private property owners and the need to provide compensation for property which is taken or diminished in value as a result of that action.

I was, quite frankly, amazed at the number of examples witnesses provided about the cold, cruel realities of dealing with a vindictive government that believes its sole purpose in life is to protect the rights of species, endangered or not, and the rights of property owners be damned.

Unfortunately, a few simple revisions of the Endangered Species Act will not address all our problems, whether they be related to property rights or personal freedoms. I personally favor throwing out the Act and starting fresh with an incentives-based, non-regulatory approach to saving species.

Just as the government cannot provide shelter for all the homeless or guarantee welfare for the poor, Americans cannot be obliged to create and protect habitat for every species. But we can as a government provide incentives for citizens to voluntarily save our endangered species.

One such approach has been crafted by Congressman John Shadegg of Arizona and I strongly support his efforts to move it forward in the House Resources Committee. As currently drafted, Mr. Shadegg's bill would allow the Secretary of the Interior to offer various tax credits (in addition to direct payments) to landowners who have entered into voluntary agreements to enhance species recovery through habitat development and management. The Secretary would also be required to establish a system of awards for private conservation efforts and maintain an information database.

One particular example of where this would have been helpful came from a witness at my hearing in Sheridan. Dr. David Cameron, a Montana rancher and former professor of biology and genetics, became interested in the recovery of the Montana grayling.

This fish had for some reason disappeared from much of its former habitat and Dr. Cameron decided to look for a suitable site for its reintroduction. He soon discovered that the most appropriate site was the trout stream on his ranch.

Just as he was about to proceed with the reintroduction of the grayling, he learned from the U.S. Fish and Wildlife Service that they were seriously considering listing this Montana species as endangered. Luckily for Dr. Cameron, people knowledgeable about the heavy-handed tactics of federal environmental zealots, advised him to forego his experiment. Had he not taken their advice, Dr. Cameron could have easily lost the right to graze his own pastures or seen his family's ranch confiscated in the name of protecting the population of one species.

Clearly, it is illogical and unfair to make a few individuals bear the burden of biological diversity. We can protect species, but we can do so through partnerships that move away from control and towards real results. I will be working hard to promote that approach to endangered species recovery.



Wyoming Wildlife Federation
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**Written Testimony of the Wyoming Wildlife Federation on the
 Endangered Species Act.**

Presented to
 The Subcommittee on Drinking Water, Fisheries, and Wildlife
 of the U.S. Senate Environment and Public Works Committee.

August 16, 1995 by Dan Chu, Executive Director.

Thank you for the opportunity to comment on the effects of the
 Endangered Species Act on Wyoming.

The Wyoming Wildlife Federation represents hunters, anglers,
 hikers, and other recreationists united by a deep commitment to
 protect and enhance wildlife habitat and protect our right to
 access and enjoy public lands. Our organization is a 501(c)3
 nonprofit, wholly supported by member contributions. Our Board
 of Directors consists of a diverse array of Wyoming wildlife
 enthusiasts including wildlife biologists, military personnel, a
 miner, farmer, state employees, mechanic, accountant, and
 carpenter.

Today, I would like to address how the Endangered Species Act
 (ESA) has protected and enhanced wildlife habitat in our state,
 how healthy habitats benefit our state economy, and offer some
 suggestions on how to strengthen cooperative efforts between
 Federal, state, and local people to protect habitat on public and
 private lands.

The ESA and Healthy Habitats

Presently, Wyoming has five species fully listed as endangered,
 one listed as an experimental population, and three listed as
 threatened. In part, the low number of endangered species listed
 is testimony to the good health many of our habitats are
 presently in.



Healthy habitats provide forage, shelter, and water to game and non-game species. In fact, when biologically based wildlife management is applied to healthy habitats, sustainable yields of economically important species result. For instance, hunting license numbers are set by state Game and Fish departments to provide maximum take of a game animal while insuring a stable population capable of providing a good hunt the following years. Watchable wildlife populations are monitored and augmented by providing habitats that are biologically in balance. If a habitat is out of balance, certain indicator species will decline precipitously. The ESA recognizes these indicator species as candidates for listing as threatened or endangered. The ESA is meant to provide a framework for the recovery of healthy habitats for the long term benefit of wildlife and people.

Over 70% of Wyoming hunts and fishes, directly contributing \$323 million to the state economy in 1993. Abundant wildlife, clean water, and diverse habitats are our natural heritage. They are the basis for a sustainable economy and a quality of life unmatched in the nation. Healthy air, water, and wildlife habitat are of paramount importance to all of us. The Endangered Species Act has improved and protected crucial and unique habitats in Wyoming, directly benefiting hunters, anglers, and recreationists. By focusing on habitat health, the ESA works to successfully recover both endangered and non-endangered wildlife.

For instance, establishing Grizzly Bear recovery areas has improved habitat for many economically important species such as elk, deer, moose, bighorn sheep, and fish. Direct evidence shows that, as habitat health improves and forage is readily available, grizzly bears remain in areas where traditional food exists, thus they roam less in search of alternative foods and the incidence of conflicts between grizzly bears and humans decreases.

The ESA Supports Sustainable Development

Wildlife is big business in Wyoming. The majority of Wyoming's recreation revenues, \$1.7 billion in 1994, arise from people who want to observe, hunt and interact with wildlife. These revenues directly support local economies. Hotels, motels, gas stations, sporting shops, outfitters, and restaurants all over the state depend on tourism dollars. Charismatic threatened and endangered species such as the black footed ferret, grizzly bear and gray wolf have attracted people from all over the world to Wyoming. In particular, public outreach efforts by the Wyoming Game and Fish Department and the Division of Tourism have led people across the nation to associate the black footed ferret with Wyoming! Even last year's official State of Wyoming Economic Almanac pictures the black footed ferret on the cover.

Modifications to the ESA to encourage more local participation.

The ESA can provide discrete planning and implementation opportunities that bring all affected parties together in working groups. A USFWS scientific recovery team would remain responsible for determining species habitat and other biological needs, as well as, provide scientific oversight of actual recovery. Subsequently, the USFWS scientific recovery team would cooperate with the Wyoming Game and Fish Department and local interested parties to best determine on-the-ground actions that integrate the biologically sound recovery plan with local landowner concerns. Participation in these working groups would be open to all interested parties with mandatory participation by state and federal wildlife representatives, and voluntary participation by all other parties. These groups would be charged with the responsibility of creating habitat management plans that result in recovery of viable populations of candidate or listed threatened and endangered species.

For instance, the Wyoming Wildlife Federation participates in the statewide Coordinated Resource Management (CRM) program. The CRM program promotes voluntary participation from all interested parties on local working groups. A CRM group usually consists of local landowners, recreationists, state and federal agency representatives, and an impartial facilitator. Issues of water quality, soil erosion, forage, livestock and wildlife impacts, and public access are often covered. The group often begins with contentious debates between all parties before settling down to crafting land use plans that all can live with. The key to the success of these CRM groups is the willingness of all participants to reach a consensus that ultimately benefits the resource.

The success of the Wyoming Toad Task Force shows the ESA provides the flexibility to protect private property rights while pursuing an effective monitoring and recovery plan for an endangered species that is found largely on private land. The Task Force brought together landowners, local officials, federal agency representatives and conservationists. In the end, private landowners allowed federally funded searches for the Wyoming Toad to be conducted and no restrictions were imposed regarding pesticide spraying or land use. The success of the Wyoming Toad Task Force should be used as a model for the ESA to utilize local communities in the monitoring, planning and implementation of an Endangered species recovery. For more information, please refer to written testimony submitted by Wyoming legislator, Mike Massie.

Federal Oversight of ESA Implementation

The U.S. Fish and Wildlife Service (USFWS) should remain ultimately responsible for insuring that the listing of a species as threatened or endangered is based on biological considerations, and not political concerns. Since recovery plans are ecosystem based, they often cross state and local boundaries. The ESA provides the USFWS with guidelines for providing consistent management and enforcement. Ultimately, any cooperative recovery plan must still be consistent with guidelines set in the federal ESA.

Federal Funding for the ESA

We believe that, for the ESA to be successful in fostering more cooperative efforts between federal agencies and local communities, our U.S. Congress and the President must allocate more federal funding for ESA recovery and implementation plans. Many complaints about the ESA arise from the fact that inadequate funding often accompanies a recovery plan. By adequately funding a comprehensive incentives program for habitat protection on private land, the federal government can encourage private landowners to take a leadership role in promoting species recovery. Increased funding could provide services to private landowners, state wildlife agencies, and local groups. These services could include financial aid, technical assistance, and easily accessible information for species recovery and habitat protection.

In particular, we believe the success of endangered species recovery depends upon the voluntary cooperation of private landowners. Most landowners in Wyoming enjoy seeing wildlife on their property and often initiate habitat protection measures on their own. These landowners should be encouraged and rewarded for their efforts. The ESA should be adequately funded to provide incentives for habitat protection such as conservation easements, habitat reserve programs and property tax credits for habitat protection and restoration.

Proactive work to protect, enhance, and restore wildlife habitats prevents candidate species from reaching critical numbers where they become listed as Endangered. In the long run, measures focused on improving habitat conditions are less costly than emergency measures such as reconstructing lost habitats. An ounce of prevention equals a pound of cure.

Ultimately, funding for the Endangered Species Act should remain primarily federal. The benefits of recovering a species, especially on public lands, often benefits many people outside of the region. Therefore, it is reasonable to ask the American people as a whole to fund species and habitat recovery efforts

and not just place the financial burden on a few. The benefits of protecting an endangered species or habitat is often long term and not immediately felt. Also, with the financial constraints and political uncertainties many states face, federal aid is often mandatory for recovery efforts to be successful and consistent. A financial commitment from our U.S. Congress to adequately fund the ESA is absolutely essential to on-the-ground successes of local recovery efforts.

The reauthorization of the Endangered Species Act is one of the most important legislative actions wildlife enthusiasts will witness this year. The immediate and long term benefits of maintaining healthy habitats and a diversity of plants and animals can not be overstated. Without quality habitat on public and private lands, the state of Wyoming would suffer economically, and we, the people, would lose a quality of life unmatched in the nation. The Wyoming Wildlife Federation urges all interested parties to come together and work towards protecting our natural heritage. We all have a basic responsibility to ourselves and our children to conserve the habitats that are the basis of life on Earth.

I am grateful for this opportunity to testify before the Subcommittee today regarding this important matter. I hope my testimony has been helpful,

Thank you,

Dan Chu
WWF Executive Director

Testimony of
Connie Wilbert
Wyoming Chapter of the Sierra Club
before the
Drinking Water, Fisheries and Wildlife Subcommittee
of the Senate Environment and Public Works Committee
on the
Reauthorization of the Endangered Species Act
August 16, 1995
Casper, Wyoming

My name is Connie Wilbert. I am here today representing the Wyoming Chapter of the Sierra Club. I am a Wyoming native: I was born and grew up in Riverton, Wyoming. I learned to love the open spaces and abundant wildlife of Wyoming as a child accompanying my family on many outdoor adventures. That love, coupled with a deep respect for the natural wonders of this remarkable land, has only grown over time.

My background is in wildlife biology. After earning a Masters degree in zoology specializing in wildlife biology, I worked for the Wyoming Game and Fish Department as a habitat biologist until my son was born last summer.

I think it's important to note that there are many people in Wyoming like me: people who have lived here for years, who love the natural wonders of this state, and who do not buy "War on the West" rhetoric. Many Wyoming residents recognize the value of federal regulations that help us maintain the quality of life we so value.

According to your invitation to speak at this hearing, you would like to hear our views on the effects of the Endangered Species Act (ESA) on Wyoming. I strongly believe that the ESA has had a positive and valuable effect on Wyoming. I'd like to review several cases to illustrate this to you.

Grey Wolves

This spring, after decades of work to restore the grey wolf to the Northern Rockies, Wyomingites celebrated the return of this magnificent animal to its native home in the Yellowstone ecosystem.

Some who oppose wolf reintroduction have claimed the federal government forced wolf reintroduction on Wyoming residents. Nothing could be further from the truth. The decision to return the wolf to the Yellowstone ecosystem was the result of an exhaustive process that included hundreds of public meetings (including dozens in Wyoming) and generated almost two hundred thousand comments, two-thirds of which favored wolf recovery.

Several polls conducted in Wyoming showed that a majority of Wyoming residents support wolf recovery. This was also demonstrated when the majority of Wyoming residents attending public hearings supported wolf reintroduction.

The wolf reintroduction program is working. The U.S. Fish and Wildlife Service (USFWS), working closely with the affected states, decided to introduce wolves under the experimental, nonessential provisions of the ESA, to allow more management flexibility and less strict management requirements. While the Sierra Club and much of the conservation community didn't agree with this decision, it does demonstrate that the ESA is flexible

enough to accommodate concerns with the effect the Act might have on development activities.

Economically, wolf reintroduction is proving beneficial to Wyoming. The USFWS estimated that tourist spending in the Yellowstone area would increase from seven to ten million dollars a year. This summer has begun to prove their forecast correct, as the northeast entrance of Yellowstone National Park experienced a 22% increase in visitation. Each morning a steady stream of traffic flows into the Lamar Valley where one wolf pack has been regularly visible to visitors scanning the scene with spotting scopes and binoculars.

We are not out of the woods yet. Additional wolves are needed for reintroduction to ensure success of the program. Habitat for wolves and their prey will also be need to be secured. But we are on the right track. Reintroduction of wolves has been good for the wolf and good for Wyoming economics.

Grizzly Bears

Grizzly bears are now absent from 98% of their former range in the lower 48 states and have been reduced to one percent of their former numbers of 100,000 animals that roamed the American west at the time of Lewis and Clark's explorations.

The fact that grizzly bears still exist in and around the Yellowstone area is mainly due to the ESA. Since John and Frank Craighead's pioneering work on grizzly bears in the 1960's, we've learned a lot about how and why bears die, and what is needed to ensure their survival. Significant and positive steps have been taken by federal and state agencies to reduce some of the most pressing threats to grizzly bear populations. These steps include:

- 1)improvements in storage of human foods and refuse;
- 2)reduction of domestic sheep and grizzly conflicts through voluntary agreements with permittees and exchange of allotments to areas outside bear habitat; and
- 3)education of the public by federal and state agencies on how to live with bears and share their habitat.

While these steps have been critically important, without other habitat conservation measures the grizzly bear has a slim chance of long-term recovery.

There has been talk of removing the grizzly bear from the endangered species list. Delisting the bear is scientifically unjustified and premature. Neither the number of bears or the protection of their habitat is adequate for such a move.

While grizzly sightings were more frequent last year, this most likely had little or nothing to do with population increases. Instead, it was a result of drought and failed

natural food supplies such as berries, moths and whitebark pine seeds. Poor food years like 1994 cause bears to expand their range in search of food, resulting in more sightings and more conflicts with humans. As Wyoming Game and Fish biologist Dave Moody said, "It's hard for me to believe... that we've just seen a population explosion... It's just not biologically possible. What I'm attributing the increased encounters to is the poor food year that we saw...."

Since the grizzly bear was listed in 1975, state and federal agencies have done a poor job of protecting bear habitat. In the greater Yellowstone area approximately 50 square miles of national forest have been clearcut in just the past five years. On the Targhee National Forest west of Yellowstone, grizzlies have nearly vanished due to massive roadbuilding and timbering. Since the bear was protected as a threatened species, almost 1,000 miles of roads have been built on one single ranger district of the Targhee National Forest.

The current grizzly bear recovery plan states that "Roads probably pose the most imminent threat to grizzly habitat today...The management of roads is the most powerful tool available to balance the needs of bears and all other wildlife with the activities of humans." Yet the recovery plan includes no standards to limit the number of roads in grizzly habitat.

Twenty-two internationally known bear and conservation biologists wrote to Interior Secretary Bruce Babbitt that "We are deeply disturbed about the Final Grizzly Bear Recovery Plan, which we believe lacks scientific credibility and will not lead to the recovery of the threatened grizzly bear... The plan establishes recovery criteria that could lead to delisting the grizzly bear with essentially the same distribution and abundance that qualified it for Threatened status in 1975". I will submit a copy of this letter for the record.

In summary, the ESA has been critically important in stopping the extinction track that grizzly bears were on in the 1970s. But additional steps must be taken before bears can be considered a recovered population.

Wyoming Toads

The Wyoming toad program is an excellent example of how the ESA can work on private lands. The Wyoming toad is an endangered species found in only two small locations in the Laramie Basin, both on private land. To protect these toads under the ESA, in 1992 the Environmental Protection Agency (EPA) proposed restrictions on the use of 43 pesticides in an approximately 1,000 square mile area of Albany County. This area included Laramie and privately-owned ranch land west of town. The EPA believed the area potentially constituted the toad's habitat.

Residents within this area did not routinely use most of the chemicals on the list, with the important exception of malathion, which ranchers sprayed to control mosquitos. Laramie mostly used biological agents to control mosquitos, and so was not directly affected by the proposed restrictions.

The EPA extended the comment deadline so Albany County Commissioners could form a task force to pursue two goals - to ensure protection of the Wyoming toad and to allow control of mosquitos in the Laramie Basin. The task force represented a broad cross section of Albany county residents including ranchers, conservationists, agency personnel and scientists.

Once the task force was formed, the EPA further extended the comment deadline so the task force would have time to submit an alternate plan of action to the agency. As they developed and later implemented this plan, the task force held a series of public meetings so citizens could comment and ask questions. Using the expertise represented on the panel, the task force was able to better define the habitat of the toad and reduce the affected area by more than two-thirds. The task force submitted a plan to search the reduced toad habitat area during two consecutive summer seasons, 1994 and 1995, after which all areas in which no toads were found would be declared "cleared", and no chemical restrictions would be applied. The EPA accepted this plan, and agreed to provide almost \$100,000 to conduct the searches. Thanks to the reassurances provided by the federal agencies and to persuasion provided by the ranchers on the task force, a large majority of the people who owned land in the toad habitat area agreed to the searches. Searches were accomplished in both years before malathion was normally applied, and no toads were found.

As a result, at no time was the routine suppression of mosquitos halted, even temporarily, in the Laramie Basin as a result of the presence of the Wyoming toad. Property owners did not experience any restrictions on the use of their land or the chemicals they use.

Equally importantly, this cooperative effort between local citizens and state and federal agencies has furthered the protection of the Wyoming toad. We now know where they exist and can devote our energies to protecting those two small areas. Because the plan was developed and implemented cooperatively, an atmosphere of mutual trust developed among most people who were involved in and affected by the project. So it is likely that the recovery team will be able to work with willing landowners to introduce new populations so the toad may be removed from the endangered list.

The Wyoming toad program clearly demonstrates that the ESA is viable if the local community is devoted to preserving the diversity of its wildlife and is willing to work with the federal agencies, and if the federal agencies work with local groups who

are affected by the ESA. In the Laramie Basin, Wyoming citizens found a way to make the ESA work. In fact, the process worked so well in southeastern Wyoming that the EPA plans to use the Wyoming toad project as a prototype for similar situations in other western states.

Other Endangered Species in Wyoming

Wolves, grizzly bears and Wyoming toads are not the only examples that show the value of the ESA in Wyoming. In the early 1980s, black footed ferrets were North America's rarest mammal and one of the rarest mammals on earth. The tiny breeding population that was captured near Meeteetse, Wyoming has now expanded to provide animals for several additional captive breeding populations and for reintroductions into three different sites. While ferrets are still in a struggle for survival, the ESA has brought them back from the brink of extinction.

Similarly, the ESA has led to increased populations of peregrine falcons and bald eagles in Wyoming. For instance, bald eagles occupied 49 breeding territories in 1990 compared to 27 in 1981.

All of these species make Wyoming a richer and more satisfying place to live. Quality of life is critical to Wyoming's future and wildlife is an important part of that quality of life.

The Need to Strengthen the ESA

The Sierra Club recognizes that there are several areas where the ESA can be improved during reauthorization. We advocate amendments that address species recovery, prevention of species listing, incentives for private landowners and increasing the role of science in the ESA process.

The recovery of species listed as threatened or endangered is the ultimate goal of the ESA. However, the ESA does not currently possess binding timelines for the completion of recovery plans and does not identify specific actions required to achieve recovery. We can remedy these deficiencies by requiring timelines for the development of recovery plans, by establishing a planning process devoted to the scientific needs of species and by requiring the federal government to implement recovery plans in a matter that includes all affected interests and requires concrete actions with applicable deadlines.

The most economical and biologically sound way to achieve species health is to prevent activities that lead to ESA listing in the first place. We believe the federal government should be doing more to prevent listings. In particular, key ecosystem species should be identified and all federal lands should be

managed to conserve native species diversity. Management plans for declining species must also be encouraged.

When information alone cannot resolve a development conflict under the ESA, we propose a variety of legal mechanisms for affected private landowners. Congress should change the income tax codes to reward private landowners for responsible stewardship and change federal estate tax provisions to promote good land stewardship from generation to generation. To encourage actions beyond mere compliance with the law, we support the establishment of cooperative agreements where private landowners are compensated for approved conservation actions.

Science, rather than politics, needs to play a greater role in species protection. We suggest that scientific information should drive the recovery and interagency consultation process, that the National Biological Service be maintained to collect and distribute basic biological information and that Congress enable the USFWS to open offices of field technicians and representatives who can offer sound advice and information to landowners.

Funding needs to be increased for implementation of the ESA. Recovery could be greatly accelerated with appropriate funding.

The Gorton Bill

The Wyoming Chapter of the Sierra Club believes the Gorton Bill would eliminate virtually all of the ESA provisions that have proved valuable in protecting Wyoming's endangered fish and wildlife for the past 22 years.

The Gorton bill would end the nation's commitment to save fish and wildlife species for future generations. It would authorize the federal government to choose feeble "conservation objectives" that would mean certain extinction. For example, under the Gorton bill the Secretary of Interior could choose to prohibit anything other than direct kills of the threatened grizzly bear, and allow the species to go extinct as a result of habitat destruction.

The Gorton bill eliminates the ESA's protection of habitat, despite the fact that habitat destruction is the primary cause of species decline and extinction. In addition it requires that taxpayer funds be used to pay 50% of any costs corporation incur in fulfilling their most basic stewardship obligations.

The Wyoming Chapter of the Sierra Club strongly opposes the Gorton bill because it would eliminate any chance we have of recovering our threatened and endangered species in Wyoming, and of preventing extinction of other species in the future.

Economic Benefits

Much has been said that is misleading about the relationship between the ESA, jobs and the economic well being of communities in the Rockies. I'd like to spend a few minutes here to address some of these misconceptions.

The counties around Yellowstone National Park have experienced an economic boom over the last twenty years, with total employment and personal income growing faster than elsewhere in the nation. Nearly 75,000 new jobs were created from 1970 to 1991, and more than 2000 new businesses opened in the past ten years. Along with two decades of job growth came a per capita income increase of 35%. Most of the newly created jobs have been in the service, insurance, medical, retail and government sectors -- at a time when agriculture, mining and manufacturing have remained stagnant or in some areas have declined. Newly established businesses are small (one to nine employees) but salaries are roughly on a par with traditional manufacturing and timber jobs in the region.

The current entrepreneur in Wyoming, who is the foundation of recent growth in the Yellowstone area, is not a "hamburger flipper" working for minimum wage, but a highly paid professional who comes here with a recognition and appreciation of the environment.

Summary

In closing, I believe that the ESA has been of great value to the state of Wyoming, both economically and environmentally. I hope your committee deliberations will reflect that reality and I thank you for coming to our proud state.

Statement of: **Leah Talbott**

Albany County, Wyoming Commissioner

Before the:

Senate Committee on environment and Public Works

Subcommittee on Drinking Water, Fisheries and Wildlife

Casper, Wyoming

August 16, 1995

On the:

Reauthorization of the Endangered Species Act

I am Leah Talbott, County Commissioner in Albany County, Wyoming. My address is 381 Pahlow Lane, Laramie, Wyoming 82070. I appreciate the opportunity you have provided for me to tell you my views on the endangered Species Act and the problems it poses for people in my area and in Wyoming. Chairman Kempthorne's letter of August 7 inviting me to testify said the Subcommittee wanted to hear about the Endangered Species Act's "effectiveness in conserving species and the habitats on which they depend." The Subcommittee realizes that the habitats on which these species depend is generally private land from which we are trying to make our living. We pay the taxes on those lands and we survive the long winters and dry summers and hopefully produce enough hay, forage, cattle and sheep to remain in the agricultural business. The demands for conserving of that habitat for these species is at the expense of my species, my family and my friends. The first year we sprayed for mosquitos, in 1976, our lambs gained an additional 8 pounds each which would be an increase in gross revenues of about \$6 per lamb. The Endangered Species Act, as now written, is based on providing punishment for landowners with no rewards.

In our area of Albany County we have a species which is listed as "Endangered" known as the Wyoming Toad . In 1993 the U. S. Environmental Protection Agency advised the citizens that there were 43 pesticides which would no longer be permitted for use in 970 square miles of Albany County because of the Wyoming Toad. With Rhode Island containing 1,212 square miles of area you can see the impact of the EPA decision on our county.

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The U.S. Fish and Wildlife Service, EPA and State of Wyoming worked out an arrangement which allowed that areas of private land could be searched for Wyoming Toads, with those areas where none were found being cleared for use of the pesticides. However, landowners had a fear, and still do, of what restrictions would be placed upon the use of their lands had Wyoming Toads been Found.

Albany County, the State of Wyoming, the U.S. Fish and Wildlife Service and the EPA all incurred costs in the search program. The federal agencies say they are required, by the Endangered Species Act, to protect any endangered species. The law does not provide for the problems it causes those of us who own the habitat upon which the species may or may not be found. The cost of the searches was \$100.00 in hard identifiable cash, with much more being spent in indirect costs.

Recently the government returned 1,000 Wyoming Toads, which had been propagated at the Cincinnati Zoo and placed them in a lake in our county. My question is, "How many Wyoming Toads does it take to remove the species from the endangered list"? These toads are found in North and South Dakota, Minnesota, Canada and were planted in 6 zoo's throughout America. How will the government know when the Toads are no longer "endangered" if they haven't told us what number they are striving to recover? We have never been told what the number is. The Gray Wolf is listed as endangered, but there are 50,000 to 60,000 in Canada, 5,000 to 7,000 in Alaska and 1,750 in Minnesota. Just why do they say the Gray Wolf is "endangered"?

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Several landowners have refused to allow the government to search their property, and cannot use pesticides on their property as a result. Because there is a half-mile wide buffer zone their neighbors cannot use the pesticides on portions of their property. While the U.S. Constitution says that private property cannot be taken without just compensation the Endangered Species Act is being administered in direct defiance of the Constitution. What rights do private property owners have?

Because of the Wyoming Toad being listed as "endangered" and because the EPA must prohibit the use of a pesticide, under the Federal Insecticide, Fungicide and Rodenticide Act, which might harm a listed species, we have seen our county, and City of Laramie, mosquito control programs hampered severely these past two years. This poses a public health problem for our citizens, and for our livestock. One of my sons had encephalitis and I can ensure you his mother does not appreciate the government's lack of concern for this problem. No parent should have to go through what we did. We are grateful to God our son survived. The \$100,000 spent for Toad search could more beneficially have been spent on Vector research and Encephalitis control. A county road project was held up 3 years because of the requirement for toad "underpasses".

The Endangered Species Act must be amended to provide for written agreements with all landowners who are asked to provide habitat for listed species. Those agreements should also indicate the amount of money society is willing to pay landowners to nurture these species.

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Agreements are also needed with County and City governments for reimbursement for the additional costs they are incurring as a result of the requirements this Act is imposing on citizen taxpayers, Private property rights must be protected and this Act cannot be held to be supreme to the U.S. Constitution.

Evolution is one thing that has not been discussed. Much more could be said concerning this supposedly Endangered Species. I see my time is up thank you for inviting me.

**Statement of
Larry J. Bourret for the
Wyoming Farm Bureau Federation**

**before the
Senate Committee on Environment and Public Works
Subcommittee on Drinking Water, Fisheries and Wildlife**

**Casper, Wyoming
August 19, 1995**

Reauthorization of the Endangered Species Act (ESA)

I am Larry J. Bourret, Executive Vice President of the Wyoming Farm Bureau Federation, 406 So. 21st Street, Laramie, WY 82070. We appreciate the opportunity to voice our concerns about the Endangered Species Act and are especially pleased that the Subcommittee came here to listen to people who are providing habitat for listed species and also to those persons who have a desire to use the Act to control other peoples private lands or endeavors by the improper use of this Act. Over the past 25 years I've had opportunity to listen to many ranchers and farmers who have developed an ever-increasing fear of this Act. The wording of the Act allows lawyers, the "deny and delay crowd" and administrators to run wild and trample the rights of other citizens.

There is a great deal of evidence that the Endangered Species Act should be rewritten. Reform is vital to the interests of the species which deserve protection, but the citizens who provide habitat for those species also deserve protection. There are three points which we should recognize; 1. Society has said it feels species should be protected; 2. It is a well known fact that biological species depend upon habitat; and 3. Society needs to begin to compensate private property owners for providing the habitat for the species society claims should be protected. As USFWS Director Mollie Beattie said, in a June 25, 1995 speech to the Outdoor Writers Association of America in Chattanooga, Tennessee "The Endangered Species Act is not about species as much as it is about habitat ...". The Act must be amended to recognize that most of that habitat is also private property. The Act should be used for protecting endangered and threatened species, not misused to stop various economic development programs. Those who say "don't amend the Act" are not affected private property owners or are not trying to develop property that is or may be habitat for listed species.

The Endangered Species Act, as visualized in 1969 and 1973, was to protect those species which were in danger of extinction. Unfortunately what we see coming out the end of the pipeline is something different. Species, subspecies and distinct population listings have resulted in the expenditure of funds on charismatic megafauna while other truly endangered species might be disappearing. The government lacks criteria for establishing priorities so that scarce resources can be wisely expended. Priorities are not established based on science and protecting the most vulnerable species but instead are driven by sweatshirt, coffee mug, book and calendar supply and demand curves and hyping the species based on the latest polls. While the U.S. Fish and Wildlife Service claims to have a system for setting priorities on recovery plans we find no evidence to indicate they actually adhere to it.

An article in the August 13, 1995 Casper Star-Tribune headlined "Measuring the worth of endangered species" indicates two Colorado State University economics professors found out what "people were willing to pay to protect individual endangered species." They said the "average value" for the gray wolf was \$71 which people would be willing to pay via taxes or other assessments to prevent individual species from being driven to extinction. The federal government said, in its Final Environmental Impact Statement (FEIS) on wolf introduction into Central Idaho and Yellowstone National Park:

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"A final area of potential change in economic value associated with wolf reintroduction is the value potential visitors and others place on having a recovered wolf population. There are 2 components to this value. There is value associated with hearing or seeing wolves. There is also what is called 'passive use' or 'existence value'. Existence value is the value a person associates with the knowledge that a resource exists, even if that person has no plans or expectations of ever directly using that resource."

The government went on to say the "economic existence value of wolves in the Yellowstone area is estimated at \$6.6 to 9.9 million annually", which the government's publication says is the amount people would pay with no plans or expectation to ever directly use that resource. The government did not provide data on the value "associated with hearing or seeing wolves", but they did indicate the "Aggregate net economic value/year" was \$28,572,785. We can only assume the government felt the value of seeing or hearing wolves is represented by the difference between the \$6.6 to 9.9 million and the \$28,572,785, with the difference being \$21,972,785 to \$17,672,785 annually. With 2 million visitors to Yellowstone National Park per year that would indicate the visiting public would be willing to pay about \$8.80 to \$11 per person, over and above current entry fees, to visit with the expectation of hearing or seeing wolves. Additionally, the government's publication would indicate each visitor would also be willing to pay \$3.30 to \$4.95 just to know the wolves are being protected. Realizing there is a difference of \$66.05 to \$67.70 between the Colorado State University professor's "existence value" and that reported by the federal government in the FEIS we have to wonder about validity of either set of data. However, even using a value determined by averaging the two sets of data would reveal that the government is not getting full value from the use of its resources. If, in fact, the wolf issue is a fad we suggest that when a new charismatic megafauna fad reduces the wolf to a lower federal priority the funding will be redirected to the new fad. On the other hand, if the wolf issue is not a fad, the public should be willing to pay much higher fees to visit the Yellowstone National Park -- according to the Colorado State University and the government FEIS data.

If the Colorado State University professors are correct each United State citizen would gladly allow the government to deduct from everyone's paycheck \$71 just for the wolf. Their information on other species is as follows:

	Average value
Atlantic salmon	\$ 7.63
Arctic grayling/Cutthroat trout	\$10.06
Bald eagle	\$26.01
Bighorn sheep	\$11.15
Blue whale	\$41.78

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Grizzly bear	\$35.96
Humpback whale	\$73.20
Monk seal	\$20.22
Red-Cockaded woodpecker	\$15.50
Pacific salmon and steelhead	\$26.52
Sea otter	\$28.32
Spotted owl	\$92.65
Squawfish	\$ 8.42
Striped shiner	\$ 5.10
Whooping crane	\$33.07

The Colorado State University professors data on these 15 species, plus the gray wolf, indicates the average citizen would be willing to pay \$507.59 just for these species to say nothing of the remaining 939 species. Their data, if it is accurate, would mean the citizens of this nation would be willing to contribute \$127 billion for the aforementioned 16 species. If Congress were to propose that each citizen would have \$507.59 deducted from their paychecks we would soon learn if there is any validity in the data and conclusions put forth by the Colorado State University professors. If entry fees were raised by the magnitude of the data found in the aforementioned FEIS we would also quickly learn if there was any validity in the governments publication and data. Congress might face a taxpayers revolt, but we feel such proposals would quickly sort fact from fiction.

Expending money to recover a species in a portion of its range, when the species is abundant in other portions of its range is a waste of resources which could be better expended on species which are truly in danger of becoming extinct. The definitions of "endangered species" and "threatened species" in Section 3. (6) need to be amended to remove the words "or a significant portion". The results of such amendment would mean that species must be endangered or threatened throughout their range before they would be considered for protection under the Act. If the Act were properly written the differences between the "endangered" category and the "threatened" category would have meaning and would place those actually in danger of becoming endangered in the "threatened" category on an early warning basis. The government's current treatment of "endangered" species and "threatened" species is virtually the same, which results in wasted resources and confusion by the public.

Amendment of the definition of "species" is also needed. The current definition says the term "species" includes any subspecies of fish and wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. We would suggest the definition be amended to read, "The term 'species' means a category of biological classification ranking immediately below the genus or subgenus, comprising related organisms potentially capable of interbreeding, and being designated by a binomial that consists of the name of its genus followed by a Latin or latinized uncapitalized

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noun or adjective agreeing grammatically with the genus name." If the species is not in danger it should not be listed, and if a species is listed it would protect the subspecies -- therefore subspecies should not be listed separately.

A 1988 list of endangered and threatened species revealed the following:

	Species listing	Lower than species listing	Total
Mammals	176	82	258
Birds	38	28	66
Reptiles	74	31	105
Amphibians	12	5	17
Fishes	70	18	88
Snails	8	1	9
Clams	21	6	27
Crustaceans	7	0	7
Insects	5	12	17
Arachnids	3	0	3
Plants	169	34	203
Total	583	217	800

It is evident that over 25 percent of the listings were lower than at the species level. In 1992 eleven species (or subspecies) were listed as endangered or threatened in Wyoming. However 29 additional animal candidates and 32 plant candidates were being reviewed for listing. Fifty-seven species (or subspecies) are eligible for ESA protection but are not listed (primarily for lack of funding). Those include five fish, one amphibian, six birds, seven mammals, four invertebrates, and 34 plants. When is the government going to provide mitigation for property owners who provide habitat for these species?

Under current law and interpretation hybrids are not supposed to be protected under the Act. Actual practice is completely different. This poses some interesting possibilities and specific examples. The Florida panther became a hybrid many years ago when South American panthers were brought into the area. With dwindling numbers of "Florida panthers" our federal government decided to bring in Texas cougars to supplement the numbers and ensure the Florida panther "gene pool" was maintained. The federal government has suspected for a number of years that the Red Wolf was actually a wolf-coyote hybrid. In the early 1990s DNA analysis confirmed that fact. The government however is continuing to "protect" "Red Wolves" on the basis that they are protecting the "gene pool". If hybrids are going to be considered for protection under the Act it is reasonable to assume that the abundance of the parent species should be considered in total. For instance, DNA research has shown that (Gray or Timber) wolves in Minnesota and eastern Canada have hybridized

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with coyotes at some time in the past. If the hybrid offspring are to be protected shouldn't the relative abundance of coyotes in the United States be considered when listing or delisting of the Gray Wolf (or Gray Wolf-coyote hybrid). The government, by protecting hybrids, has embarked on an expensive, ill-conceived, non-scientific exercise. If Texas cougars are abundant why should the hybrid offspring be listed as endangered or threatened? This particular issue should be investigated because the government's resources will not allow for waste on hybrids.

The definition of "take" includes the term "harm" which has been the subject of much controversy relative to habitat modification which might "harm" a species. Restrictions on the modification of habitat clearly interferes with the use of private property. If society wishes to restrict the use of private property for the benefit of endangered species and society, then society must develop a method of financially compensating property owners for their damages and losses. Tax write-offs are of no benefit to someone who has no tax liability as a result of lower or non-existent income as a result of the Act. The Congress needs to consider providing hard currency to pay for these desires of society. Habitat modification restrictions also impact those who are dependent upon federal lands or minerals in the Western United States. Western States, such as Wyoming, should not be expected to see their economy wrecked because of the highly improper use of the Act to dictate nonuse dictums of some members of society. Any activity taken under the Act which results in the loss of use or enjoyment of any valid use of federal or state lands should be compensated for by the federal government. Taking of 20 percent of the value of property under this Act is no different than taking 20 percent of the value of property for a road. The history of the Act shows that the big stick approach has not, and will not, work.

There are those who will say that the Act does not need to be amended, but property owners are aware of the fact that the executive branch doesn't follow its own regulations on this subject. We would point to Section 17.81(d) of the Fish and Wildlife Service's regulations relative to experimental population designation. That regulation reads as follows:

"The Fish and Wildlife Service shall consult with appropriate state fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules."
50 CFR Section 17.81(d) (emphasis added)

In the instance of the introduction of Canadian wolves into Central Idaho and Yellowstone National Park the government failed to comply with that regulation. The government said they held public hearings, but mere solicitation of comments from the general public does not constitute consultation with private landowners, or with the State or local governments.

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We wish to notify the Subcommittee that on the same day a U.S. District Judge disallowed a preliminary injunction to prohibit the importation of those Canadian wolves the National Audubon Society, the Sierra Club, the Predator Project, Sinapu and the Gray Wolf Committee filed a lawsuit alleging the Central Idaho portion of the implementation plan:

"would withdraw or deny full ESA protections from wolves legally entitled to those protections, including members of overlapping artificially introduced and natural wolf populations, wolves already present within central Idaho, wolves that will migrate into central Idaho in the future, and the offspring of artificially introduced and naturally recolonizing wolves within central Idaho." (emphasis added)

Plaintiffs asked that wolves in central Idaho be given full protection under the ESA, and given the fact that Canadian imports are now in the area we all know that identity of the various wolves will be impossible to establish. Therefore we have a situation in which the government did not comply with its own regulations on designating experimental populations and now some within the environmental community are attempting to change the scenario for private landowners and property owners within the area. Had the government followed its own regulations the private landowners and property owners would have had an opportunity to express their concerns about this matter and the government should have made every effort to thwart such manipulation of the process. Landowners within the area now have no idea under what rules they will be expected to function, and were never consulted as to their individual situations and concerns. Section 10(j) of The law must be amended to specifically require direct consultation, and agreement from, any "person holding an interest in land which may be affected by the establishment of an experimental population." The government cannot ignore its duty to directly consult with such persons and then find itself in a position which could result in its public pronouncements about the program being incorrect. If that should be the case, severe problems for persons holding an interest in land which may be affected by the establishment of an experimental population will surely occur.

As relates to Section 10(j) amendment is needed which says:

"Release area" means a National Park or federal Wildlife Refuge, or an area where the federal government has obtained the written consent from those persons holding an interest in land which may be adversely affected by the introduction of an experimental population or individuals being released, and their offspring, whether the offspring are the progeny of the released population or individuals or are offspring resulting from those released individuals or population, or their progeny, mating with other individuals of the same species in the release area. The release area shall be the same as the experimental population area and the Secretary shall

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ensure that the species being introduced is kept within the experimental population area."

This would possibly resolve the type of "shell game" that is in the making in the Central Idaho and Yellowstone National Park areas. Another amendment would ensure that the government does proper consulting with this wording:

"The Secretary shall not consider public hearings to be a substitute for individual contacts with persons holding an interest in land which may be impacted by the introduction of an experimental population. The Secretary is directed to ensure that each person holding an interest in land which may be affected by the introduction of an experimental population is contacted and made aware of the sections of this Act, and the Constitution of the United States of America, which protect that person's private property rights."

There are those who claim they speak for the public, and even the government feels it is representing the public. Regardless of who is actually the spokesperson for the public society cannot impose the burdens of the majority on the minority. If habitat is needed the government, on behalf of society which is allegedly demanding protection of endangered and threatened species, must provide mitigation in the form of compensation for society's use of the private property of individuals.

We would recommend, in addition to those items previously noted, the following:

- a. Critical habitat should be designated at the time of listing of the species. This will ensure that the species is truly worthy of listing, provide the taxpayers with some idea of the costs and require the government to deal with private landowners early in the process.
- b. The Act should require minimum scientific standards necessary to support listing and other decisions affecting listed species. We would point out that the hybrid situation discussed earlier is a good example of why minimum scientific standards are necessary.
- c. The definition of "take" under Section 9 should be clarified so as to not include modification of potential habitat. The property owner should not be placed in a position of having his property confiscated by means of this Act.
- d. The Act should provide strict liability for damages caused to persons or property by listed species. This would merely mean the Act needs to be amended to conform to the Constitution of the United States of America, which should have been the case all along.

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- e. The Act should be amended to require a species management plan that considers socio-economic impacts separate from the listing process.
- f. The exemption process is overly expensive, unworkable and generally inaccessible.
- g. The Act should not include protection for candidate species at this time.
- h. The Act must differentiate and distinguish between species listed as endangered and species listed as threatened.
- i. That the U.S. Department of Interior be required to prepare an Environmental Impact Statement on the Endangered Species Program itself. This would ensure that all the impacts of protecting one species over all other species has been considered.

We are attaching to this statement copies of a number of documents to support our testimony, and ask that all documents be made a part of the record.

We thank the Committee for their efforts and for considering our comments. Thank you.

**AFBF ANALYSIS AND PROPOSED
AMENDMENTS TO THE ENDANGERED SPECIES ACT**

The purpose of this document is to identify provisions of the Endangered Species Act that have caused problems for agriculture, and to suggest how those sections could be amended to remove those problems.

GENERAL AMENDMENTS

The ESA should be amended to specifically include the compensation requirements when private property is diminished in value, risk/benefit criteria, the unfunded mandates requirements, and any other regulatory reform measure passed by Congress. Even though these elements might be in general legislation applicable to the ESA, it would be advantageous to incorporate that same language into the ESA.

The regulatory reform legislation is needed because of documented abuses in the regulatory process. Many of these stories concern administration of the Endangered Species Act. Even if such legislation were not being considered concurrently in Congress, the principles of such bills would be necessary elements of ESA reauthorization.

The American Farm Bureau Federation sees enactment of these principles as going a long way toward solving many of the problems that our members have with the Act. Enactment of these amendments is a priority for the American Farm Bureau Federation in the reauthorization of the Endangered Species Act.

**SECTION TWO. CONGRESSIONAL FINDINGS AND PURPOSES OF THE
ACT. 16 U.S.C. 1531.**

The findings and purposes of the Act are stated in such a way that they are often cited for the proposition that it was Congressional intent that conservation of troubled species should have the highest priority. In addition, the statement in subsection (b) concerning preservation of "the ecosystems upon which endangered and threatened species depend" has bolstered the proposition that "habitat preservation" is a prime goal of the Act and has also given rise to the biodiversity concept within the Act.

Even though this section has no substantive requirements as contained elsewhere in the Act, this section sets the tone for the Act and is often cited as evidence of Congressional intent.

Suggested Amendments: In section (a)(1), add a statement that recognizes extinction by natural processes. In subsection

(b) ("Purposes"), add notions of consideration of economic, social, environmental and technological factors to balance species conservation. In subsection (c) (a), add the idea that such species conservation shall be done in accordance with the purposes of this chapter.

SECTION THREE. DEFINITIONS 16 U.S.C. 1532

The expansive definitions given to many terms in the Act have provided overzealous bureaucracy with the justification to use the Act for purposes for which it was not intended. The definitions in this section should be carefully reviewed and limited so they cannot be expanded to justify activities outside the purposes of the Act. In this respect, some definitions will have to be amended, while others should be added.

Critical Habitat -- It is currently defined to include areas outside currently occupied habitat. This allows for protection of habitat by the FWS without even a showing that the species is present there. Critical habitat should be limited to only that habitat currently occupied by the species. (Any expansion of habitat should be by voluntary incentive program as set forth below.)

The definition of "critical habitat" should also reflect that it is determined on the basis of credible scientific evidence.

Species -- It currently "includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreed when mature." This definition greatly expands the scope of possible listings, and allows for listings without regard to the overall status of a species. Thus, a species that is rare in one area can be listed, even though it is plentiful in other areas and in no danger of becoming extinct (e.g. gray wolf).

This definition must be changed, perhaps to include a scientific definition that incorporates interbreeding capabilities and/or acceptable levels of scientific genetic distinction. The definition should specifically exclude hybrids as protected species.

Ideally, the subspecies and distinct population concepts should be eliminated from the definition of "species." There may be circumstances, however, when listing such species might be warranted. These circumstances should be limited by statute to only those where: (1) the subspecies or distinct population is so distinct from the species that it no longer can interbreed, (2) it has become genetically distinct from other members of the

species, or (3) its listing is determined by credible scientific evidence to be necessary for the survival of the species as a whole.

Endangered Species and Threatened Species -- Current definitions provide for listing if threatened with extinction/endangerment "throughout all or a significant portion of its range." This terminology is ambiguous, because it is unclear whether range refers to "current" range or "historical" range (where the species once existed). "Significant" is a term whose meaning has been stretched. We suggest elimination of this phrase. It serves no purpose, and re-focuses the intent of the Act on the actual status of the species as a whole.

Take -- The definition of "take" should be tightened to include only any act that "directly" impacts the species. The terms "harm" and "harass" should be separately defined in the statute to include only direct impacts and to exclude habitat modification.

The definition should also be amended as follows: "Take shall not include any act or omission committed in self-defense or in defense of others or in defense of one's own property."

The Act should include separate definitions for "take" of endangered and threatened species, with lesser restrictions in the take of threatened species.

Isolated Population -- This is a new concept that is a corollary to the "distinct population segment" idea. An "isolated population" would be defined as "a population of a species, which although few in number in a particular habitat, is of a species that is not otherwise endangered or threatened throughout the United States, Mexico and Canada." Such populations would not be eligible for listing.

This gets to the issue of species that might be low in numbers in the U.S. but which might be plentiful elsewhere in the world. Canada and Mexico were singled out because (1) species in Mexico and Canada are more apt to be extensions of U.S. populations, and (2) Mexico and Canada are more likely to cooperate in conservation efforts if a species is in danger. There are several species that are listed in the U.S. but which are plentiful in Mexico and/or Canada (e.g., gray wolf). Under this concept, they would not be listed.

SECTION FOUR. DETERMINATION OF ENDANGERED AND THREATENED SPECIES. 16 U.S.C. 1533

This section contains procedures and requirements for

listing species, de-listing species, and designating critical habitat.

1. Listing of Species

The evidence clearly shows that the current provision is not working and needs to be changed. As currently defined, anybody can propose a species for listing, and a species can be listed with little or no supporting scientific data. The government does little independent investigation of the status of proposed species.

This loose procedure leads to many species being listed that are neither threatened or endangered. The current procedure, with no required scientific baselines, deters investigation of a species beyond its immediately defined area. Similarly, listing a species, thereby invoking the restrictions of sections 7 and 9, stifles development of a management plan for the listed species.

Because the Act forbids the consideration of economic and social impacts in the listing determination, and because the section 7 and 9 prohibitions stifle development of management strategies, the impacts of listing on agriculture and other affected industries can be devastating.

The procedure and requirements for listing a species needs a complete overhaul. The new section should contain the following elements:

a) Require the submission of a draft species management plan with every proposed listing. The management plan would consider economic, social, and other community factors in deciding how to manage the listed species. This procedure keeps economics, et al. out of the listing process (as it should be) but gives consideration to these factors at the time a listing is made. The Act should also require an affirmative finding, supported by credible and verifiable scientific evidence, that listing a species and resultant management plan will benefit the species. Such a measure also helps the species by providing an active management plan for that species.

b) Require that listing determination must be made "on the basis of competent and credible verifiable scientific evidence necessary and sufficient to support that determination," or words to that effect. This creates a scientific standard for making ESA decisions that holds the government to a specific burden of proof. The current standard of "best scientific and commercial data available" is no standard at all.

c) Provide for three-person Peer Review Panels to review all proposed listings for sufficiency of scientific

information. The same panel would also review the proposed final rule to see if there is sufficient credible scientific information to justify the listing. Panels should be: randomly selected from impartial scientists for each rule, and specifically exempt from the Federal Advisory Committee Act (FACA). Panel findings would be part of both the proposed rule and the final rule, with the Secretary responding to points raised in the panel report.

(d) Prohibit the listing of "isolated populations," and any species where more than 75% of the range or population is outside the United States.

(e) Require at least one public hearing in the area where the species proposed for listing occurs. If the species occurs in more than one state, a hearing should be held in each affected state.

2. Critical Habitat Designation

An integral component of the Congressional scheme for protecting listed species is the designation of critical habitat. The concept is based on a determination of the amount of habitat necessary for a species to survive, and designation takes economic and social factors into account (one of the two places in the Act where economic factors are specifically considered). Designation of critical habitat forces the government, in at least a limited way, to balance the needs of the species with human needs.

While the Act states that critical habitat "shall" be designated, it allows the Secretary to make certain exceptions. These "exceptions" have been abused to the point where critical habitat has only been designated in 16% of the cases.

Section 4 of the Act must be amended by:

a) removing most of the exceptions for designating critical habitat, so that the only exception is if designation would result in the extinction of the species.

b) The "economic impact" of designation is interpreted by the government to mean the impacts over and above listing, which creates a false statement of such impacts. The Act should be amended to specify that cumulative economic impacts should be analyzed and considered in the designation process.

c) Designation of private property as critical habitat should trigger either voluntary participation of the landowner in a Critical Habitat Reserve Program, or

compensation for taking of private property. Both of these are described below.

3. De-Listing Process

While the Act briefly mentions that the procedure for consideration of de-listing petitions is the same as for listing petitions, the de-listing part of this provision should be spelled out in more detail.

In addition, the Act should be amended to provide that the government shall de-list species when population goals set forth in the recovery plan have been met. Such goals have been met in many cases, but species are not removed from the list.

In addition, many species are added to the list and nothing is ever done to put that species on the road to recovery. Hopefully, the addition of a draft and final management plan as a condition of listing will prevent such species from falling through the regulatory cracks. However, a provision should be added to the ESA to the effect that if no affirmative federal action is undertaken to implement the species management plan and recovery plan within five years, then the species should be de-listed. The five year period coincides with the review cycle mandated in the Act.

Similarly, if a species has not been sighted for five years, then it also should be either considered extinct or de-listed.

4. Equal Opportunity for Judicial Review

Section 4(b)(3)(C) of the Act provides for judicial review of any negative finding on a petition to list or de-list any species, but no right of review if the government determines that species should be listed or de-listed. The Act should be amended to allow for judicial review of any finding of the government upon a petition to either list or de-list.

5. Recovery Plans

The Act should be amended to provide that recovery plans should be developed in conjunction with approved management plans and critical habitat designations. Recovery goals should reflect the intent of the ESA and be set at levels where species are no longer endangered or threatened with extinction.

If the FWS determines that recovery plans are appropriate for the species, then these recovery plans should be required to be in place no later than one year after listing.

SECTION FIVE. LAND ACQUISITION 16 U.S.C. 1534

This section should be amended to include a provision requiring compensation for diminution in value of private property as a result of ESA actions. This amendment should be reflected in adding this concept to the title of the section.

It appears to be the original intent of Congress in enacting this section that lands required for habitat for listed species should be purchased by the federal government and managed by them. This intent should be reiterated and more clearly stated in the amendments to the Act.

The Act should add a section to this provision to the effect that whenever any activity taken under the ESA diminishes the value of privately owned property, or results in the loss of use or enjoyment of any valid use of federal or state lands (e.g., grazing permit), then the government is required to pay compensation to the injured party.

SECTION SIX. COOPERATION WITH STATES. 16 U.S.C. 1536.

This section sets forth the relationship between the federal government and states. It should be expanded to include federal relationships with local governments and willing landowners as well. The Farm Bureau Critical Habitat Reserve Program described in our policy should go in this section. That program is outlined in a separate document.

This section should be further amended to authorize entry into cooperative agreements with states and local governmental agencies to preserve and protect listed species in accordance with the management plans that have been developed as part of the listing process. Any such agreements should be voluntary so as not to impose any unfunded mandates.

To further encourage states and local governments to seek workable solutions to these issues, the federal government should recognize and encourage state and local conservation efforts as an alternative to listing. State and local authority and control over listed species should be recognized and expanded, and federally funded accordingly. State and/or local management is more likely to reach solutions that accommodate the needs of both the species and the community. Not only does this preserve federal-state relationships, but also results in more attention provided to the species and its conservation. The provision that allows states to take more restrictive measures to protect endangered or threatened species than the federal government should be eliminated.

A very important amendment is the addition of the Farm Bureau Critical Habitat Reserve Program, which provides incentives to private landowners to protect listed species on their property instead of penalties if they do not. It should be a voluntary program that provides for active management of listed species on private property. Such a program will do more to save listed species than any other provision in the ESA.

SECTION SEVEN. INTERAGENCY COOPERATION. 16 U.S.C. 1536

Section 7 of the ESA contains provisions relating to how federal agencies proceed under the ESA. These include requirements for pre-project consultation with the FWS or NMFS, and obtaining exemptions from the requirements of the ESA.

(a) Consultation

Section 7 of the ESA has two separate and distinct provisions relating to how federal agencies must proceed under the ESA. The best known provision is the requirement that for any action "authorized, funded or carried out" by any federal agency, it must consult with either FWS or NMFS, as appropriate, to ensure that the proposed action "is not likely to jeopardize the continued existence of" the listed species. It involves, in some cases, the preparation of a "biological assessment" by the action agency, and a "biological opinion" by FWS or NMFS regarding the impacts of the project on the listed species, as well as possible "reasonable and prudent alternatives" that might be employed to remove any jeopardy findings. Consultations can be formal or informal.

The consultation process should be amended as follows:

(1) Allow a private permit or applicant for a license to participate in the consultation with the action agency and FWS.

(2) Provide a maximum time limit for completion of consultation that is reasonable.

(3) Recognize that activities that are taken in conformance with approved Habitat Conservation Plans (HCP) and final management plans as provided in these amendments shall not require section 7 consultation. A finding of conformance with either the HCP or management plan would be sufficient.

(4) Require within the context of species management plans that activities be delineated which will have minimal or no adverse impacts on listed species. Such activities

would be categorically excluded from section 7 consultation requirements and from section 9 take provisions.

(5) Where a jeopardy opinion results in a conflict between the ESA and the agency's responsibilities and duties under applicable statutes and regulations, then the President should resolve the conflict.

(b) Conservation

The second provision provides for federal agencies to "use their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species ..." (Section 7(a)(1))

Certain interests are pushing for an interpretation of this clause that would require agencies to initiate programs and projects to enhance endangered or threatened species populations above and beyond the requirements of the ESA. In other words, these interests are pushing for an affirmative duty on federal agencies to make ESA considerations the primary mission of the agency over all other interests.

Section 7(a)(1) might be amended to state that federal agencies shall cooperate with the Secretary in the administration of the ESA. We believe that is the intent of the section. Otherwise, this section should be deleted.

(c) Endangered Species Committee

The process devised in 1978 to resolve the snail darter conflict has proven unworkable in actual practice. The Committee has only been convened twice since the snail darter situation.

The ESA should be amended to present a more streamlined approach to resolving federal conflicts and to provide for exemptions. In addition, any such process should involve the governors of the affected states as members of any decision-making body.

SECTION EIGHT. INTERNATIONAL COOPERATION 16 U.S.C. 1537

This section relates to the cooperation between the United States and foreign countries with regard to protection of endangered and threatened species. It does not directly affect U.S. agriculture, except that it provides an authority for entering international compacts such as the Biological Diversity Treaty.

SECTION NINE. PROHIBITED ACTS. 16 U.S.C. 1538

This section includes the prohibition against "taking" listed species. We would re-define "take" to include only direct impacts on species, and exclude indirect impacts such as habitat modification. The definition would also exclude any activity taken in self-defense, or in defense of others or property. This section can clarify that any action taken to repair or maintain an existing facility, structure or piece of ground shall not constitute a "take" under the ESA.

As subsection (a) (1) only applies to endangered animals, there should be a second corresponding section that pertains to threatened animals. It should put the burden on the government to affirmatively develop special rules for each threatened species, subject to notice and comment. The section should provide that these special rules shall constitute the only restrictions resulting from threatened species. In other words, if not specially promulgated, there are no restrictions.

The prohibitions applied only to threatened species would be less stringent than those applied to endangered animals. For example, the 5 acre or less exclusion proposed by Secretary Babbitt is a good example of this, and might be a good starting point for amendment.

The section should also be amended by adding the following: "Any activity or omission of a non-federal entity is deemed not to constitute a take of a species under this section if the activity or omission

(a) was authorized as part of an approved Habitat Conservation Plan, and/or an incidental take permit issued in conjunction therewith,

(b) is authorized pursuant to participation in the Critical Habitat Reserve Program,

(c) the activity underwent consultation pursuant to section 7 of the Act and either no jeopardy was found or the activity is a reasonable and prudent alternative as provided in the biological opinion."

SECTION TEN. EXCEPTIONS. 16 U.S.C. 1539

This section deals with incidental take permits, habitat conservation plans and experimental populations. In all three cases, amendments will improve administration of the Act and impacts on agriculture.

(a) Incidental Take Permits

The FWS and NMFS have proposed the addition of certain new chapters to their respective agency manuals that increase the flexibility of incidental take permits and habitat conservation plans. Many of these additions have some merit and should be codified.

For example, the proposal sets outer limits for the approval of incidental take permit applications. Since many such applications have languished within the agency for years, such an amendment would be beneficial.

The proposal also provides for different levels of incidental take permit applications depending on the intensity of the impacts that the applicant will have on listed species. This distinction thus separates the interests of the big developers or the county from the small producers who want to take advantage of the process as well. A statutory amendment incorporating these levels of permits will help in this regard.

The key issue is flexibility. The statute needs to adapt to greater or lesser impacts, to whether species of interest are listed as endangered or threatened, and even to levels of how endangered some species might be.

(b) Habitat Conservation Plans

These are the main components of applications for incidental take permits. Many of the same amendments described above apply to Habitat Conservation Plans as well. It should be made clear in this section that activities authorized pursuant to an approved HCP will not be considered as a "taking" and will not be subject to consultation under section 7.

Habitat Conservation Plan requirements must be made less burdensome and more flexible.

(c) Experimental Populations

The statute must be amended to clearly provide

(1) There is a distinction between reintroduction of a species and augmentation of existing species by bringing in other members of the same species from other areas to an existing population. Both situations should be defined in the section, and both should be subject to the same restrictions.

(2) Populations can only be introduced into areas of known historic range of the species, based on accepted scientific evidence. Different subspecies cannot be put

into areas where that subspecies did not once exist.

(3) No reintroduction can occur where any members of a naturally occurring species might overlap with any members of the experimental population. For purposes of this section, no augmentation of species by bringing in other members of the same species is allowed, unless the Secretary determines on the basis of sound, credible, verifiable scientific evidence that such augmentation is necessary to save the species from extinction.

(4) No species can be reintroduced or augmented without a designation as an "experimental population."

(5) The special consultation rules of 50 CFR 17.81 should be codified. These rules require the FWS to specially consult with state and local governments and affected landowners, and to reach agreement to the maximum extent practicable.

(6) The law should provide that no reintroduction or augmentation shall occur without the express approval of the affected state or states. That could mean approval by the governor or the legislature, if that is the mechanism provided by state law.

(7) The law should provide that the federal government is liable for any damages, losses to property or diminution on property value resulting from any reintroduced or augmented species and its progeny. In this respect, this section will supercede the provisions of any independent takings legislation passed by Congress.

(8) The law should be amended to provide that any proposed reintroduction or augmentation is subject to NEPA, and further that it shall be subject to the same notice and comment provisions as for listings, etc. The provision should also be amended to require at least one public hearing in each affected area.

SECTION ELEVEN. PENALTIES AND ENFORCEMENT. 16 U.S.C. 1540

The primary focus in this section is on the citizen suit provision, 16 U.S.C. 1540(g). This section should be amended by:

(1) Adding a subsection 1(D) that specifies that a citizen suit may be brought to challenge any action taken under the ESA, as provided in subsections (A), (B), and (C), above) to protect economic, social, biological or environmental interests. This is necessary because some courts are denying standing to plaintiffs alleging economic

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
ON REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

When the Endangered Species Act was passed in 1973, Congress declared its concern that species of fish, wildlife and plants were becoming extinct at an increasing rate. These species, the Congress stated, ... "are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people."

AFBF strongly suggests that a properly crafted and administered Endangered Species Act may benefit those of us who are desirous of viable agricultural growth and development. We are mindful of the gene pool needed for successful bioengineering, the results of which could be increased resistance to disease, pests and drought. Like other consumers, we look forward to the contributions that species might make to the discovery of pharmaceuticals that will better maintain our health and vigor. Such advances could be important to the continued success of animal agriculture as well.

AFBF also lauds the Congressional finding that the States and other interested parties are to be encouraged to develop and maintain conservation programs "through Federal financial assistance and a system of incentives..."

It is therefore disappointing that the history of the Endangered Species Act has been one of failure--failure to recover species that are listed under the Act, failure to persuade those in an affected area to want to protect a species, failure to take appropriate actions that might save a species, and failure to focus attention on those species in those areas that most need help. It is time to stop throwing good money after bad, and time to devise a law that will work.

Twenty years after initial passage, the Endangered Species Act is in need of a complete overhaul. The grandiose ideas of 1973 to save species from becoming extinct have instead fostered bitter disputes between species preservation and the economic and social well-being of rural communities. Instead of instilling a greater appreciation for the plight of listed species, the Act has produced divisions and misgivings that are reflected in a cap that says "Spotted Owl Hunting Club." Small farmers, ranchers, loggers and others are being suffocated by the smothering land-use regulations required by the Act.

The main problem with the law and its current administration is that a small number of private landowners, through onerous land use regulations and far-reaching statutory prohibitions, are told to bear the entire cost for protecting listed species. Farmers, ranchers and small landowners across the country are restricted from using their property in ways that it has traditionally been used because of the alleged presence of a listed species or because it might someday be habitat for a listed species that is not presently there. As if the broad governmental authority over private property were not bad enough, the liberal citizen suit provision of the Act allows private interest groups to sue to control strictly private activities on strictly private property. The abuse of the citizen suit provision by such interest groups is increasing.

injury.

(2) Delete "any person, including" from section 1(A). This eliminates suits against private citizens. An alternative is to require plaintiffs suing private defendants to post a bond equal to the entire value of the property at issue, but that would be a back-up position.

We are told that there is a "public interest" in protecting these species, and that their survival will benefit all of us. Yet private landowners are told to bear the entire costs. The outrageous examples of abuses of private property rights by federal officials in the name of ESA administration provided a strong impetus for the regulatory reform efforts currently underway in Congress. Those amendments must be the starting point for meaningful ESA reform to return a measure of common sense to the Act. Thus, payment of just compensation for diminution in property values caused by ESA actions is necessary to spread the costs of species protection fairly to the general public, instead of putting the entire burden on the shoulders of a few. The agency must perform a cost/benefit analysis for ESA actions to determine whether the action should be undertaken. Finally, ESA actions should be examined to determine whether they impose unfunded mandates on state or local governments that are already collapsing under the weight of federal regulatory requirements. These reforms should be specifically included in the reform of the Endangered Species Act as well.

The problems that people are experiencing with the current administration of the Endangered Species Act are not limited to the northern spotted owl or to one specific area of the country. People in every state in the Union are experiencing similar problems.

Yet the agencies must have the cooperation of farmers, ranchers and private property owners if the ESA is going to work. A recent Report of the Government Accounting Office¹ found that over 90% of listed plants and animals have some of their habitat on nonfederal lands, with 78% occupying privately owned lands. Approximately 34% of all listed species occur entirely on nonfederal lands. Private landowners are clearly the key to the Act's success, but are also susceptible to private property right abuses by federal officials. The abuses have occurred, without any resulting successful species recoveries. It is time for a different approach, one that recognizes and respects private property rights. We strongly believe that such an approach will result in a "win-win" scenario for all species.

Compounding the problems with the Act are interpretations by courts and the federal agencies administering the law that have carried it far beyond what Congress had originally intended in 1973. The Section 9 "take" provision, for example, has been construed by some courts to mean virtually any human activity that might possibly adversely affect a habitat area that might be occupied by a particular species. These prohibitions are being enforced whether or not the action actually does harm a species or even whether or not the species actually occupies the premises. Instead of searching for ways in which the species and man can co-exist, the agencies administering the Act have tended to impose blanket restrictions on land uses. Federal enforcement officials flaunt and abuse their authority, as in the case of invading an elderly Montana ranch couple's property with 18 vehicles, automatic weapons, bulletproof vests and a CNN camera crew. Such tactics are not only unnecessary, but they are inflammatory. Courts have proclaimed that the rights of human beings are subordinate to the "rights" of plants and

¹"Endangered Species Act: Information on Species Protection on Nonfederal Lands," GAO/RCED-95-16 (December, 1994)

animals. Such an attitude understandably causes anger and resentment in people in affected localities who believed they elected officials to represent their interests. The Act is so far out of control that the current situation prompted Senator Robert Packwood of Oregon to state: "If there was a single Act that we did not grasp the consequences of, it was the Endangered Species Act."²

Furthermore, the law is being used in ways that its original sponsors never dreamed of using it. The section 7 consultation process is designed to measure possible effects of single, limited development projects on listed species, with the Fish & Wildlife Service suggesting ways to mitigate possible adverse impacts while allowing the project to continue. Many of the listings occurring in the past few years, however, have involved species whose range encompasses an entire region of the country. Recent listings of the northern spotted owl, the desert tortoise, 5 snails in the Middle Snake River in Idaho and the red-cockaded woodpecker are but a few examples of this trend. Also, rather than affecting single, proposed projects, the listing of these species affects ongoing activities that constitute a way of life. For example, the effects of the northern spotted owl on the timber industry in the Pacific Northwest are well documented. However, the listing of the desert tortoise in the Southwest has halted livestock grazing in areas that have been grazed for almost 200 years. Also, the listing of Columbia River and Snake River salmon and the delta smelt will result in the loss of irrigation water for the production of food. There is a great difference between a species affecting single prospective projects and shutting down entire existing industries that form the economic backbone of an area.

Despite the absolute priority and protection provided to plants and animals by Congress, the courts and government officials, the Endangered Species Act has still failed in its primary purpose--to have listed plants and animals recover sufficiently so as to be de-listed. Of the over 900 plants and animals currently listed, only six species have been de-listed (0.67% of those listed) because they have been considered to be recovered under the Act. And three of those species are from the Pacific island of Palau and owe their recovery to the recovery of the island from World War II. Conversely, six species have been declared to be extinct after they had been listed.

Rather than actively manage listed species so that they will recover, the federal agencies have imposed blanket restrictions on activities in areas occupied and surrounding listed species. These restrictions against many types of human activities, imposed by virtue of section 7 and section 9 of the ESA, are often the only type of "management" provided by the agency for the listed species, while the same natural processes that most often contribute to the decline of the species are allowed to continue to affect the species. With that kind of "management," it is little wonder that species do not recover.

The American Farm Bureau Federation believes that an appropriate balance between the needs of a species and the needs of people can be struck. We agree with the basic goals of the

²Oregonian, August 17, 1991

ESA. No one wants to see species become extinct, yet at the same time no one wants to see people lose the capacity to produce food or to be without essential human services. Any such balance, however, must necessarily begin with a proper respect for private property rights, and a recognition that the costs to recover species must be borne by the public as a whole and not by those few individuals who happen to have listed species on their property. The Fifth Amendment to our Constitution demands nothing less.

The challenge facing Congress is to craft a statute that will both promote recovery of truly endangered or threatened species and at the same time not destroy the social and economic fabric of affected areas. The current law fails in both regards, and a completely new approach is called for. We offer some ideas for improving the Act to achieve that balance.

Following are some suggestions for amending the Endangered Species Act to better achieve its goals.

1. Regulatory Reform Principles should be Enacted as Part of Re-authorization.

Several bills are in various stages of development in Congress that would make the regulatory process more responsive to those regulated. Such bills would: (1) require payment of compensation for diminution of value of property resulting from regulation, (2) require that both the costs and the benefits of the proposed rule be analyzed before promulgation, and (3) prohibiting the federal government from imposing unfunded mandates on state and local governments. We support the principles contained in these bills, and support their inclusion as specific amendments to the Endangered Species Act.

2. Provide Positive Incentives to Enhance Recovery of Listed Species Rather than Using Negative Enforcement Penalties.

Farmers and ranchers are not opposed to saving endangered species. They are opposed, however, to the arbitrary land use prohibitions that are imposed by species habitat protection and the harsh and often unreasonable penalties that accompany any activity that is contrary to administrative fiat. Farmers and ranchers are not alone in their feelings. These same fears spawned the "Spotted Owl Hunting Club" caps in the Pacific Northwest.

Farm Bureau believes that endangered species protection can be more effectively achieved by providing incentives to private landowners and public land users than by imposing land use restrictions and penalties. Desired behavior is always more apt to be achieved by providing a carrot rather than a stick. There is no "carrot" provided by the Endangered Species Act as currently written.

Positive incentives might be adopted through creation of a voluntary Critical Habitat Reserve Program (CHRP) administered by the Secretary of Interior. Under the proposal, the Secretary of Interior would enter into contracts with willing landowners and public land users in areas designated as "critical habitat" for a listed species. The private landowner/operator would

agree to implement a plan for management of a listed species on his land and retire acres judiciously from uses that conflict with species management activities. Management plans would focus on actions that would enhance the species instead of blanket land use prohibitions.

In return, the Secretary would provide the costs for implementing the CHR program, pay annual rental and management fees to the private landowners for the conversion of private property to CHR use, and provide technical assistance and management training to cooperating landowners.

The program would be voluntary, and must protect the private property rights of both participants and non-participants alike. The program must contain assurances that participants in the CHRP will not be later restricted in the use of their property outside the terms of their voluntary agreements. Participants who enhance species habitat pursuant to their agreements to the point where other listed species might also take up residence should not be restricted because of the presence of these other residents.

The CHR contract would be for a period of no more than five years, to coincide with the periodic species review mandated by the Act. In order not to de-stabilize the economic base of the community, the CHR would be restricted to no more than 25% of the total area of any one county.

The program would also permit the enrollment of land that might already be enrolled in other government conservation programs, and would require consultation between the Secretaries of Interior and Agriculture to ensure harmony between the CHR program and other programs.

We believe that, given the opportunity and proper support from the government, farmers and ranchers can do a better job of enhancing listed species than the government. As experienced, practical land managers who may have observed the species for a number of years, they bring a working knowledge that government scientists do not have. More importantly, they can offer day-to-day management of the species that the government certainly cannot do. Such a program will result in better management and greater chance for recovery of the species than is provided under the current law.

We also believe that with the proper incentives and a respect for private property rights of participants and their neighbors, farmers and ranchers will be willing to participate in the program.

We would be happy to discuss this program with you in greater detail.

3. Critical Habitat Should be Designated at the Time of Listing of a Species.

An essential element of any re-authorization of the Act is the need to balance the

requirements of the species with the social and economic fabric in the affected area. One of the primary ways of achieving such a balance is to define with specificity and with scientific justification those currently occupied lands, and only those currently occupied lands, that are needed for protection of a species. This "critical habitat" should be designated at the time of listing.

The concept of "critical habitat" is not new. Amendments in 1978 added the idea of critical habitat, and required designation except in certain specific situations. Section 4(b)(1)(B) of the Act requires designation unless the Secretary determines that there is insufficient data or designation will not promote the long term survival of the species.

What Congress thought in 1978 were narrow exceptions to critical habitat designation have now become the rule. The Fish & Wildlife Service routinely invokes the "insufficient data" provision to evade the critical habitat designation requirement. As a result, only about 16% of all listed species have a protected critical habitat. This evasion of responsibility is one of the many abuses in the way the Act is administered.

Everybody loses from the lack of critical habitat designation. The species loses because necessary habitat is not identified or managed for the enhancement of the species. Economic and social interests lose because all possible habitat that might be occupied by the species becomes subject to the prohibitions and restrictions of the Act, creating uncertainty in all quarters.

The cry of "insufficient data" can no longer be used as an excuse not to designate critical habitat. History has shown time and again that once a species is listed and critical habitat is not designated, it becomes forgotten. The science that was once promised to help identify habitat and management is undelivered. "Listing" by itself, accompanied by the harsh "taking" provisions is perceived as sufficient in most cases to provide protection.

Unfortunately, that is not the case. Consider the saga of the Oregon silverspot butterfly.

The silverspot lays its eggs near the common blue violet plant, because that is the exclusive food source for silverspot caterpillars. Blue violets are only found in open coastal grassland areas. Left unattended, these grassland areas become overrun naturally by brush that destroys the blue violets and therefore destroys the habitat for the silverspot.

The primary habitat management requirement for the silverspot is keeping the area open so that the blue violets can survive. This has been accomplished by periodic burning, and might also be accomplished by planned development that retains the habitat area as open space. It is a situation where the interests of people and the interests of the species coincide. Unfortunately, the government has seen fit only to list the species and rely thus far on the section 9 "taking" provision to conserve the species. The action ignores the critical needs of the species, and this no-action management is perhaps the worst thing for the silverspot.

4. The Act Should Require Minimum Scientific Standards Necessary to Support Listing and Other Decisions Affecting Listed Species.

The most celebrated case involving an endangered species remains the snail darter. This small fish halted a multi-billion dollar water project in Tennessee. A lawsuit over this human-species conflict went to the Supreme Court, and remains the only substantive case on the Endangered Species Act to have been decided by that forum. Following the decision in Tennessee Valley Authority v. Hill, Congress passed a law exempting the Tellico Dam project from the strictures of the Act.

A few months later, several more areas were found to be inhabited with snail darters. The species was soon thereafter downlisted from "endangered" to "threatened." Millions of taxpayer dollars were wasted because of incomplete scientific information.

Recently, five snails located in the Snake River in Idaho were listed as either endangered or threatened, despite the fact that less than one percent of their possible habitat had ever been surveyed. The decision to list was made even though only approximately 300 square feet of the entire Snake River had ever been sampled for the presence of these species. That is not the use of sound science in the application of the Endangered Species Act.

Endangered Species Act decisions currently are required to be made on the basis of "the best scientific and commercial data available." The "best" scientific data available might be as little as one monograph on the subject by a single biologist who might have an interest in having the species listed.

With affected species occupying greater habitat areas and affecting more basic, pre-existing human activities (as opposed to new, proposed projects) than ever before, there is too much at stake to make such decisions on inadequate scientific evidence. Before basic human patterns are disrupted, jobs are lost and communities are stripped of economic vitality, we submit that Endangered Species Act decisions need to be based on more sound, scientific certainty than is currently required.

The current "best scientific data available" standard is really no standard at all. It provides no incentive for agencies involved in species decisions to obtain accurate and up-to date information necessary to make an informed decision. All too often, decisions are made on outdated or misinformed data. Unverified hypotheses or assumptions made by one researcher often become truth for the next researcher who does nothing more than glance through the earlier work.

Often, the correct scientific data is easily obtainable through a little effort. For example, in the case of the listing of the five snails in Idaho, the Idaho Farm Bureau Federation hired an independent biologist to check the FWS data. With minimum effort, he readily discovered that these snails exist in far greater numbers and in a far greater number of places than determined by the government. Such information, however, was largely ignored in the final decision.

We are troubled that private landowners are being required to prove that government data is incorrect. Private landowners do not have the resources that are available to the government; and even in the face of contradictory evidence, there is no guarantee that the government will accept it. We submit that precious time and resources will be saved if the listing agency or the agency making the decision is required to do it right in the first place.

Furthermore, requiring an affected private person to disprove the government's data places the ultimate burden of proof for Endangered Species Act decisions on the private party. Instead, the burden of proving that a species deserves to be listed or that certain management prohibitions are appropriate should be on the government agency proposing the action. After all, the Act requires the FWS to make decisions whether or not to list certain species, and those decisions should at the very least be based on sound science. The agency has greater resources available to it, is in a better position to obtain required data, and should be required to justify its actions.

The term "best scientific and commercial data available" must be defined to incorporate minimum scientific standards and procedures necessary to sustain a decision that a species be listed or that some other action be taken. This amendment is necessary to ensure that decisions affecting entire regions of the country are not being made on outdated information or on bare assumptions that could easily be disproved. Further, there must be some unbiased, objective review prior to decision to ensure that the proffered data meets minimum scientific standards.

To accomplish this, we suggest the creation of a truly independent Scientific Advisory Panel to peer review ESA decisions prior to their proposal to ensure that there is sufficient scientific data to support the conclusion. We envision the Scientific Advisory Panel to have much the same role as the Scientific Advisory Panel within EPA, except that the panel would have authority to veto any proposal that did not meet minimum scientific standards.

5. Delete Application of the Endangered Species Act to "Sub-Species" and "Distinct Populations."

One of the reasons leading to the enactment of the Endangered Species Act was the increasing number of species that were cited as becoming extinct each year. The Act was passed to try to reverse that trend. The stated trade-off for restricting land uses, stifling the economy, causing the loss of jobs, and adding millions of dollars of regulatory costs as the cost of doing business is to keep species from becoming extinct.

Were the ESA limited to that goal, it would be much easier to accept by those who are directly affected by its harsh restrictions. By extending the law to "subspecies" and "distinct populations", however, the Act goes far beyond what the public is being told is the goal of the law. We submit that the definition of "species" be amended to delete protection to sub-species and distinct populations.

Taxonomic definition to the "species" level is sufficient to separate different plants,

animals and fish that should be protected under the Act. Further classification into sub-species often adds nothing to the taxonomic definition of a species. So-called sub-species are often indistinguishable from others of the species, and there is no practical reason for such sub-classifications to be protected separately. Classification at the species level is what gives the organism its identity--further sub-classifications add little or nothing.

If protection down to the sub-species level bears little relationship to whether a species becomes extinct, protection based on "distinct populations" has absolutely no relationship to the survival of the species. As with sub-classifications of species, a particular plant, animal or fish might be thriving as a whole, but the Act would allow that species to be listed as "endangered" or "threatened" if it is not thriving in one particular area of its historical range. To permit a listing on that basis where the species is thriving elsewhere flies in the face of everything that the Act is supposed to represent. Furthermore, this situation siphons scarce resources from species that really are in danger of extinction to protect distinct populations of more glamorous species. It almost sounds as if this sort of a listing is designed to turn back the clock and remove people from the land and return it to the flora and fauna that might have lived there many years ago.

The clearest and most visible example of this "preservationist" strategy is the status of the so-called "gray wolf" under the Act. From a biological standpoint, all experts agree that the species of "gray wolf" is in no danger of becoming extinct or endangered. There are approximately 60,000 of these animals in Canada with an additional 8,000 in Alaska and 2,000 more in Minnesota, Wisconsin and Michigan. Based on the supposed goal of the Act, there is no conceivable way that this animal would or should be listed under the Act.

Using the "distinct population" idea, however, the gray wolf is listed as "threatened" in Minnesota and "endangered" in the other 47 lower tier states. A proposed introduction of wolves into Yellowstone Park and environs has touched off one of the most bitter controversies surrounding the Act today. The federal government has conservatively estimated that it has spent nearly \$6.5 million on the introduction project, which represents about one-half the total estimated cost. Yet, the whole mess is unnecessary.

Government officials state that introduction is necessary to "recover" the species. Yet the species is fully "recovered" in large numbers in Canada and Alaska, and a healthy population lives in northern Minnesota.

Aside from having no rational basis for inclusion in the Act, the "distinct population" criterion is being used in a manner that was not intended by the Act. "Distinct populations" are not being used to decide whether a proposed project should be begun in an area. As with the wolf introduction example, or in the example of specifying different runs of salmon as separated protectable species, these activities affect the basic fabric of people's lives. Instead of proposed, future activities, these actions affect the way people live and make their livelihoods. It is this very basic difference between intention and present reality that demands that the structure, functions and priorities of the Act be re-thought.

So much agency time, attention and money is devoted to listing and "recovering" these kinds of "distinct populations" like the gray wolf that species truly in need of federal assistance are left wanting. We submit that both the agricultural community and the truly endangered species would benefit from a return to the central purpose of protecting those species which are in danger of becoming extinct. We submit that the only way this can be accomplished is if the Act focus on plants and animals at the species level. Protection for sub-species and "distinct populations" should be removed from the Act.

6. The Definition of "Take" under Section Nine Should be Clarified to Not Include Modification of Potential Habitat.

One way in which the federal agencies and the courts have expanded the scope of the Act beyond all intent is in the expansive interpretation given to how a species might be "taken" pursuant to section 9 of the Act.

Section 9(1)(B) of the Act makes it unlawful for any person to "take any such species within the United States or the territorial sea of the United States..." The term "take" is defined in section 3(19) to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." The Act provides civil and criminal penalties for violations of this provision.

In a series of cases involving the palila bird in Hawaii, the courts have also judicially extended the definition of "take" to include modification of habitat that might affect breeding, feeding and shelter for the species. As a practical matter, this means that any modification of possible habitat for a listed species--be it on public or private land--could result in large fines or even criminal penalties.

To show how far this has gone, approximately 550 landowners in central Florida recently received letters out of the blue from the Fish & Wildlife Service informing them that their property "might" contain scrub which "might" house the Florida Scrub Jay, a federally threatened species. These landowners were informed that any activity they might take which could alter that habitat could result in a violation of the Endangered Species Act. The practical effect of this letter was to stop any land use activity on those lands for fear of risking prosecution.

Actions of this sort by government agencies attempting to make modifications of possible habitat actionable under the Act are blatant attempts at using the Endangered Species Act to achieve land use control on private property. Using the Act to prohibit activity in possible habitat areas without compensation completely ignores the concept of private property rights as guaranteed by the Fifth Amendment to the Constitution. The Fifth Amendment requires that if the use of private property is regulated to the point where it is no longer viable, then the Fifth Amendment requires that compensation be made. To date, the administration of the Act has failed to recognize this responsibility.

The expansive interpretation of "taking" has resulted in internal inconsistencies within

the law. The section 9 "taking" provision and the section 7 consultation provision are the two primary regulatory provisions of the Endangered Species Act. These provisions place substantive requirements on government agencies and other "persons" concerning what can and cannot be done under the Act. To the extent possible, these two provisions should be consistent in reach and scope.

Section 7 consultation is required to insure that any activity involving any federal agency "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical..." section 7(a)(2) (Emphasis added). Thus, the statutory reach of section 7 extends only to actions affecting critical habitat as designated in accordance with the Act. By contrast, the reach of section 9 as expanded by the courts and agency interpretation extends to all possible habitat, whether designated as critical habitat or not.

As the law currently stands, federal agencies are held to a lesser standard than private landowners when it comes to the scope of the Endangered Species Act. We submit that there is no basis for such a difference, and find it completely unacceptable. It is but another example of private landowners being charged under the law for much more than their fair share of the cost to maintain listed species.

This disparity also has serious implications for the concept of "critical habitat." With the Act having been judicially and administratively extended to encompass all possible habitat, the concept of "critical habitat" is obsolete, and has no meaning under the way the Act is administered. Armed with these interpretations, why should federal agencies take the time and make the effort to determine what habitat is required for survival when section 9 will encompass actions on all possible habitat? People involved in administration of the Act have told us that they have no incentive to comply with the requirements of section 4 to designate critical habitat when they can protect all habitat under section 9. These same people have indicated that this is precisely the reason why critical habitat has been designated in less than 16% of species listings, despite a requirement in the Act that critical habitat be designated.

Through the critical habitat requirements, Congress sought to reach some sort of balance between the needs of the species and the needs of the people in the community. Fragile as that balance might be in some cases, it is completely shattered by the attitude that the agencies administering the Act have taken.

Allowing this interpretation to continue creates an imbalance in the two major substantive provisions of the Act, and has made a mockery of the critical habitat provisions of the Act. We suggest amending the definition of "take" to make it consistent with the provisions of section 7.

To illustrate the sheer lunacy in the way the Act is being interpreted and applied, John Shuler, a Montana rancher, was recently fined \$4000 by an Administrative Law Judge for

shooting a grizzly bear that threatened his life. We do not believe that this is the type of result that Congress intended in enacting the section 9 "take" provision, yet this is the way it is being applied.

7. The Act Should Provide Strict Liability for Damages Caused to Person and Property from Listed Species.

There are cases where species listed under the Act injure people or cause damage to property. These cases are most common where the listed species is a predatory animal, such as a grizzly bear or wolf.

There are many examples of both wolves and grizzly bears attacking and killing livestock. Farmers and ranchers continue to lose livestock to these animals, but yet are prohibited under the law from protecting their property. Any re-write of the Act must respect the private property interests of farmers, ranchers and other affected people.

This situation and the responsibility that must be assumed by the federal government strikes at the very foundation of the Fifth Amendment to the Constitution. That foundation is that it prevents the government "from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."³ Yet such "forcing" is exactly what the Endangered Species Act does with regard to private property rights.

The Act was passed by Congress on the basis that there is a "public interest" in preventing species from becoming extinct. Protection of such species under the Act is therefore in the public interest, and the entire nation should share in the costs of achieving that goal.

Instead, the burden has fallen to those unfortunate few who happen to reside in areas near listed species. These landowners are expected--and through the prohibitions of section 9 are required--to provide habitat for feeding, breeding and sheltering of these species on their property at their own expense. In the example of the predatory wolves or grizzly bears, ranchers are forced to provide food to these animals in the form of livestock, and at their own expense. Furthermore, they are prohibited by section 9 from protecting their own property, or in the case of John Shuler, from protecting his life.

It is very clear that in these cases the costs that are supposed to be shared by the public at large are instead forced upon a few persons. The Fifth Amendment was passed to remedy this exact situation. Recognition of this fact ought to be included in any re-consideration of the law.

A solution acceptable to Farm Bureau would include amendment of the Act as follows:

- a. The Act should be amended to specifically allow the "taking" of any species that is

³Armstrong v. United States, 364 U.S. 40 (1959)

causing damage to person or property. This is the easiest and most direct way of dealing with the problem, but also seems to have caused the most conflict between agency and private landowners.

b. The Act should be amended to provide that the federal government is strictly liable for any damages caused to person or property by listed species. This type of approach would reduce conflict between agency and landowner, and yet provide the private property owner with the protection guaranteed by the Fifth Amendment. The Act should require the agency to provide an expedited administrative procedure where loss could be proven and compensation quickly paid for that loss. We would be happy to discuss this with you in further detail.

Some might have questions regarding the costs of this program to the federal government. Yet these are not new costs, but are costs now being borne by private landowners, family farmers and individuals who can ill afford to bear these costs. If the federal government cannot afford these costs, can we expect private individuals to afford them?

8. The Act Should be Amended to Require a Species Management Plan that Considers Socio-Economic Impacts Separate from the Listing Process.

The Endangered Species Act should be amended to require the development of a draft management plan to accompany any proposed listing, and the development of a final management plan to accompany any final listing. Public comments on both the listing proposal and the draft management plan would run concurrently. Development of an active management plan concurrently with the listing of a species will allow consideration of socio-economic factors in the development of a draft and final management plan. Such a procedure has the dual benefits of considering the costs to the community of listing and management, while at the same time providing a management plan for the species.

The story of the northern spotted owl indicates some confusion about the listing process itself that in part is fueled by the way that the Act is being administered. The focal point for the debate over species-human needs has been the listing of the species, where in reality the proper focus should be on the management plan for the species. The fact that the listing is often the only action ever taken for a species forces this situation and fosters the conflicts.

Listing would be based solely on science, as is currently provided in the law. Management of the species, however, would take into account the socio-economic impacts as well as other factors that might come into play. The amendment would also require the development of a management plan for the species at the time of listing. This management plan could incorporate the Critical Habitat Reserve Program we suggested above, and could also then become part of a recovery plan.

This proposal would benefit the species, because it would require the development of a management plan. No longer would the species be listed and then forgotten. No longer would the misconception that the best management is no management be allowed to persist. It is quite

conceivable that if the Oregon Silverspot Butterfly (whose story was described above) had been managed properly under a management plan, it might have been fully recovered.

9. If Substantial Progress Toward Recovery or De-Listing is not made within Five Years, Any Critical Population should be Identified (After Notice and Comment) and the Remainder Released from any Protection.

This is the converse situation of that described above. All too often, species are listed and nothing else happens. Recovery plans are indefinitely delayed. Further research and management activities are forgotten. Yet land use restrictions through section 7 and section 9 remain.

In such situations the government has dumped the care and management of the species on private landowners or those few individuals on whose lands the species occurs.

Enforcement of this responsibility is through section 7 and section 9. By shifting the responsibility for care and maintenance of the species, the government has abdicated its own responsibility under the Act.

In order to meet the requirements of the Act that decisions be made on the basis of the "best scientific and commercial data available," the responsible agencies must periodically re-examine all species to determine if what they are doing is still in the best interests of the species. The Act requires that this be done every five years. In addition, priorities for recovery efforts are determined in accordance with guidelines adopted in 1983.

Farm Bureau strongly opposes the dumping of responsibility for the welfare of a listed species by the government to a few private landowners. We submit that if the species is not important enough for the government to begin recovery efforts within a reasonable time, then the section 7 and section 9 provisions of the Act should no longer be applied against private landowners. Private landowners should not be penalized for the indifference or apathy of the government. We further submit that five years is a reasonable period of time to have recovery efforts to get underway.

Along the same lines, we also submit that property owners should not continue to be subject to section 7 and section 9 requirements if the species no longer occurs on the property. We suggest an amendment to provide that if a species has not been sighted for a period of two years or more, then any and all restrictions on use that might have resulted from application of sections 7 and 9 should be removed.

10. The Exemption Process is Overly Expensive, Unworkable and Generally Inaccessible.

The Act was amended in 1978 and 1982 to provide two different procedures for relief of

overly burdensome constraints placed by the Act. In the process, the relief procedures have become overly burdensome, exorbitantly expensive and generally unavailable to those who need their protection most.

The Endangered Species Committee (also known as the "God Squad") was enacted in response to the snail darter controversy, and was designed to provide a mechanism to decide whether the species or human needs will prevail. A Cabinet level committee, it has recently been convened to resolve issues concerning the northern spotted owl. It had been convened one other time between 1979 and 1991.

The Committee is designed to decide only those cases involving large projects. Yet the Act affects many smaller projects and activities, which if taken in toto, would have substantially more at stake than these larger ones. There is no relief provided by the God Squad for these smaller activities. In fact, the God Squad is convened so infrequently that it has not even been a factor in the almost 13 years it has been authorized.

Another procedure that seems good in theory but is disaster in reality is the habitat conservation plan. The Act provides that a limited number of listed species might be authorized to be taken as "incidental take" but only as part of an approved habitat conservation plan. Such plans must meet vague criteria determined by the Fish & Wildlife Service, and must be approved by the Service.

Habitat conservation plans have typically cost millions of dollars apiece, and taken several years to put together. Once developed, there is no assurance that it will be approved by the Service. Many such plans have been pending with the Service for several years with no decision having been made.

These habitat conservation plans are generally priced out of reach of farmers and ranchers. Such plans must typically provide mitigation for the right to have incidental take. The mitigation requirements generally provided are much too expensive and burdensome for farmers and ranchers to use.

The addition of the concept of "incidental take" was a positive one. Now, however, the Act must be amended to allow this concept to be used by everyone, and not only by those who can afford the exorbitant price tag. The current system has created a two-tier exemption program that is available to the super-rich, but not to the smaller businessman or the family farmer and rancher. It is these latter people who are being hurt most by the current application of the Act.

The current provision for HCP's in the Act is too cumbersome and inflexible. The provision and implementing regulations contain fairly specific requirements that perpetuate the problem of making these procedures largely unavailable for most farmers, ranchers and small landowners.

The FWS has recently proposed changes to the incidental take permitting process that might offer some relief to small landowners and to those seeking to avail themselves of the habitat conservation planning procedure. For example, the FWS has proposed a three tier HCP process that provides lesser standards for smaller projects with less intensive impacts on listed species. We believe that such a provision would significantly increase the availability of HCP's to farmers, ranchers and other small landowners. Also, a procedural proposal to require a decision by the agency on an HCP application within a specified period of time would eliminate much of the bureaucratic red tape and uncertainty of acceptance that plagues the current program. While not the complete panacea for the program, these proposals are a good starting place for amendments to the Act on this issue.

11. The Act Should not Include Protection for Candidate Species at this Time.

It seems ironic that a program that is continually crying about lack of funding is seeking to expand significantly. Yet that is what the Endangered Species program has done by including candidate species and treating them as proposed for listing. The agency says it does not have the funding to handle current responsibilities. How is it going to handle this expansion?

We suggest that the Act be amended to re-focus on species determined to be endangered and threatened, and reiterate the primary goal of the Act to recover those species. Focus on candidate species at this time can only detract from recovery efforts for species that are listed. And it is the listed species that are most in need of assistance.

Expansion of the terms of the Act to candidate species also creates undue burdens for landowners. Such property owners are subject to limited application of sections 7 and 9, yet there is no determination that the subject candidate species will ever be listed. It is similar to a person being guilty until proven innocent.

Furthermore, placing section 7 and section 9 restrictions on landowners for candidate species raises serious questions concerning compliance with the notice and comment procedures of both the Endangered Species Act and the Administrative Procedures Act. Such species are designated without notice and comment, and prior to scientific review having taken place.

As we have stated repeatedly, many species are listed and then forgotten. No other management activity is ever done. Extension of the Act to candidate species will likely carry this government inertia one step farther, and apply the prohibitions of the Act without even listing the species. Again, if the species is protected by section 7 and section 9 prohibitions, what incentive is there for the government to actually carry out the listing process in the near future?

Provisions of this sort violate the due process of private property owners, fly in the face of established rights to receive notice and have the opportunity to comment on proposed regulations, and unduly and unnecessarily expand the scope of the Act. This is happening at a time when we hear that there are insufficient funds to administer the Act as it is. We further

submit that such provisions go far beyond the original intent of the Endangered Species Act to prevent extinction of plant and animal species.

If the Act is to work in the way Congress originally intended, then it must start with the basics--work to prevent species from becoming extinct. As indicated above, the Act has failed miserably in this regard. It should focus on accomplishing that basic premise first.

12. The Act Must Differentiate and Distinguish Between Species Listed as Endangered and Species Listed as Threatened.

When Congress first enacted the ESA, it created two classifications of listed species -- those that were "endangered" and those that were "threatened." While the Act continues these distinctions, the Act is also being applied in such a way that there is no practical difference between an "endangered" species and a "threatened" species. Congress intended for FWS to adopt flexible management options for threatened species that are not as strict as the management mandates for endangered species.

FWS, however, has failed to carry out this intent of Congress. Instead, the prohibitions of section 9, applicable in the Act only to endangered species, are being applied in toto to threatened species as well.

The Act needs to be amended to carry out the original Congressional intent to realize the difference between an "endangered" listing and a "threatened" listing. We suggest that sections 7 and 9 be amended to provide a separate list of criteria for "threatened" species. An alternative to the amendment to section 9 would be to require the Secretary to implement conditions of "take" for each threatened species at the time of listing as part of the listing proposal. The Act must then provide that these will be the only conditions for "take" for that species.

We believe that these suggestions will improve the Act from the standpoint of both species recovery and reducing conflicts between a species and affected landowners. We also believe that these suggestions will restore credibility to the Act and help re-focus the Act to the objectives that were originally intended.

We look forward to working with the committee on the re-authorization of the Endangered Species Act.

TESTIMONY SUBMITTED TO THE SENATE SUBCOMMITTEE
FOR ENDANGERED SPECIES ACT REFORM
AUGUST 16, 1995
CASPER, WYOMING

SUBMITTED BY
JOHN TALBOTT, DIRECTOR
WYOMING GAME AND FISH DEPARTMENT
CHEYENNE, WYOMING

My name is John Talbott and I am Director of the Wyoming Game and Fish Department. As the State wildlife agency, we are intimately familiar with both the positives and negatives of the Endangered Species Act (ESA). My agency has been involved with some of the more contentious endangered species issues including wolves, ferrets, Wyoming toads, and grizzly bears. As the number of candidate and listed species grows, I will predict that the conflicts and disputes surrounding the management and recovery of these imperiled species will grow proportionately. Perhaps many of these arguments are unavoidable; perhaps not.

I was fortunate to be selected by Governor Geringer to participate with a working group for the Western Governor's Association to develop amendments to the Endangered Species Act. Our purpose was to 1) preserve the intent of the Act while increasing the roles and responsibilities of the states for threatened and endangered species recovery, 2) streamlining administration and implementation of the Act, and 3) providing incentives to landowners for participation in species recovery and habitat protection. I believe we have accomplished our task and I am hopeful the Congress will view our efforts favorably when you begin deliberations on reauthorization later this session.

As a wildlife agency administrator, there is a wide array of issues I could bring to this sub-committee regarding the role of the states in the recovery of threatened and endangered species. However, I will limit my comments to three areas of concern; funding of ESA activities, state responsibilities under ESA, and state involvement in the administration of the ESA.

Funding

The cost of recovering a threatened or endangered species to an agency such as mine is significant. These costs include not only cash outlay for equipment, facilities, services and personnel, but also the diminished emphasis and expenditures on other high priority programs as our priorities are diverted to endangered species. Because funding to the states for participation in endangered species recovery is woefully inadequate, much of the cost for recovery is being borne directly by the state and its citizens.

I would like to provide you with two representative examples. The Wyoming Game and Fish Department will expend approximately \$350,000 for grizzly bear management activities this fiscal year. Of that amount, the United States Fish and Wildlife Service (USFWS) will

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reimburse the state less than \$30,000 under our Section 6 Agreement, or less than 10% of the cost of the program. The Act provides that 75% of the cost of these programs can be reimbursed under Section 6 agreements with the state.

The black-footed ferret is the most endangered mammal in North America. With the exception of a few individuals which have been reintroduced into the wild, the entire population is housed at a number of captive breeding facilities and participating zoos throughout the country. This captive breeding population provides offspring for reintroduction sites throughout the west. Earlier this year we were informed by the USFWS that funding for the entire program was being curtailed and that reintroduction efforts would not be funded for this fall. The States involved with recovery of the ferret have since then developed a cooperative agreement to continue reintroduction efforts without the benefit of federal funds which should be provided under the act.

The Wyoming Game and Fish Department continues an active effort for recovery of the peregrine falcon and yet we receive no funding for this program from the federal government.

Simply put, without an increased level of funding for threatened and endangered species recovery, the states cannot afford to participate. As the number of listed species grows, so does the drain on our budgets to protect these species and their habitats. Other-equally important programs will be impacted and our ability to address the needs of species not currently on the list but suffering significant declines, will be severely compromised. The entire nation and its future generations benefit from these programs and should be financed from an appropriate combination of sources including predominantly the federal government.

Finally, I would encourage the subcommittee to establish funding priorities such that species on the brink of extinction, like the ferret and the Wyoming toad, receive priority over those species whose populations are locally extirpated but whose continental populations continue to thrive. While wolf recovery is an admirable goal, it should not be done at the expense of other species more deserving of our attention and money.

Involvement

Current administration of the ESA does not allow for an appropriate level of involvement of the states in ESA activities. Revisions to the Act are needed to ensure a greater level of active involvement by the states. States with species protection programs approved by the Secretary, should be given the option to assume primacy for implementation of certain aspects of the Act depending upon each state's capability and resources as long as the goals of the Act are being met. If states assume primacy, then they could retain authority over prelisting prevention activities, recovery planning and implementation, including critical habitat designation, and all other aspects associated with land, resource and wildlife protection. If states chose not to exercise primacy, they should still retain a full co-equal partnership role in administering the

federal program. States should also be provided the opportunity to accept the primacy role at any time. Federal oversight of those aspects of the Act under state assumption should be in the form of a periodic program audit.

Coordination and consultation with affected states must occur prior to rule making to integrate state findings and programs with federal actions to achieve maximum benefits while minimizing impacts. The Act should provide for a cooperative federal-state rule making process to identify standards and criteria within which state programs will be designed to conserve habitat and species under the Act. The states and the Secretary should be directed to jointly develop a model containing the standards and guidelines for subsequent approval of state programs.

The States and the Secretary should be given the authority to utilize the resources available under the Act and other programs to promote the sustainability of ecological communities and conservation of endangered or threatened species on a prioritized basis of rarity and threat over the range of species, as opposed to an equivalent emphasis given to subspecies and distinct vertebrate populations. Habitat conservation and management, better integration of natural resources and land management programs across all jurisdictions and preventative/incentives measures designed to preclude the need for the listing of species under the Act should be aggressively pursued.

Responsibility

The findings declared by Congress in the Endangered Species Act must recognize and affirm that states possess broad trustee and police powers for fish and wildlife management, including those found on federal lands within their borders. With the exception of marine mammals, states retain concurrent jurisdiction even where Congress has previously limited state authority, as in the case of endangered species. The authority, primacy, and role of the states must be recognized and affirmed with respect to the conservation of species.

The ESA should acknowledge and affirm the responsibility of the state for fish and wildlife management. This can be accomplished through a variety of ways, but should at a minimum allow the state to assume responsibility for conservation planning to preclude species being listed and also to assume primacy for recovery of listed species.

Prior to federal agency use of a listing process or the designation of critical habitat, the agency must consider whether the state agencies have developed their own programs for that species which are designed to protect the species, consistent with the Act. In the evaluating state programs, the Secretary should provide significant flexibility to the states to develop adequate broader habitat (ecosystem) species protection programs.

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Upon receipt of a listing petition by the Secretary, a copy must be sent to each affected state. If a state recommends against proposing the species for listing, the Secretary should be required to conduct substantive peer review and rebut a presumption in favor of the state's position in order to propose that species for listing. The standard of review for such a presumption should be preponderance of the evidence. The review should be completed within one year. There should be opportunity for interjection of independent scientific evidence, a record of decision on the information utilized in making the decision, and an opportunity for judicial review of the listing decision by the federal agency.

The Secretary should be given explicit authority to concur with approved conservation management agreements entered into by states, federal, tribal and local agencies, and private landowners in order to conserve declining species before the need to list those species. Agreements would address those actions to be taken by the respective parties to eliminate the need to list species by reducing the threats and provides for species recovery. This would include a determination by the Secretary of the adequacy of the program, which would have the force of law. Such agreements would also provide assurances to cooperating landowners that further conservation measures would not be required of the landowners should the species be subsequently listed.

Subsequent to a proposal to list or designate critical habitat, the Secretary should have the authority to suspend the consequences of listing or designation of critical habitat under the Act if the Secretary determines that the state(s) had initiated and is making satisfactory progress in implementing measures that are likely to protect or conserve the species. An extension of this suspension should be allowed, if the time for a listing or critical habitat designation decision arises, if the agreement is not in place but the state is demonstrating progress toward such agreement, unless such an extension is likely to jeopardize the species. Any force of law aspects of the agreement or suspension of the effects of the Act implemented due to the existence of an agreement should be applicable on a state by state basis for those protecting habitats and species.

Where the states opt to do so, through a program approved by the Secretary, recovery planning authority should lie with that state. Under those circumstances, the state shall assume the lead in facilitating the involvement of all jurisdictional parties in developing recovery plans. When a species' habitat or range cross state boundaries, the Secretary should act as a facilitator to bring the involved states together to develop the recovery plan. If the Secretary determines that conservation programs across the species range are inconsistent or not complimentary, the Secretary may assume recovery authority. This assumption will only occur after notifying the states of such inconsistency and providing the states with adequate time to correct the noted problems.

The recovery planning process under the ESA should require all appropriate state and federal agencies to develop one or more specific agreements by each of the appropriate state and federal agencies, the agreement should be legally binding and incorporated into the recovery

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plan. An incentive should be created for federal agencies to approve implementation agreements by providing an easier, quicker Section 7 process. Such implementation agreements should - -

- expedite and provide assurances concerning the outcome of interagency consultations under Section 7 and habitat conservation planning under Section 10 of the ESA;
- ensure that actions taken pursuant to the agreement meet or exceed the requirements of the ESA; and
- should require that each appropriate agency that signs an agreement comply with its terms.

Recovery plans developed by the states utilizing the processes outlined in this paper and provided for public review and comment, should be construed as having satisfied the NEPA requirements for implementing actions.

There should be a mandatory status review of recovery programs at least every three years. If intermediate reviews reveal that the recovery plan criteria need revision, then the Secretary or states should revise the plan. If the recovery criteria have not been met, then the recovery team shall specify what has been and has not been accomplished under the recovery plan and indicate what else needs to be done.

State recovery planning and HCP's, exercised in conformance with the standards and guidelines developed coincidentally with listing, must be considered by all federal agencies taking any action subject to Section 7 consultation. To the maximum extent practicable, federal agencies must have the responsibility of coordinating their management programs to cooperate with and ensure implementation of state programs for recovery of species.

To the maximum extent feasible, priority shall be given to the utilization of existing public lands for the conservation of species, insofar as conservation measures are compatible with the primary public purposes of such lands.

I would like to close my testimony with an observation. The ESA was intended as a tool to recover threatened or endangered species - not as a means to simply compile a "list" of species in need of protection. Unfortunately, we have created quite a list while in the past 20 years we have actually recovered very few species. Some will argue this is because the Act does not go far enough in terms of imposing the necessary restrictions to protect species and their habitats. I would argue the opposite is true. The lack of an implied partnership through funding, involvement and shared responsibility, means a lack of commitment by all the many interests needed to guarantee a species survival. This lack of commitment assures that our lists will grow longer and successes fewer as time passes. Commitment will only come if all affected interests who share the burden of threatened and endangered species recovery can share in the formulation of solutions and strategies for that recovery. A unilateral approach to this problem will not d

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succeed, especially if it only provides disincentives for participation. A true partnership which includes incentives, however, is in the best interest of the participants and the 900+ species currently demanding our attention.

Wyoming State Legislature

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*House of Representatives***Statement of**

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before the

United States Senate
COMMITTEE on ENVIRONMENT and PUBLIC WORKS
SUBCOMMITTEE on DRINKING WATER, FISHERIES and WILDLIFE
August 16, 1995

My name is Frank Philp. I represent Wyoming House District 34 in the State Legislature where I serve on the Agriculture, Public Lands and Water Resources Committee and the Education Committee. I serve as chairman of the American Sheep Industry Association's Endangered Species Committee. My family owns and operates a sheep and cattle ranch in west central Wyoming.

Thank you for the opportunity to testify before this Senate Subcommittee on how the Endangered Species Act (ESA) is working. I welcome this opportunity to share my views on the effects of the requirements of the ESA on the State of Wyoming and how the act could be reformed.

The effects of this act are far reaching with impacts on the State and local economies, private property, and water rights. I have concerns about the effectiveness of the act in conserving species and their habitats as was the intent of the act and about the federal, state, and local roles and responsibilities.

The impacts of the ESA are far reaching; in fact they reach far beyond the intent of the original act. Regulations in conjunction with the act have gone further than is reasonable, prohibiting a person from protecting his private property and even his own life, as in the Christy case and the Schuler case in Montana.

The administration of the ESA goes beyond the original intent of the act. This can be no more succinctly put than in Secretary of Interior Babbitt's comments at a conference of Northwestern School of Law of Lewis and Clark College. He said, "I am certain the members of Congress who passed the Endangered Species Act did not fully understand the American West."

Reauthorization offers an opportunity to reestablish Congress's understanding of the act and to express its understanding to Secretary Babbitt and other federal resource managers. There is also the opportunity to establish common sense in the implementation of the act. I urge you to reassess the intent, the impact, and even the need for the ESA. Please consider the following input.

STATE AND LOCAL ECONOMICS

The economy of Wyoming relies heavily on the use of natural resources. Minerals, oil and gas, timber, agriculture, and wildlife and recreation provide the basis for Wyoming's tax base and economy. The ESA has impacted each of these areas and fails to adequately balance biological, economic, and cultural concerns.

Oil, Gas and Minerals. Oil, gas, and mineral industries are the largest contributors to the state's economy and the funding of state government. These resources fund general state expenditure, water development, highways, cities and towns, counties, the school foundation program, and community colleges. In 1994 the state collected \$224 million from oil, gas, and minerals in severance taxes and \$195 million in royalties. Minerals provide for over half of the state's assessed valuation.

Oil and gas drilling in the Rocky Mountain Region in endangered species recovery areas requires a minimum of four months for consultation required by ESA unless the companies are willing to do surveys, studies and inventories of threatened and endangered species which may cost \$200,000 or more per lease.

Oil and gas leasing on the Shoshone Forest is shut down for an environmental impact statement, however, even before the EIS was started huge areas of the Shoshone Forest were shut down to oil and gas development to purportedly protect grizzly bear habitat.

Interruption in exploration and production of oil, gas, and minerals by the ESA significantly impacts the state's revenues. The state is facing a projected \$73 million shortfall in the budget for the 97-98 biennium; the legislature is mandated by the state constitution to present a balanced budget. Reduction of state revenues is of great concern to the people of the state; either programs will need to be cut or other tax sources will need to be generated.

Wildlife and Recreation. Wildlife viewing, hunting and fishing are important elements of tourism and recreation in the state. Funding for state game management will be reduced by the additive effect of predation by both the grizzly bear and the gray wolf. Concerns for personal safety because of

large predators limit recreational opportunities for many people.

Approximately 80% of the funding for the Wyoming Game and Fish Department comes from the sale of licenses. The introduction of wolves added to the effect of grizzlies will have a tremendous impact on wildlife numbers. Scientific studies show that increases in numbers of large predators will reduce big game herd levels and hunting opportunities. With reduced sale of licenses there again is less money generated for wildlife management in the state.

The rules for introduction of gray wolves in Wyoming, Idaho, and Montana give wolves full protection of the ESA on wildlife refuges. When wolves become established on the National Elk Refuge in Jackson Hole it will be impossible to control the predation unless the rule and/or the act is changed.

As bears become more numerous their food supply is depleted and they become more aggressive; it is then more likely that human injury will result. Many of my constituents are fearful of taking family outings to camp, fish, hike and hunt because of this risk.

Agriculture. Livestock makes up more than 80% of the states agricultural economy. The ESA negatively impacts the agricultural economy in the state through predation problems and land use restrictions.

The ESA prevents the agricultural industry from controlling predators such as the coyote, bear, and bobcat resulting in significant livestock losses. In Wyoming, Idaho, and Montana the U.S. Fish and Wildlife Service (USFWS) has placed restrictions on the use of M-44s, an essential tool in management of predators. The M-44s are noted for being an effective, selective and humane device for predator control. Bureau of Land Management (BLM) districts have restricted the use of coyote traps at a time when predator losses have increased 38% in these three states. Without preventative control of these predators the sheep industry cannot survive.

Problems with grizzly bear predation cause not only extreme aggravation to ranchers but causes an extreme hardship to state game managers who are coerced into either managing endangered species or accepting management by the USFWS.

Friends of Animals Inc. has filed suit to stop the state of Minnesota's wolf management plan which allows the taking of wolves in areas with identified livestock losses.

The regulations for the introduction of the gray wolf to Wyoming, Idaho and Montana are written so that the set of circumstances in which a rancher could protect his livestock are so remote as to be almost impossible to occur. It is extremely unlikely that the rancher would witness the actual livestock kill or wounding by the predator and be able to actually take the predator "while in the act." Unless all these criteria were met, the rancher would be liable for prosecution.

Land use restrictions are apparent in allotment management plans revised by the BLM and the U.S. Forest Service (USFS). Revised management plans on public lands restrict, limit and remove lands formerly available for livestock grazing and other resource development.

Ranchers in the Columbia River Basin watersheds with endangered fish habitat are experiencing severe reductions, having to remove animals after 35% of the forage is utilized in areas that formerly allowed utilization of 65% of the forage. In many cases this is done to protect the bull trout which was determined by the USFWS to be warranted for listing but precluded because of the moratorium on listing put in place by Congress.

PRIVATE PROPERTY RIGHTS

Implementation of the ESA exemplifies the current conflict between private property rights and federal government control. The issues of private property rights and the ESA include: protection of private property; taking of private property; and self-defense.

Protection of Private Property. As the ESA has been interpreted in the courts ranchers are not able to protect livestock from predators listed as endangered species. Control measures of non-listed predators are severely limited as well by ESA regulations, as explained above.

In California ESA regulations prevented homeowners from establishing fire breaks to protect their homes from wildfire. When the fires came many of the homeowners lost their houses and personal belongings.

In Montana in the Christy case the court determined that a rancher did not have the right to protect his sheep, his private property, from a marauding grizzly bear.

Taking of Private Property. The ESA allows the taking of private property without compensation.

Farmers near Sacramento CA were prohibited from farming 370 of 720 tillable acres to protect a kangaroo rat. They lost \$75,000 in annual gross income.

In Utah a property owner planned to build a golf course and had initiated the work. USFWS found a snail in a pond on his property; he was forbidden to continue to work on the project. His cost was estimated to be \$2.5 million.

Self-Defense. The ESA has been interpreted by the courts to place a higher value on the endangered animal than on human life. A rancher who was attacked by a grizzly bear on his own Montana property was fined \$7000 for taking the bear. The injustice was the court ruling that the rancher did not have the right to protect his own life on his private property.

WATER RIGHTS

Water is the lifeblood of the West. The states have long held sovereignty of the water; as states joined the union ownership of the water was placed with the state. The development of the West centered around natural water sources and the development of these sources. The future of the West depends on the ability of the states to utilize water.

The conflict of the ESA and Water Rights is clear in Secretary Babbitt's identification of the ESA as the tool for "finding the strings to pull the water back..." to federal management.

In the Platte River in Nebraska the USFWS determined 417,000 acre feet of water annually is necessary to protect the whooping crane habitat. Nebraska is now suing Wyoming for 400,000 acre feet of water.

Parts of the Colorado River Basin has been declared essential habitat for endangered fish. As water contracts for dams are renegotiated the Bureau of Reclamation will have to consult with USFWS concerning management of this Wyoming water. There is a clear threat that Wyoming water would be released to benefit fish once considered trash fish, but now with the enviable distinction of an endangered species listing.

The bull trout habitat exists in western Wyoming. It is unclear what the effect will be because USFWS has deemed its listing as warranted but precluded because of the Congressional moratorium on listing. In Idaho the USFS has already placed restrictions on grazing due to the bull trout.

EFFECTIVENESS IN CONSERVING SPECIES AND THEIR HABITATS

The ESA has been ineffective and misused in preserving species and the habitat on which they depend. Federal law and regulation, no matter how extensive and well thought out, cannot control natural processes which are inevitable.

Statements touting the effectiveness of the ESA are false and/or misleading. Species purportedly saved by the act probably recovered because of other factors. The increased numbers of the bald eagle, the peregrine falcon, and the whooping crane have been attributed to the ESA when in fact it probably had more to do with the ban on DDT.

The ESA has served to "protect" species that are not in fact endangered. There are large numbers of gray wolves in Canada, Alaska, and Minnesota yet they are erroneously identified as an endangered species in Wyoming, Idaho, and Montana.

Even when recovery of a species is evident and has met the goals of the recovery plan the act is a failure. There are many more grizzly bears in the Yellowstone area than are required by the recovery plan. The Interagency Grizzly Bear Committee has twice recommended that the grizzly bear be delisted yet it still receives complete protection of the ESA. Perhaps USFWS job preservation is as much a motive as species preservation for maintaining a species on the list.

The act fails to recognize natural extinction as part of the evolutionary process. The ESA strives to maintain a balanced ecosystem that in fact does not and cannot exist.

ROLES OF FEDERAL, STATE, AND LOCAL GOVERNMENT AND THE PRIVATE SECTOR

The root of the problem with the ESA is that it is used to gain federal control of resources more properly managed by state and local government and the private sector.

State and local government are better able to deal with human issues. It has been the practice of the federal government to hold public meetings to inform the public rather than listen for solutions acceptable to those affected.

The heavy handed approach of the federal government in implementing the ESA provokes conflict, resentment, fear, and resistance by citizens to effective endangered species conservation.

RECOMMENDATIONS

Congress is exhibiting great foresight by scrutinizing the ESA during reauthorization. With all the identified negative impact and doubtful benefits of the ESA please seize this opportunity to implement needed change. I urge you to evaluate the need for the act rather than assuming that it must be maintained in some form. There are alternatives of modifying, repealing and/or replacing the present legislation.

I realize that repeal of the act is probably not a realistic political alternative; therefore I propose that legislation designed for the conservation of endangered species include provisions for:

Respect of private property and personal rights. Recognize the value of human life and personal safety in a way that courts cannot misinterpret Congressional intent.

Restoring and/or maintaining state rights to manage resources within the state. Prohibit ESA from infringement of states water rights and the rights of the state to manage its wildlife and other resources.

Incentives and compensation for state and local government, the private sector and citizens who use their resources to conserve endangered species.

Involvement of state and local government, the private sector and citizens in developing standards, criteria and implementation to adequately balance biological, economic, and cultural concerns.

A common sense approach for implementation. Provisions for listing and de-listing, consultation, management, appeal, and review must be designed to achieve the balance of biological, economic, and cultural concerns in a realistic and timely manner.

Review of the legislation by reauthorization or a sunset provision. Provide a plan for accountability and assessing the effectiveness of the legislation.

SUMMARY

The original intent of the ESA may have been admirable, but the implementation of the act has run amuck. The ESA has gone far beyond the original intent; the management is burdensome and punitive; there is disregard of individual and state rights. The act is misused by the federal government to seize control of resources rather than protect endangered species.

In spite of the high cost to states and individuals the act has been ineffective in conserving and restoring species. We can do better to balance biological, economical, and cultural concerns. Surely the people of the United States of America can come up with a plan that works to conserve species and yet preserves the rights and freedoms we all enjoy.



Statement of George Enneking
Commissioner, Idaho County, Idaho

on behalf of the
Idaho Association of Counties
on the reauthorization of the

Endangered Species Act

before the
Committee on Environment and Public Works' Subcommittee
on Drinking Water, Fisheries and Wildlife
United States Senate

August 16, 1995

STATEMENT OF GEORGE ENNEKING,
ON BEHALF OF THE
IDAHO ASSOCIATION OF COUNTIES
on the reauthorization of the
ENDANGERED SPECIES ACT

Mr. Chairman and Members of the Committee. My name is George Enneking and I am currently the Chairman of the Board of the Idaho County Commissioners. In addition, I currently chair the Idaho Association of Counties' Public Lands Committee, am the Idaho board member of the Western Interstate Region of Counties, and am a member of the National Association of Counties' Public Lands Steering Committee and Natural Resource Payments Subcommittee. I am here today representing the Idaho Association of Counties' perspective on needed changes to the Endangered Species Act or the ESA.

The Public Lands Committee of the Idaho Association of Counties strongly supports amendments to the ESA which would require:

- detailed social and economic impacts to counties and communities;
- the Forest Service to be responsible to natural resource communities;
- fiscal accountability and responsibility;
- protection of private property rights; and
- state and local government involvement in listing decisions.

In the early part of this year, the Pacific Rivers Council filed suit because individual forests had failed to consult with the National Marine Fisheries Service (NMFS) about how their forest plans might impact the salmon. An injunction was issued that closed six national forests to all activities. Fortunately for the citizens in Idaho communities, the injunction was stayed and the economic impacts were never realized.

If the Pacific Rivers Lawsuit Injunction had gone forward to protect salmon habitat, it would have caused enormous financial hardship for individuals whose livelihoods are connected to federal lands. For example, payment of grazing for cattle on the anadromous drainages that would have been affected by the Pacific Rivers Lawsuit costs \$1,188,258.70 for five months. Feeding hay to the same number of livestock for five months would cost \$21,419,029.13--a sum that ranchers would not have been able shoulder and thus, would have been driven out of business.

Several counties projected severe impacts from the injunction. The clerk of Valley County estimated that the county would have faced a long-range loss of \$12.2 million in payrolls and an additional \$10.1 million in economic revenues as a direct result of the injunction. Valley County could have potentially lost \$3.8 million in timber receipts that pay for schools, roads and bridges. The result would have been a dramatic increase in property taxes.

These figures represent direct losses, however, the loss would have been extended to other industries because of a loss of spending on groceries, parts, equipment, clothes and virtually every service and product offered by wholesale and retail merchants. In addition to the counties, the state would also have been impacted because there would have been a loss of sales tax revenue. Counties would have then lost on another front by losing the sales tax dollars that the state shares.

Unfortunately the social costs to local communities were realized. No individual wants to live in an unpredictable environment where it is impossible to plan for the future, yet this is precisely the environment that many local communities are faced with under ESA decisions such as the Pacific Rivers Lawsuit. Idahoans do not know if they should invest in their businesses, whether they should buy homes, whether they should sell their homes and move, whether they will have a job--all based on factors that are totally out of their control. This situation causes unreasonable stress and a deep-seated anger at agencies who are perceived as causing this unpredictable environment.

Not only is the ESA undermining the stability of communities but its effectiveness in conserving species and habitats is questionable. Todd Maddock from the Northwest Power Planning Council estimates that the NMFS salmon recovery plan would cost up to \$1 billion a year after the turn of the century. Dr. Daryll Olsen who conducted a study for Benton County, Washington Commissioners projected that \$500 million to \$1 billion dollars could be spent annually on recovery plans for the salmon and in most cases the results would be negligible for the salmon. It is obvious that the US taxpayers are spending enormous sums of money to save the salmon and yet the runs continue to decline. This does not appear to be a legitimate expenditure of public funds when the cost far outweighs any benefits.

If science is the answer regarding the salmon, then we should see increasing salmon runs but this is not the case. Many people question the basis on which species are listed. In the era of hiring a scientist to support your interest, it is difficult to sort out who to believe. In addition, it is difficult to gain cooperation from the public when the basis of decision making is questionable. And there is another element that affects the science. Science is convoluted with the political process when value choices have to be made and this affects how the science is used. Since this is the way our political process works, consideration needs to be given to the option of doing nothing because the actions being taken seem to be prohibitively expensive and appear to be causing more harm than good.

Having said that, if the decision is to go forward with action, the ESA needs to provide parameters for making sound decisions so that a listing is not used as a way to address other land management grievances. Efforts must be taken to prevent listings because under the current system the rules change with each listing. It is frustrating for someone to learn to live with one species and then have the rules changed with the listing of another species. It would be more effective to make every effort to conserve habitat to protect the species rather than trying to protect the species after the fact.

Mark Plummer, the co-author of *Noah's Choice: The Future of Endangered Species* recently noted, no one wants to see a species go extinct but no one wants to see child hunger either. The US has limited resources and we have to choose how to expend the resources. Some species may go extinct because we do not have the will or the resources to protect them. It is essential to acknowledge this and move forward in providing incentives to landowners to protect habitat of viable species.

Another curious aspect of the ESA is reintroducing wolves at the cost of \$7 million dollars when it has been established that the animals are moving in to Idaho on their own. Many people wonder how an animal can be listed as endangered when large populations can be found elsewhere. The revisions to the ESA should exclude reintroduction of species. Fish & Wildlife needs to recognize that we live in a dynamic area that may not adjust to reintroductions.

Perhaps, the largest problem that needs to be addressed is the issue of how the ESA affects private property rights. If the American public wants to protect species, they should rely on public lands and not on private property. As in other instances where individuals are compensated for the loss of their property, so should private property owners be compensated under the ESA. Additionally, it is a more productive solution to seek voluntary agreements from landowners and provide incentives to landowners to protect species than become involved in contentious litigation.

As the major land owners and managers in many of Idaho's counties, it seems reasonable for the Forest Service and Bureau of Land Management to have a major role in protecting species as well as ensuring that communities remain viable. In order to function in this dual role they need to include the local communities in the decision-making and planning process. Communities need to be involved in the planning process so that community plans and agency plans mesh in protecting viable habitat. They need to be included in the decision-making process because productive solutions are often easier to generate at the local level, where landowners generally find local planning and zoning decisions acceptable. In addition, if local communities do not support the decision because they have not been involved in the process, they are less likely to take an active role in habitat or species protection. If agencies intend to take an action on federal land that impacts local communities, then those local communities need to be involved in developing the best action to achieve the desired result so that their livelihoods are impacted as little as possible.

The states have the primary authority over fish, wildlife and plants so broadening their authority to include threatened and endangered species is a reasonable step. Admittedly, not all states are ready to assume the lead role on the listing and conservation of species, but those that are should be allowed to take the lead role in implementing the act. States are closer to the site-specific issues and the people and therefore have a better probability of succeeding in working through issues than the federal government.

Because of the patchwork of ownership that exists in the West, it is unrealistic to expect any solutions to occur unless all individuals become stakeholders in protection of species. We oppose the listing of individual species and the repercussions that are piled on top of one another as they are listed by federal agencies. We advocate a better approach of land managers managing our resources in a balanced and sustainable way so that humans and other species can live together in the harmonious way that once existed in the West.

Testimony

of

Mike Purcell, Director

Wyoming Water Development Commission

Submitted to the

Subcommittee on Drinking Water, Fisheries and Wildlife

of the

Committee on Environment and Public Works

United States Senate

on the

Reauthorization of the Endangered Species Act

Casper, Wyoming

Wednesday, August 16, 1995

TESTIMONY BEFORE THE SENATE COMMITTEE
ON ENVIRONMENT AND PUBLIC WORKS' SUBCOMMITTEE
ON DRINKING WATER, FISHERIES AND WILDLIFE

Mike Purcell, Director
Wyoming Water Development Commission

Wednesday, August 16, 1995

Mr. Chairman, members of the Subcommittee. My name is Mike Purcell. I serve as the Director of the Wyoming Water Development Commission, the water resource planning and project development agency for the State of Wyoming. I would like to thank you for allowing me to speak to you. I would also like to thank Senator Thomas for arranging my participation.

I would like to use my allotted time to discuss ongoing interstate Section 7 consultations under the Endangered Species Act (ESA). I have been involved in Section 7 consultations on several individual projects. Most recently, I was appointed by Governors Sullivan and Geringer, along with Mr. Jeff Fassett, Wyoming State Engineer, to represent Wyoming on various interstate endangered species panels.

The Department of Interior has proposed watershed management plans as a means to recover endangered species and prevent the future listing of additional species. The State of Wyoming is presently involved in two multi-state basin wide management plans: The Recovery Program for the Endangered Fishes of the Upper Colorado and the proposed Central Platte River Basin Endangered Species Recovery Implementation Program. It is interesting to note that the species and habitat of concern in these programs are in Colorado and Nebraska, respectively. However, Wyoming, being a headwater state, participates in the programs due to our well-founded concern that the conclusions could impact our ability to use our water resources.

The primary purpose of Wyoming's involvement in these programs is to achieve certainty for our water users. The ESA, in its present form, supersedes state water laws, interstate water compacts, court decrees and other federal contracts and commitments. The Department of Interior uses the Act to leverage water for the species recovery and habitat improvements. As yet, there has not been a legitimate attempt to define the water needs of the respective species and habitat. The strength of ESA provides the species with the number one water right in the basins regardless of state laws and boundaries. The strength of the Act and the lack of any reasonable quantification of the water needs of the species and habitat have placed huge clouds of uncertainty over the respective river basins. This uncertainty has impacted the relationships between neighboring states. I believe my

counterparts in Nebraska would agree that endangered species issues in the central Platte River basin were one of the major reasons that state elected to initiate the ongoing law suit against Wyoming in the U.S. Supreme Court.

Our participation in these programs can best be characterized as frustrating. The administration of the programs is supposedly a partnership, based on consensus, of the participating states and the U.S. Fish and Wildlife Service (USFWS). However, it is clear the states are not true partners. During the debates relating to money and water, where consensus is difficult to reach, the position of the USFWS typically prevails. When the states protest, the USFWS simply states that the Endangered Species Act does not allow the delegation of its authorities under the Act. Therefore, the states are participating in inequitable partnerships whereby they are expected to contribute money and water while the USFWS establishes the rules using the strength of the Act.

I would like to discuss Wyoming's involvement in the proposed Central Platte River Basin Endangered Species Recovery Implementation Program. Federal policy toward endangered species; principally the whooping cranes, piping plovers, and least terns; and the designation of a critical habitat area in central Nebraska, have affected Wyoming water development and management since the late 1970's. The construction of the Grayrocks Dam, the water supply for Basin Electric Power Cooperative's Laramie River Station, was delayed due to the temporary loss of the federal 404 permit because of concerns relating to the project's impacts on the species and the critical habitat area. The problem was resolved at considerable cost to Basin Electric in terms of both dollars and water.

Since the early 1980's, the State of Wyoming has been involved in cooperative efforts with the States of Colorado and Nebraska, the U.S. Fish and Wildlife Service (USFWS), the Bureau of Reclamation, various water user groups and environmental groups to resolve the conflict between protection of the endangered species and the critical habitat, and state water development and management goals. The first effort, the Platte River Coordination Study, failed for several reasons. There was a general reluctance on the part of the parties to specifically define the water supply needs of the species and habitat. Other activities in the basin, such as the Nebraska v. Wyoming law suit and the FERC relicensing of Lake MacConaughy complicated the process. There was concern that the federal government was using its positions on these important issues to extract water decreed or compacted to the states to provide an unquantified water supply for the endangered species and critical habitat.

In the late 1980's and early 1990's, Section 7 consultations on the federal Platte River reservoirs and the reissuance of special use permits for several Colorado municipal water supply

systems located on the Arapaho/Roosevelt National Forest were initiated. Our concerns were amplified when the USFWS issued its draft biological opinions on the reissuance of special use permits for the Colorado municipal water supply systems. The first "reasonable and prudent alternative" included in the draft opinions was to replace the project water depletions in amount and in timing in central Nebraska. The basic conclusion we reached from the draft opinions was that the USFWS was taking a position that any future depletions or depletions related to federal projects or lands must be replaced in kind until target flows, which were not even remotely quantified at the time, were met in the central Platte.

These draft biological opinions resulted in Secretary Babbitt and Governor Romer of Colorado concluding that a new cooperative effort should be implemented to resolve endangered species issues in the Platte River system. They sought the participation of Wyoming and Nebraska in this proposed revitalized effort. On June 10, 1994, Governor Sullivan of Wyoming and Governor Nelson of Nebraska, along with Governor Romer and Secretary Babbitt, executed the memorandum of agreement which initiated the possibility of a Central Platte River Basin Endangered Species Recovery Implementation Program. The agreement came at a time when each state needed successful consultations. Nebraska was promoting its plan for the FERC relicensing of Lake McConaughy. Colorado was seeking special use permits for its municipalities. All three states have an interest in resolving the consultation on the federal reservoirs in Wyoming and Colorado. Wyoming is particularly interested in the impacts the consultation may have on the operation of the federal reservoirs in Wyoming; Seminoe, Pathfinder, Alcova, Glendo and Guernsey Reservoirs; and the agricultural, water supply, flood control, recreational, environmental benefits Wyoming receives from these facilities. Further, without a program, the USFWS would be faced with the burden of independently completing and coordinating several related controversial Section 7 consultations in the Platte River basin.

In 1994, the USFWS developed target flows that indicated 417,000 acre feet of additional water is needed on an average annual basis in the central Platte River for the endangered species and their habitat. It is apparent that the USFWS did not consider the economic or upstream environmental impacts of these target flows. It is understood that the Platte River basin is over appropriated. Therefore, the additional water would have to come from existing uses.

The USFWS has been reluctant to reevaluate this position, despite the objections of Wyoming, Nebraska, and Colorado. Each state provided lengthy and worthy comments to the USFWS questioning the biology and hydrology used to develop these target flows. The USFWS's responses to the comments were typically unresponsive platitudes. Further, the USFWS has made it clear that, even in the

unlikely event the states could provide 417,000 acre feet of water, it could not warrant that more water would not be necessary in the future.

The Department of Interior later presented its "sideboards" for the proposed program, which basically suggested that if the three states and their water users would provide 130,000 to 150,000 acre feet of water and the funds to acquire 10,000 acres of land in central Nebraska, they would receive non-jeopardy biological opinions for a period of nine years. At the end of nine years, resulting improvements to the habitat would be evaluated and a determination would be made as to what additional resources would be needed to meet habitat goals. There was considerable discussion as to what type of water supply would count against the target flows. The institutional problems associated with delivery of water across state lines has received considerable debate. The states have varying degrees of protections that they could provide such deliveries. There has been considerable discussion about the governance of the program and the authority the states would have in judging habitat needs, budgets and their future responsibilities.

The MOA expired on June 10, 1995. Recently, Governors Geringer, Romer, and Nelson and Secretary Babbitt agreed to extend the MOA until December 1, 1995. There appears to be consensus among the states and the water users that the USFWS is asking for too much without providing sufficient certainty or authority. Presently, the water users, in conjunction with the states, have formed two committees. One committee is responding to the administrative and institutional issues addressed in the federal "sideboards". The second committee is attempting to determine if it is politically and economically feasible to develop a basinwide water plan for the endangered species in the central Platte River basin. This committee is evaluating water supply alternatives that are reasonably attainable without impacting the economies of the states or its water users. Indeed, a difficult task in an over appropriated basin that has a past and present history of conflict and litigation among the states.

In summary, the issues relating to the endangered whooping crane, least tern and piping plover and the critical habitat in the central Platte River basin have impacted water management objectives, caused interstate conflict, and cost millions of dollars over the last twenty years. It is interesting to note that during all this conflict it appears the birds have been doing quite nicely without additional water. The numbers of terns and plovers are increasing. Further, it should be pointed out that neither the tern or plover are native to the central Platte River. The existence of the whooping crane is much more dependent on their habitat in Texas and Canada than the central Platte. A few whooping cranes use the area to refuel during their spring migration from Texas to Canada.

In preparing information relating to the FERC relicensing of Lake McConaughy, the Nebraska Public Power District compiled the following information developed by the Nebraska Game and Parks Commission. There have been 23 confirmed roost sightings of whooping cranes on the river from 1942 to 1993. These 23 sightings totalled 97 nights on the river. One whooping crane accounts for 64 of these nights.

The question becomes why are the states being coerced into providing money and water to obtain the federal actions that are essential to their economies and water users if the species are recovering in the existing habitat and whooping cranes are not using the river? Part of the answer relates to the fact that the economic impacts and resulting benefits of the various proposed recovery plans have never been quantified. Unfortunately, the rest of the answer lies in the fact that the ESA provides too much unbridled authority to the Department of Interior.

To demonstrate how ridiculous the situation has become, I would offer the example relating to experiences of a landowner in the central Laramie River basin, a tributary to the North Platte River, hundreds of miles away from the designated critical habitat in central Nebraska. The landowner in question wanted to construct a fish pond near his home on his property. He sought a 404 permit under the Clean Water Act to construct the small impoundment. It was calculated that the fish pond would result in the depletion of two (2) acre feet of water per year due to evaporation. Through the 404 permitting process, the landowner was advised by the USFWS that he could not obtain the necessary non-jeopardy biological opinion unless he replaced that depletion. In making that determination, the USFWS had to conclude that a two acre foot depletion would have jeopardized the continued existence of the threatened and endangered species and adversely modified the crane's critical habitat in central Nebraska, which is impossible. Further, there are no existing provisions in Wyoming nor Nebraska law that would insure that the replacement water would even arrive in central Nebraska. The water would be diverted by other appropriators or consumed by conveyance losses. Therefore, replacing the depletion could not be considered a reasonable and prudent alternative under the Act as it would not benefit the species or the habitat. The U.S. Army Corps of Engineers questioned the USFWS position. At last report, the situation may be resolved, but the landowner must breach another small impoundment on his property in order to get the necessary USFWS clearance for a simple fish pond. This example is a demonstration of the USFWS using the Act to establish precedence rather than dealing logically with an individual situation.

Attached is written testimony by Mr. Jeff Fassett, who serves as Wyoming's representative on the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River basin. The endangered fish are the Colorado squawfish, humpback chub, bonytail

chub and razorback sucker, all of which at one time were considered trash fish and were the subject of a major eradication program administered by the Bureau of Reclamation. Whereas the program in the central Platte is in the negotiation phase, the Upper Colorado Program is underway with unique problems of its own.

The underlying, and not so subtle, theme of my testimony, as well as Mr. Fassett's written testimony, is that if the federal government truly wishes the states to participate in watershed management plans, the ESA must be modified to allow equitable and effective state and federal partnerships. Without some authorities in the recovery process, the states are simply opening their wallets and turning their water resources over to the USFWS, an agency that thus far has shown quite an appetite for both money and water. The Act could be amended to allow the delegation of authority to commissions, made up of state and federal representatives, empowered to establish goals, budgets, and management plans for interstate recovery programs. Such a mechanism would allow the states to interject reality into recovery plans, assuring that the resources (money and water) needed for those plans are realistically attainable without severely impacting their economic and water management goals. Further, successful implementation of recovery/management plans must provide certainty to the respective states and their water users that they will receive favorable (non-jeopardy) opinions on interim Section 7 consultations as long as recovery/management plans are contributing toward species protection and recovery.

Thank you for the opportunity to meet with you.

Statement
of
Gordon W. "Jeff" Fassett
Wyoming State Engineer

Submitted to the
Subcommittee on Drinking Water, Fisheries and Wildlife
of the
Committee on Environment and Public Works
United States Senate

on the
Reauthorization of the Endangered Species Act

Casper, Wyoming
Wednesday, August 16, 1995

HEARING BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS'
SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE
ON ENDANGERED SPECIES ACT REAUTHORIZATION

STATEMENT OF GORDON W. FASSETT, WYOMING STATE ENGINEER
REGARDING THE RECOVERY IMPLEMENTATION PROGRAM
FOR ENDANGERED FISH SPECIES IN THE
UPPER COLORADO RIVER BASIN

WEDNESDAY, AUGUST 16, 1995

Mr. Chairman and Members of the Subcommittee, my name is Gordon W. "Jeff" Fassett. I am the Wyoming State Engineer and have served in this capacity since March 17, 1987. Article 8 of the Wyoming Constitution established the position of State Engineer and declares that he "... shall have general supervision of the waters of the state and of the officers connected with its distribution." As Wyoming's chief water official, I am charged by Wyoming statute with the responsibility of overseeing and administering all matters involving Wyoming's interstate streams and rivers. I wish, through this statement, to offer certain of Wyoming's views and observations about our experience with the ongoing Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (hereafter Recovery Program). I appreciate your consideration of the views presented in this statement and its inclusion in the record of this hearing regarding the reauthorization of the Endangered Species Act.

It has been said that Wyoming's greatest asset is its people. One of the people's greatest assets are our natural resources. Over half of the land area of Wyoming is owned by the Government (46.9 percent Federal and 10.0 percent State). In view of the people's ownership of the water and wildlife resources of the State and the large amount of public land in Wyoming, it is clear that the State cannot avoid playing a central role in arriving at decisions about society's wise use and conservation of natural resources in Wyoming. I am mindful of former Chief Solicitor of the Department of the Interior Tom Sansonetti's statement that Wyoming is more affected by Interior actions than any other state. I believe this statement is true and I wish to connect that point with our longstanding recognition that many natural resource decisions and issues transcend state boundaries.

On account of Wyoming's physiography as a headwaters state, most downstream water management issues can, and do, instantly "ricochet" upstream and potentially or certainly do affect resources management and use in this State. This is very clearly the case with the four Upper Colorado River Basin endangered fish species whose migration, sometimes hundreds of miles, over the course of their life cycles is done irrespective of state-lines and other political boundaries. I wish to relate to you a sense of our

Statement of Jeff Fassett, Wyoming State Engineer
for the August 16, 1995 Hearing in Casper, Wyoming

experience in attempting to accomplish what the Endangered Species Act aims to do - recover and delist endangered species - with the basin-wide recovery program for four fish species native to the Colorado River Basin that Wyoming has participated in since its inception in 1988. I am the State of Wyoming's representative on the Implementation Committee for the Recovery Program, which operates by consensus and is responsible for overseeing the implementation of the Program.

The Recovery Program is a cooperative¹, comprehensive², basin-wide³ effort to recover⁴ four endangered species of fish - the Colorado squawfish, humpback chub, bonytail chub and the razorback sucker - in the Upper Colorado Basin while providing for water development to proceed in a manner compatible with applicable State and Federal laws. Activities and accomplishments under the Recovery Program are intended to provide the "reasonable and prudent alternatives" for any new projects which cause water depletions and all existing or past impacts related to historic projects in the Upper Colorado River Basin. The January, 1988, Cooperative Agreement specified a fifteen-year period but it is apparent that recovery of all four species will not have been accomplished by the year 2003.

A brief recounting of the background of why this Program exists and how it is intended to function is a necessary precursor

¹ Program participants are the three States of Wyoming, Colorado and Utah; three Federal agencies, namely the Fish and Wildlife Service, Bureau of Reclamation and Western Area Power Administration; and representatives of water user, power and environmental entities.

² The Program has five principal elements: 1) habitat management; 2) habitat development and maintenance; 3) native fish stocking; 4) nonnative species management and sportfishing; and 5) research, data management and monitoring.

³ The San Juan River Basin was excluded from the Recovery Program because the State of New Mexico was unwilling to participate. Subsequent to the initiation of this Program, a small number of endangered fish were found in the San Juan River and the October 1991 revised biological opinion for the Animas-LaPlata Project required the initiation of a San Juan River Basin Recovery Implementation Program.

⁴ Recovering the fish will consist of restoring and establishing self sustaining populations of the four species and protecting habitat of a sufficient amount and quality to support those populations such that the U.S. Fish and Wildlife Service removes these species from the ESA's endangered species listing.

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to examining how well it is working and what are its shortcomings. Since 1978, the U.S. Fish and Wildlife Service has issued numerous biological opinions on water project impacts on the four endangered fish species. The USFWS' opinions, issued under the authorities of Section 7 of the ESA, have concluded that the depletion impacts of water projects are jeopardizing the continued existence of the endangered fishes.

These jeopardy opinions on water depletions, regardless of the amount of the depletion or the intervening distance between the water projects and the river reaches where the fish reside (and it must be recognized that none of the four species of fish reside in rivers within the State of Wyoming - but rather all are only found downstream) threatened to embroil all involved parties in severe and untenable confrontations between resource protection and resource development. All parties recognized that such confrontations were unlikely to result in any appreciable efforts to recover the listed fish species. All parties further recognized that future water resource development of the compact-apportioned water supplies provided under the Upper Colorado River Basin Compact to the Upper Division States' water users would become more uncertain in the face of jeopardy opinions for any water depletion in the Upper Basin.

Accordingly, in 1984 all of the participating entities began to develop a Program for recovering the fishes while allowing water development to proceed in the Upper Colorado River Basin. After 3 years of data analysis and negotiations, the Governors of Colorado, Utah and Wyoming, the Secretary of the Interior and the Administrator of the Western Area Power Administration executed a cooperative agreement initiating this interagency partnership.

Prompted by the U.S. Fish and Wildlife Service unilaterally⁵

⁵ The Bureau of Reclamation, Western Area Power Administration, the three States of Colorado, Utah and Wyoming and the water users representatives all disagreed with the U.S. Fish and Wildlife Service's "position" that in the Program's negotiation the matter of whether then-existing, water-depleting projects would have to pay any depletion charge or be required to accomplish additional conservation measures to offset their current water depletions was somehow "overlooked" and "not addressed." Nonetheless, as the USFWS has sole responsibility for issuing Section 7 consultation biological opinions, the USFWS was able to force the other participants to "renegotiate" the terms of the Recovery Program with regard to Section 7 consultations. Our only other recourse would have been to withdraw from the Program. The likelihood, however, under the current Endangered Species Act and the USFWS' interpretation of their responsibilities under the ESA, of future approval for water projects using Colorado River water supplies appears to be problematic unless the viability of the

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taking the position that the then-existing Program arrangements were not intended to and did not address Section 7 consultations on pre-Program, water-depleting projects, an agreement was implemented on October 15, 1993, that clarified the Section 7 consultation process for water projects within the Upper Colorado River Basin. This agreement added a new concept for consultations on water development projects in the Upper Basin in that it incorporated into the Program a Recovery Implementation Program Recovery Action Plan (RIPRAP).

The RIPRAP is the cornerstone of the Program, as it provides an itemization, timeline and budget for capital projects and all other activities identified as necessary to recover the endangered fish species. Specific elements of the RIPRAP⁶ are to be identified for use as reasonable and prudent alternatives for historic water projects, if needed. For new projects, the intention is to continue the depletion charge⁷ which is an integral part of the Recovery Program but use the Plan if any additional measures are needed (i.e., for large depletions). Implementation of the RIPRAP promotes the likelihood that the Recovery Program can continue to provide the "reasonable and prudent alternative" for water-depleting activities in the Upper Basin that need to comply with Section 7 of the ESA.

When originally conceived in 1988, the total Recovery Program cost was estimated at about \$50-55 million, including about \$15

Recovery Program is maintained.

⁶ Very briefly, elements of the RIPRAP include establishment and protection of instream maintenance flows, regulations on the stocking of non-native fish species, elimination of barriers to fish movement in rivers (passage facilities), endangered fish refugia and experimental stocking facilities, restoration and/or creation of side-channel habitat and the possible enlargement of the existing Elkhead Reservoir as a means to regulate flows in the Yampa River.

⁷ Under the terms of the Recovery Program, project proponents for new water projects who complete Section 7 consultation will receive favorable biological opinions allowing their project to proceed on the condition that they make a one-time contribution of \$10 per acre-foot (adjusted annually for inflation - the current charge is \$12.71/Af and will become \$13.04 on October 1st) for the project's average annual depletion. Projects developed in "occupied" (by the fish) habitat have to address direct, physical impacts by implementing reasonable and prudent alternatives specified by the Service and contribute the depletion fee. Water users anticipate that most development will occur in non-occupied habitat and will not be cause direct impacts.

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million for capital construction and water rights acquisition costs. These costs were to be funded with revenues from a variety of sources, including power rate surcharges, water depletion charges and Congressional appropriations. It was anticipated that all \$15 million of the capital construction and water right acquisition costs would be monies appropriated by the Congress. Although some important elements of the RIPRAP remain to be negotiated, it generally contemplates an estimated budget in the range of \$50-90 million, including about \$30-60 million for capital projects to be implemented over the next ten years (assuming that the initial fifteen-year Cooperative Agreement would be extended). The Program participants sought and believed they had a commitment from the Bureau of Reclamation that funding for this Program's capital construction program would be included in Reclamation's future annual budget requests.

In June, 1994, the Bureau of Reclamation advised the other Program participants that, irrespective of the Program's terms and the commitments made earlier, it as an agency was only willing to include in its future year budget requests fifty (50) percent of the Recovery Program's anticipated capital projects funding needs in outyear budgets and that the other 50 percent of the funding would need to be cost-shared from other sources who share in the "cooperative responsibility," as Reclamation has phrased it. The Recovery Program's Implementation Committee, responsible for approving the Program's annual budget and establishing policy, etc., established an ad-hoc funding committee in September, 1994 to develop agreement on how the future funding needs of the Program can best be met. Dialogue on these issues is continuing.

With a cost range of between \$50 and 90 million, completion of the Recovery Program, that is, recovery of these four species of native fishes, represents a very significant financial commitment. Through the end of Fiscal Year 1995, the Recovery Program will have spent in excess of \$30 million since its initiation. Colorado River Storage Project power revenues (accounted for as CRSP operation and maintenance expenses) have amounted to about \$12.7 million of that total, and the U.S. Bureau of Reclamation's Fiscal Year 1994 and 1995 "Construction Budget" appropriations have provided just over \$7 million of that \$30 million total.

As I mentioned earlier, none of the four endangered fish species reside within State of Wyoming waters; nonetheless Wyoming agreed in 1988 to provide \$23,000 of the \$200,000 annually contributed by the three participating States. Each entity's contribution is adjusted annually based on the Consumer Price Index. Wyoming's Fiscal Year 1995 contribution is \$29,400 and since Federal Fiscal Year 1989 (the first year of funding), the State of Wyoming has contributed \$184,600. Based on an assumed 4 percent per year increase in the Consumer Price Index each year through the year 2003, we anticipate that the Wyoming Legislature will need to appropriate an additional \$278,270 and that our total

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contribution to the annual budget, excluding any cost-sharing for capital projects for the Program, over the fifteen-year Program will total about \$463,000. Through the end of July, 1995, Wyoming water users have contributed \$38,141 in depletion fees to the Recovery Program. Depletion fees are assessed on all new water projects in the Upper Colorado Basin as a part of the Program's terms and have provided more than \$1.1 million for Program activities since its January 1988 inception.

What additional funding Wyoming will be asked to contribute as "cost-sharing" for the capital project construction which I highlighted earlier remains to be seen. Our participation in the ongoing discussions of the Ad-Hoc Funding Legislation Committee are tempered by several factors. First, the arrangement specified in the September, 1987, framework document for the Recovery Program was that Congressional appropriations would be sought to restore side-channel habitats, acquire instream flow water rights, install fish passage structures at dams which are barriers to the migration of these fishes and provide broodstock refugia and captive rearing facilities. The Endangered Species Act is a Federal statute and we continue to believe that the conservation of species and administration of the ESA is a national obligation.

Attempts to assess the three participating states and their citizens, whether by additional depletion fees, user fees or whatever for 50 percent of the cost of recovering these species does not seem to be an appropriate means to address a Federal obligation. Second, it is problematic to anticipate that the Wyoming Legislature will appropriate sums of money for acquiring lands or building facilities in locations in Colorado and Utah. Third, in the face of the considerable uncertainty as to whether the measures currently believed to be necessary to recover the endangered fishes will actually benefit the species to the extent that we currently believe they will, the question that must be asked is will these expenditures actually produce recovery and the only answer that can be given is that we hope so. Unless the species are recovered, Section 7 consultations on water and hydropower projects will never end. I would add that the ESA has come under criticism for not recovering species quickly enough. It is my understanding that 21 species have been removed from the list in the 22 years since the ESA, as we know it, was enacted and only 15 have been downlisted from endangered to threatened status.

While there are certainly large uncertainties looming, the Program is moving forward, albeit not at the pace and with the progress that any participant would like. Many important activities have been completed or are in the process of occurring. First of all, the basin-wide approach that this Program set in place is still working - the widely divergent interests of the cooperating federal agencies, states, and water, power and environmental interests continue to all be at the table working together and pursuing the common objective of recovering the

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species. All involved parties have made huge investments in the Program. There are those who would point to the Recovery Program as being a "model" program for how the U.S. Fish and Wildlife Service should be "doing business." This is in part because through working together all of the parties are able to accomplish much more than any could individually. Pragmatically, Section 7 consultations without such a Program do nothing more than preserve the "status quo" with respect to species abundance and habitat maintenance, and allows individual species to continue to decline - while this Program transcends that limited scope and addresses recovery. The Recovery Program obligates the Federal Government and the States to work within the State water rights law and the interstate water compacts in providing flows for the endangered species and has established the States as willing partners in providing the necessary instream flow water rights.

In addition, no litigation has resulted on account of the issuance of biological opinions for the 170 water projects that have completed Section 7 consultation since the initiation of the Program in 1988. Those projects have a cumulative potential average annual depletion of 207,300 acre-feet (of which 38 were historic projects which have been depleting 16,560 acre-feet). For your information, I would add that 26 of those 170 water projects are located in Wyoming, and those 26 consultations provide for 5,082 acre-feet of new depletion and 3,316 acre-feet of pre-Recovery Program (historic) depletion.

While I could present information about the specific accomplishments of the Recovery Program to date, I would note that I understand that the Regional Office of the U.S. Fish and Wildlife Service has been requested by the Subcommittee to provide information summarizing the Program's status and accomplishments. I would direct your attention to that submittal in lieu of repeating that information. I would simply like to state that the Program's accomplishments are noteworthy and certainly reflect a lot of commitment on the part of all parties to make the Program work. The States, their fish and wildlife agencies and water users and the Federal agencies have taken on many difficult issues to produce the progress that we have made to date. This Program has enjoyed support from the Congressional delegations in our three States. It has also led those with jaundiced eyes with regard to endangered species conservation to question our collective actions and wisdom on many occasions. Simply put, however, we have not lost sight of the importance of providing for our continuing water needs in the arid Colorado River Basin and our commitment to taking those actions needed to recover the four endangered fish species.

I want to offer several key observations about the conduct of the Program to date and, inherent in that, certain of its shortcomings. Obviously all of the participants, including Wyoming are frustrated with the slow pace of our collective progress in implementing the Program. It is also the case that we were

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dismayed to be into the Program about six years and find that the estimated cost of the Program was then estimated to be threefold over the estimates made when the Cooperative Agreement was signed in 1988. Certainly, the position, seemingly based solely on the realization of the cost escalation of completing the Program, taken by the Bureau of Reclamation that the non-Federal participants must "pony up" fifty percent or at least some very substantial amount of the cost of the capital projects construction portion of the Program has been a slap in the face to the States and the other Program participants.

As I noted early, we believe that Federal position is in contradiction to the agreement specified in the 1987 framework document that this portion of the Program would be funded through seeking Congressional appropriations. The unwillingness of the Federal agencies to even submit our capital projects appropriation request to the Congress - for its consideration of funding priority as a means to carry out the Congressional mandate with regard to conservation and recovery of endangered species - is problematic and gives us pause about just what kind of a partnership we find ourselves in seven years down this road of cooperatively working to recover these four fish species.

One of our fundamental concerns with regard to the past and future conduct of the Recovery Program goes to the fundamental way that the U.S. Fish and Wildlife Service interprets the relationship between Recovery Program activities and accomplishments and its responsibilities under Section 7 consultations. Within the "normal" (outside of the Recovery Implementation Program) Section 7 consultation process, project proponents are required to "offset" or mitigate for the effects of their proposed project. Basically, conservation measures proscribed to offset the project impacts are intended to maintain the status quo with regard to the species and their habitat. The Recovery Program goes much further than just offsetting impacts; it has as its objective the delisting and full recovery of the four endangered species.

Based on this important distinction, it is somewhat misleading for the U.S. Fish and Wildlife Service to characterize the Recovery Program as the "reasonable and prudent alternative" for all water projects in the Upper Colorado River Basin - as it is much more than that. Were this the real case, the bounds of the Recovery Program would only need extend as far as maintaining the status quo and offsetting project impacts. Such a Program would be much simpler and much less expensive. Regardless of our repeated efforts to get the USFWS to recognize and acknowledge the distinction between offsetting impacts and recovery as the objective, the USFWS approach has been that consultations within the Recovery Program should be handled with a "business as usual" approach.

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We are quite frustrated with what seems to be a constant renegotiation of the details of Section 7 consultations for water projects. Much time and resources have been consumed in revisiting fundamental tenets and aspects of the Program's conduct to the detriment of accomplishing measures that actually will benefit the endangered fishes. Wyoming strongly believes that the participating States, on behalf of our water users, deserve a real voice in key issues such as sufficient progress. It seems to us that it is past time to amend the Endangered Species Act to truly allow mutual decision-making in important implementation issues.

I am reminded of a remark presented in the late Governor Ed Herschler's statement read into the record at a December 20, 1988 hearing on the Recovery Implementation Program held in Rock Springs, Wyoming. The Wyoming Legislature, in appropriating funds for Wyoming's first financial contribution to the Program, mandated that a hearing be held in Wyoming's portion of the Basin about the then newly-initiated Program. Former Governor Herschler stated:

"I submit that the protection and management of those fish on the endangered species list is desirable and necessary, but I also submit that development of beneficial use of water is also extremely necessary and desirable, particularly to the three States of the Upper Colorado River Basin. There must be cooperation and consensus between the actors in this process, and if one of the actors takes the position that its prerogatives outweighs or overshadow the other's then the process will fail."

We in Wyoming feel that as long as the U.S. Fish and Wildlife Service has unilateral decision-making power with regard to the key issues of Program implementation, that we and the other participants are, in some ways, merely along for the ride. The current situation is that the USFWS' prerogatives are outshading and clearly do outweigh those of the other participants. This was the case, as I have indicated above, with regard to the agreement "clarifying" the Section 7 consultation process under this Program, and is the case with regard to the ongoing discussions about additional cost-sharing and future funding for the Program.

Secretary of the Interior Babbitt's "a deal is a deal" assurance last August - to landowners who have endangered species habitat on their property and who agree to a habitat conservation plan that they will not be subject to later demands for a larger land or financial commitment if the plan is adhered to even if the species needs change over time - should, we believe, extend to the participants in this Recovery Program. This Program, since its inception, has taken the multi-species, basin-wide approach advocated by the Secretary and, as I indicated earlier, has been pointed out as a "model program." It is my understanding that Secretary Babbitt testified before this Subcommittee in early July

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that: "We ought not to take multiple bites from the apple." We in Wyoming agree, but our history with and the current funding dilemma facing the Upper Colorado Endangered Fish Recovery Program leaves us reflecting that the apple is being well chewed.

Partnership is a two-way street that can extend to all areas of implementing and cooperatively administering all provisions of the ESA, including each of its sections (habitat conservation plans, Section 7 consultation, critical habitat management, etc.). Too often in this Program the word "partnership" has seemingly been a code-word that translates to mean bring state water and state money and the Federal government will bring the Federal statutes, federal regulations and the rules of conduct for program activities. True partnership means all partners, both state and federal, have a voice and a vote in planning and decision-making.

My points with regard to our funding dilemma and the shortcomings of the current partnership arrangement both relate directly to the absolute need for more certainty. We all want certainty. The States and water users, in agreeing to participate in this Program had at the time the Program was initiated and continue to have the expectation that they can and will receive biological opinions that will allow new water development projects to proceed and historically-depleting projects to continue to be operated in such a manner that they will yield the same amount of water annually as they have in the past. Successful implementation of this Recovery Program, or any other, must provide certainty to the respective states and their water users that the Section 7 consultation process will allow their needed water projects to become reality so long as their concerted efforts to implement recovery/management plans are contributing toward species recovery and habitat conservation.

Certainly, all parties want to feel certain that our Recovery Program can accomplish its objective of recovering and delisting the four native fish species. Some "leveling of the playing field" with regard to key matters of Program implementation - the what, when and whether activities will be initiated and completed - needs to occur. We have steadfastly continued to urge the U.S. Fish and Wildlife Service to recognize the distinction between "offsetting depletion impacts" and "recovery of species" in terms of its approach to Section 7 consultations and their unilateral determination of whether the Program is making "sufficient progress" but, under the existing ESA and the promulgated regulations, the USFWS gets to call the shots. We do not see this situation being ameliorated by the U.S. Fish and Wildlife Service voluntarily agreeing to, in essence, share the power that has been vested to it through the wording of the Endangered Species Act and the numerous court decisions that have consistently added to that agency's authorities and prerogatives. Amendment of the ESA to provide a greater role and voice to the states, to devolve the situation to one where shared decision-making is assured and to

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reestablish checks and balances that are rooted in reality is an essential goal that this Congress needs to have firmly in mind as it reauthorizes this important Federal statute.

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to provide this information to you. These are issues that are truly important to the citizens of this arid, western state and have long-term implications of tremendous consequence for our economies and way of life.

* * * * *

TESTIMONY OF RICHARD TASS;
Commissioner of Johnson County, WY
on the reauthorization of the
Endangered Species Act

Mr. Chairman, Members of the Committee and staff. My name is Richard Tass and I am a County Commissioner from Johnson County, Wyoming. I have been asked to appear for Sweetwater County Commissioner Linda Taliaferro who was called away on family business. I am here today to address my concerns and those of many of my fellow county commissioners across the State regarding the reauthorization of the Endangered Species Act and its implications for Wyoming.

To date, Wyoming has been somewhat spared some of the more notable intrusions caused by the Endangered Species Act. I believe this has as much to do with our vast land mass and limited population as it does with the so-called benign nature of the Act. But, make no mistake, the impact of the Environmental Species Act will be felt eventually by every county across the West. Wyoming will not escape the reach of the ESA.

Let me give you some real world examples from other Western states to give you some perspective. Kern County, California has over 27 species that are listed by the State or Federal Governments, with another 41 as candidate species. Due to the large number of species and the need to address multiple listings, over \$1.2 million in private and public funds have been used developing the Metropolitan Bakersfield and Kern County Valley Habitat Conservation Plans. The projected net loss to the agricultural interests due to ESA implementation in this area alone

will exceed \$73 million annually. One would be hard pressed to find a county that could absorb such economic dislocation. I cannot imagine any of our 23 counties in Wyoming being able to take such a blow. I assure you, Johnson County could not.

There are more examples -- examples where a replacement bridge crossing over the Snake River has been delayed because of snail habitat, signalling the assignment of a lesser value to people and their livelihoods than is right. Look what the debates and the impacts of the Northern Spotted Owl did to families in the Pacific Northwest. Will the same type of results be in store for the people that live in Johnson County and the rest of Wyoming?

With the Supreme Court's decision in the Sweet Home v. Babbitt case, private lands must now be included in the effect of the ESA. No longer will private interests be able to ignore the impact of the Endangered Species Act because they, and we, will all be affected.

Mr. Chairman, my concerns over the impact of the ESA on Wyoming and the rest of the West are magnified by the fact that we have much land and, in many areas, very few people with limited assets with which to take up the struggle to preserve their way of life, and their livelihoods. Rural America must be given a greater voice in the Endangered Species Act. Other than outright abolishment of the Act, I suggest that we need greater involvement by local governments in the planning and management decisions affecting the listing processes under the ESA. Every step must be taken to recognize that many rural counties have limited resources which must be used to put people and the social, economic, cultural

and historic aspects of their lives into decisions associated with the implementation of the Endangered Species Act. Habitat conservation plans should conserve the human habitat as well as those of other species.

All stakeholders must be at the table when critical decisions about people, property and business are concerned. The current Act excludes too many, empowers too few and allows bureaucrats in Washington to decide the futures of thousands of people, scores of communities and the way of life they have come to enjoy and rely upon.

Mr. Chairman, if we cannot mitigate the losses from the implementation of the Act through good stewardship, better planning, more effective management, and if the government insists on meeting the strict goals of the Endangered Species Act, it seems only fair to compensate those who lose real value when the Act is imposed upon them. We must be prepared to make private and public landowners whole if we are ever going to expect to develop support for the goals of the Endangered Species Act.

Mr. Chairman, on behalf of many residents of Wyoming, please make your effort on the reauthorization of the Endangered Species Act one which recognizes the history and the future of the people of Wyoming. Please make sure that the investments the have made in Wyoming are not forgotten.

Statement of
Stephen D. Thomas
CODY FIELD REPRESENTATIVE
for the
GREATER YELLOWSTONE COALITION
before the
SENATE ENVIRONMENT and PUBLIC WORKS COMMITTEE
SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE
on the
REAUTHORIZATION of the ENDANGERED SPECIES ACT (ESA)
AUGUST 16, 1995
CASPER, WYOMING

Chairman Kempthorne and members of the Subcommittee:

Thank you for inviting the Greater Yellowstone Coalition to testify at this hearing on the reauthorization of the Endangered Species Act. My name is Stephen Thomas, Cody Field Representative for the Greater Yellowstone Coalition. I live in Cody, Wyoming a couple of hundred miles from here on the east side of Yellowstone National Park. I am a former Commissioner from Teton County having served two terms in that capacity.

The Coalition was formed in 1983 by citizens concerned about the rapid rate of development and fragmentation in the Greater Yellowstone ecosystem. It includes as members about 110 local, regional and national organizations, and over 6,000 individual members committed to ensuring the longterm well-being of the natural and human resources of Greater Yellowstone. Our membership includes sportsmen, scientists, wildlife enthusiasts, resource professionals, ranchers, business people, hunters and fishermen, animal advocates, and many others. We appreciate the opportunity to submit our views on this Act.

THE ENDANGERED SPECIES ACT (ESA):

We view the ESA as one of the most important pieces of environmental legislation crafted and adopted anywhere in the World.

Without the ESA we may very well have lost such important and magnificent species as the grizzly bear, bald eagle, black-footed ferret, peregrine falcon and many others. Without this Act our children and their children might never have seen our National Symbol, the bald eagle. How would we explain that we allowed such a thing to happen? How could we explain? In short, the ESA has been an extraordinary success with great meaning to this generation and generations to come.

Even with the success of the ESA in protecting many species from extinction there remains much work to be done in the protection of species and habitat. Indeed, the need for the ESA increases as our own population demands upon the environment continue to grow.

NATIONAL ISSUES:

I have enclosed copies of a working paper titled "Endangered Species Listings and State Economic Performance" written by Stephen M. Meyer, Director of the Project on Environmental Politics & Policy, Massachusetts

Institute of Technology, Department of Political Science.

I believe the key points to be gleaned from this document are that there seem to be a large number of anecdotal kinds of examples of the ESA running roughshod over economic development, and that the numbers do not support these anecdotal examples. You may read this paper for yourself but I would like to draw your attention to pages 14 and 15 under the Heading "Concluding Observations" and particularly to page 15 in the third paragraph, and I quote "In fact for every tale about a project, business, or property owner allegedly harmed by efforts to protect some plant or animal species there are over one thousand stories of virtual non-interference. In reviewing the record of 18,211 endangered species consultations by the Fish and Wildlife Service/National Marine Fisheries covering the period 1987-1991, the General Accounting Office found that only 11% (2050) resulted in the issuance of formal biological opinions.

The other 89% were handled informally--that is to say the projects proceeded on schedule and without interference. Of the 2050 formal opinions issued a mere 181- less than 10%- concluded that the proposed projects were likely to pose a threat to an endangered plant or animal. And most of these 181 projects were completed, albeit with some mod-

ification in design and construction. In short, more than 99% of the projects reviewed under the Endangered Species Act eventually proceeded unhindered or with marginal additional time and economic costs." So as you can see the ESA is, in fact, not causing the widespread economic disasters that the anecdotal examples would portray. I would further argue that this demonstrates a need to strengthen the ESA. Indeed, there appears to be an almost automatic approval of projects by the agencies.

We believe that most of the anecdotal stories are far outweighed by the facts mentioned above and by the success stories of the grizzly, the bald eagle, the peregrine falcon, not to mention many plant species that have very important medicinal uses. You have all heard of taxol from the Pacific Yew tree which is one of many, many examples.

WYOMING and the ESA:

Finally, let me address my home state of Wyoming. We here are fortunate to live in a state that has an abundance of wildlife and natural resources. In fact, we share some of the more famous ESA successes including the bald eagle and peregrine falcon. Many of us are proud of those success stories. Many of us owe at least part of our economic success to our wildlife. As you may know tourism is one of the top two industries in

this state. Many communities owe their economic survival to tourism which directly depends on such things as wildlife.

I was in business for twelve years in Jackson, Wyoming and I spoke with literally thousands of tourists every year. At least part of the reason most of them came to Wyoming was to see our wildlife and especially such species as the grizzly. I was asked hundreds of times each year, "Where can we go to see a grizzly bear?". It is the thrill of a lifetime for a family on vacation to see a grizzly bear. Without ESA they may never have that opportunity which means they might not come to Wyoming.

The additional benefit of protecting habitat for such species as the grizzly is that so many of our big game species use the very same habitat. The economic value of big game hunting alone, has been estimated, by the Wyoming Game and Fish Department to be \$ 32,000,000 to this state while tourism as a whole contributes \$ 1,700,000,000 to this State's economy. As you can see we are talking big money for Wyoming and wildlife accounts for a large portion of that sum. This is not even considering that this, beautiful, pristine habitat that is being protected is one of the other reasons that people come here.

Speaking of people coming here, how about that wolf? The Lamar Valley, up in Yellowstone, and particularly the Northeast entrance, has

shown a 22% increase in traffic counts over 1994. Now the wolf cannot take all that credit for increasing business but a good part of is directly attributable to the wolf. Again we are talking big money for the communities in the Greater Yellowstone area.

There has been much wringing of hands and gnashing of teeth about the so-called horror stories of heavy-handed enforcement of the ESA, but we should look at the actual facts, as we did on the National level. The public record from the Wyoming office of the U.S. Fish and Wildlife Service demonstrates that in the past five years they have not blocked any action on private land in Wyoming due to the ESA. They have conducted 1,751 consultations and issued 14 jeopardy decisions--representing less than 1% of all cases. All of those 14 cases regarded the depletion of water to the Colorado River System which can jeopardize 4 endangered fish downstream. In every one of those cases, a reasonable and prudent, easy alternative was worked out and each party was able to proceed while also helping to conserve the fishery. In general, the Wyoming USFWS office estimates less than 10% of their issues deal with private land.

Earlier in my testimony I mentioned the grizzly bear as an animal that has positive economic impacts. There are those who will attack the

ESA based on the grizzly bear. They contend that the ESA is flawed because the grizzly has not been delisted. We contend that the grizzly should not be delisted because there has been inadequate habitat protection for its survival. This does not mean that the ESA process is flawed. It requires good science to be used. We are contending that the science does not support delisting. We are not arguing the ESA process itself.

You will also hear of grizzly problems on the Togwottee Pass allotment. First, let me stress that the Togwottee Pass area is public lands, not private. It is historical grizzly habitat and is identified as management situation I recovery zone. Furthermore, the bears historically have caused few problems in this area. Poor range management, inadequate livestock distribution and poor forage have contributed to higher depredation rates in the recent past. This year only one calf depredation has occurred on the Blackrock, Spread Creek allotment since it is a good forage production year. This clearly demonstrates the need for adequate habitat protection. In any event, we believe the grizzly bear owes its very existence to the ESA and as a symbol of the American wilderness, has very positive economic and ecologic effects that far outweigh any negative implications.

In summary, in the Nation and in Wyoming in particular the record clearly indicates that the ESA has few, if any, significant adverse impacts. So what's the problem? Are a few extremely narrow special interest groups going to rule the day or is your decision going to be based upon the public record? It is my belief that the ESA is an extraordinary example of this Nation doing something to protect its wildlife heritage. If you reauthorize the ESA and indeed strengthen it our generation, our children, and their children will owe you a great debt of gratitude.

Thank you very much.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
DEPARTMENT OF POLITICAL SCIENCE

Project on Environmental Politics & Policy
Stephen M. Meyer, Director

30 March 1995

ENDANGERED SPECIES LISTINGS AND STATE ECONOMIC PERFORMANCE

Our most recent working paper, *Endangered Species Listings and State Economic Performance*, examines the allegation that the Endangered Species Act has "trashed" the economy. Analyzing the periods 1975-1980, 1980-1985, and 1985-1990 the paper compares state growth rates in gross state product and construction employment against their corresponding number of federally listed species. The data clearly show that the Endangered Species Act has had no measurable economic impact on state economic performance.

Controlling for differences in state area, economic size, and extractive industry dependence the study finds that states with the highest numbers of listed species also enjoyed the highest economic growth rates and the largest increases in economic growth rates between the three periods. A closer look at the data suggests that population growth is the common link: states with booming economies attracted larger numbers of new residents, which in turn put increasing pressures on habitats. From a conservation biology perspective this implies a larger likelihood of human-wildlife collisions that result in a new listing. From a political perspective it implies more opportunities for environmental activist intervention and NIMBYism to halt habitat destroying projects, again producing larger numbers of new listings..

Working Paper No. 4



**ENDANGERED SPECIES
LISTINGS
and
STATE
ECONOMIC PERFORMANCE**

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March 1995

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ENDANGERED SPECIES LISTINGS and STATE ECONOMIC PERFORMANCE

by
Stephen M. Meyer¹

INTRODUCTION

For most Americans mention of the Endangered Species Act conjures up images of a triumphant Spotted Owl perched atop an enormous Douglas Fir, while below a group of unemployed loggers idly drink beer and pitch stones. The Endangered Species Act, some argue, is impeding American economic growth and prosperity – “trashing the economy”. Indeed, anecdotes abound of butterflies halting shopping mall projects, mosses scuttling highway extensions, and fish blocking resort development.

With the number of listed endangered species presently hovering around 800 and thousands of candidate listings waiting in the wings it is certainly prudent to question whether we can pay the alleged price for protecting endangered plants and animals in the manner presently defined by the Endangered Species Act. And it is in this context that a number of amendments to the Endangered Species Act have been proposed, all aspiring to balance the needs of biodiversity against those of the economy.

In order to assess the potential economic value of these proposed amendments we need to have some sense of the actual economic impact of endangered species listings. To what degree do such listings depress economic growth and development? Those who favor giving economic interests more weight in the endangered species process are convinced that the negative economic effects of endangered species listings are readily observable and substantial. This should be easy to verify, and if true would prove valuable in estimating the economic return from an “economically balanced” Endangered Species Act.

Accordingly, this paper estimates the impact of endangered species listings on state economic development for the period 1975-1990, the entire lifetime of the Endangered Species Act for which complete data are available. The data show that endangered species listings have not depressed state economic development activity as measured by growth in construction employment and gross state product. These findings hold even after taking into account state area, population, population density, size of economy, structure of economy, population growth, and time. In fact a state by state comparative analysis across three consecutive five year periods reveals the converse to be true: higher numbers of listed endangered species are

¹ The author is Professor in Political Science and Director of the Project on Environmental Politics and Policy.

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associated with higher rates of economic growth and corresponding population pressures.

ESTIMATING THE ECONOMIC IMPACT OF ENDANGERED SPECIES LISTINGS AT THE STATE LEVEL

Before launching into any form of statistical estimation it is useful to examine visually the basic trends in the two key variables -- rates of economic development and endangered species "burden"-- to see how they move in time. This study uses two standard indicators of state economic performance that reflect development activity: growth in construction employment and growth in gross state product.² The choice of construction employment is obvious. If the weight of endangered species listings is systematically hindering development activity, for example forcing delays and cancellation of public works projects and spawning permit denials for residential and commercial construction, then construction employment opportunities should be limited if not actually depressed.

Endangered species burden is measured in terms of the number of listings per state -- a relative measure of endangered species burden. In fact the political debate over the Endangered Species Act is itself waged in terms of the number of listings, current and prospective. Opponents worry that the impending avalanche of listings will shut down important segments of the U.S. economy, especially the natural resource sectors. A larger number of individual species listed, they argue, means a larger amount of land likely to be affected. It also implies a larger assortment of restrictions put in place, all else being equal. Therefore, Alabama with 61 listed species in 1990 would in theory labor under more onerous burdens than neighboring Georgia with 31 listed species. And both would be worse off than Louisiana with just 19 listed species.³

If the impact of the Endangered Species Act is really as pervasive and perverting as the anecdotal evidence implies then the overall economic climate in states with high numbers of endangered species listings should suffer in a

² Data were obtained from the U.S. Department of Commerce and Department of Labor.

³ Of course the number of listed species is not a perfect measure. Some listed species range over very small habitats. Habitat for the Tecopa Pupfish was under an acre. Others, such as grizzly bears require hundreds of thousands of acres. Thus, two states with a single listing each may experience very different impacts.

Then too many listed species have overlapping territories. For example, the area designated as habitat for the California Gnatcatcher contains some 37 other endangered species. Thus, it is likely that the cumulative impact of these 38 listings may be substantially less than the sum of their parts. It would be desirable, therefore, to use this alternative measure of species burden. Unfortunately, data are not yet available to allow us to measure endangered species "burden" directly by land restrictions.

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measurable way.⁴ This negative effect should ripple back through state economies and be detectable in changes in the gross state product. For example, traditional assumptions about multiplier effects assert that every timber job lost in Oregon causes three additional jobs in services, retailing, etc. to disappear.

Construction Employment Growth: FIGURE 1 consists of three graphs representing the periods 1975-1980, 1980-1985, and 1985-1990. Forty-eight states, omitting Alaska and Hawaii, are plotted according to (the vertical axis) their average annual growth in construction employment during the five year period and (the horizontal axis) their corresponding number of listed endangered species as of the *beginning* of that period.⁵ In other words, each graph is a snapshot in time comparing the states in terms of the number of listed endangered species and subsequent economic performance for the five year period. The line running through the graph attempts to trace the general trend using simple regression.

None of the patterns in any of the time periods support the assertion that endangered species protection results in measurable reductions in state economic performance. In fact there seems to be a modest *increasing* (positive) trend during the first two periods in construction employment growth as the number of listed species rises, and no trend in the last period. If endangered species listings are "trashing" state economies there is no sign of that impact on construction employment.

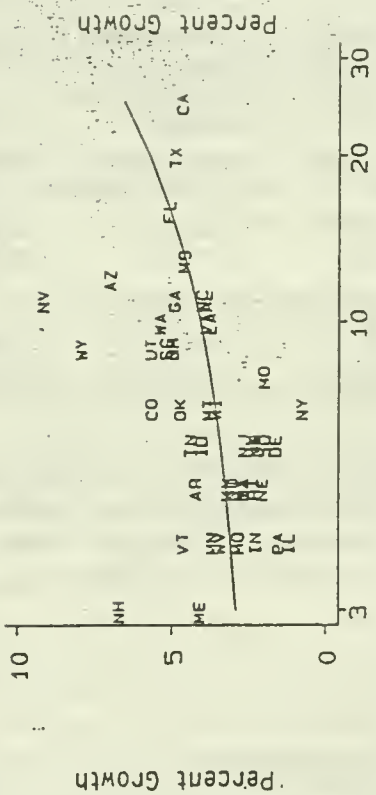
Gross State Product Growth: The next set of graphs arrayed in FIGURE 2 examine the trend for growth in gross state product as a function of endangered species listings. Here again the pattern predicted by critics of the Endangered Species Act fails to appear. There is no trend of declining economic performance as species listings increase. Instead all three periods show a modest increasing rate of gross state product growth associated with increasing numbers of species listings.

⁴ State by state annual data for endangered species listings were obtained from the U.S. Fish & Wildlife Service.

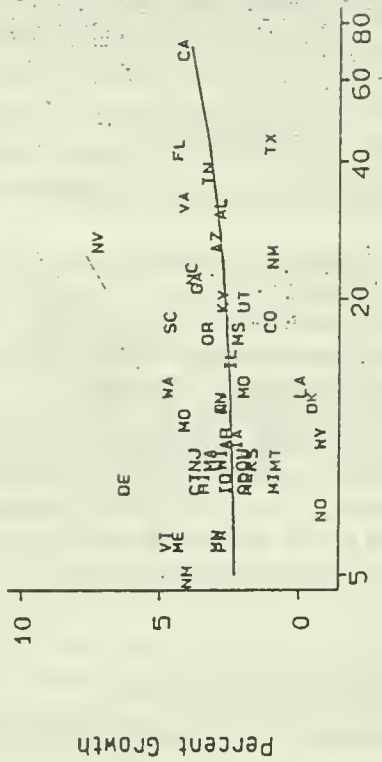
⁵ Both Alaska and Hawaii sit as distant outliers in these graphs - that is, they fall outside the pattern set by the other states. Indeed it is quite common to exclude these states from cross-sectional analyses because of their atypical characteristics. In the context of this study there are strong substantive reasons to explain their "outlier" status. In Alaska's case its extraordinarily low population density, large wilderness areas, and natural resource (oil)economy separate it from the other states. Hawaii's island bio-geography and island economy uniquely distinguish it from the states of the continental U.S..

The statistical analyses for this study were run including and excluding Alaska and Hawaii. There were virtually no substantive differences in the results, albeit for larger standard errors around coefficients and statistics. Thus, only the results excluding these two states are reported.

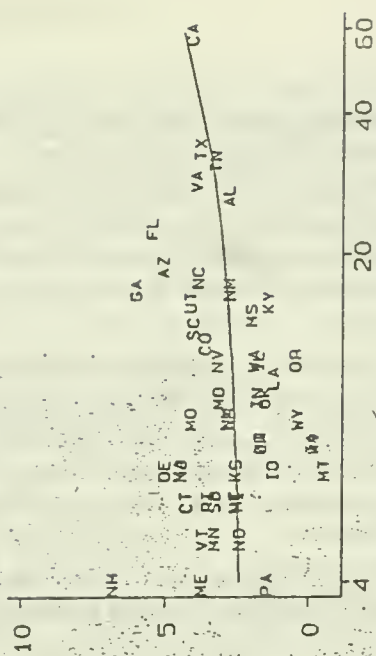
Figure 2: Gross State Product Growth & Species Listing



Number of Listed Species-1975



Number of Listed Species-1985



Number of Listed Species-1985

Simple Bivariate Associations

The patterns in the graphs are indeed suggestive, but do they hold up to more serious scrutiny? Or, is it possible that that *apparent* positive relationship could arise from chance occurrence? Using simple bivariate regressions we can test if the visual impressions from the graphs of a positive association could stand on their own as being statistically significant, or whether they just might be random fluctuations that give the appearance of a systematic relationship.⁶

Beginning with a simple bivariate regression is justified in this case by the fact that those who argue that the Endangered Species Act is trashing the economy are quite vocal in their view that the effects are clear and obvious. Certainly their anecdotes make it seem so. Therefore we should be able to detect the harmful economic effects of endangered species listings without more complex econometric or statistical controls.

Construction Employment Growth: The bivariate regression results for construction employment growth are shown in TABLE 1. What do we find? Look at the row corresponding to the predictor variable: **NUMBER of ENDANGERED SPECIES**. Each column corresponds to a given period and the first

PREDICTOR	PERIOD		
	1975-1980	1980-1985	1985-1990
NUMBER of ENDANGERED SPECIES	0.370*** (3.760)	0.082 (1.325)	0.004 (0.070)
<i>N</i>	48	48	48
<i>R-SQR</i>	0.24	0.04	0.00
<i>Adj. R-SQR</i>	0.22	0.01	0.00

p*<0.05 *p*<0.01 ****p*<0.001

number in the cell is the regression coefficient. It measures the change in construction employment growth as a function of change in the number of listed species. For 1975-1980 it appears that when you compare states each additional listed species is associated with an increase of 0.37% in construction employment growth.

⁶ The regression model used was:

$$\text{Construction Employment Growth}_{(t,t-5)} = \text{constant} + \text{SPECIES}_{(t)}$$

The number in parentheses directly below the regression coefficient is the t-statistic testing the statistical significance of the regression coefficient. An asterisk (*) indicates that based on the t-statistic there is less than a 5% chance that the coefficient is actually "0" or negative. That is, the coefficient is significant at the 5% level. A double asterisk indicates statistical significance at or below 0.01; a triple asterisk indicates statistical significance at or below 0.001. The choice of a threshold for statistical significance depends on your attitude toward risk. In general, probability values of 0.05 or 0.01 are considered to be appropriate dividing lines, indicating that for the purposes of analysis it is reasonable to assume that a systematic relationship does exist between the variables.

The lower section of the table reports some basic information about the regression. The most important number is the *Adjusted R-SQR*, which measures the relative amount of variation in the economic indicator that is accounted for by endangered species listings. A small adjusted R-SQR - say below 10% - says that the relationship is basically uninteresting because the vast amount of variation in the economic indicator is not explained.

Looking at TABLE 1 we see that the coefficients for all three time periods are positive, but only the 1975-1980 data produce a statistically significant coefficient. The simple regression for 1975-1980 seems to account for about a quarter of the variation in state construction employment growth (Adj. R-SQR). Given the null results for 1980-1985 and 1985-1990 (statistically insignificant coefficients and zero adjusted R-SQR) we can safely conclude that there is no clear or obvious systematic bivariate relationship between endangered species listings and development growth as measured by construction employment growth. This is not what opponents of the Endangered Species Act expect to see.

Gross State Product Growth: TABLE 2 looks at the relationship between endangered species listing and growth in gross state product. Once again the simple bivariate regression coefficients for **NUMBER of ENDANGERED SPECIES** are positive. While the 1975-1980 coefficient is statistically significant the others are not. We might be better off ignoring the positive trends seen in the graphs. Nevertheless these results strongly contradict the argument that endangered species listings impede state economic growth and development.

Confounding Influences

Of course all this begs the question: What happens when you take into account some of the obvious characteristic differences among the states? Perhaps the opponents of endangered species protection are fundamentally correct - endangered species protection does hinder economic growth - but their rhetoric exaggerates the case. Could the effect be more subtle than they believe? Controlling for certain state characteristics, therefore, might reveal the negative economic effects they predict. While a more subtle negative effect

TABLE 2: Regression Analysis of the Impact of Endangered Species Listings on Gross State Product Growth

<i>PREDICTOR</i>	<i>PERIOD</i>		
	1975-1980	1980-1985	1985-1990
NUMBER of ENDANGERED SPECIES	0.17** (3.04)	0.04 (1.55)	0.02 (1.30)
<i>N</i>	48	48	48
<i>R-SQR</i>	0.17	0.05	0.03
<i>Adj. R-SQR</i>	0.15	0.03	0.01

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

might not be as politically compelling it would still be important for public policy-making.

For example, many western states have fairly large territorial areas, relatively small populations, and have economies that depend to a substantial degree on natural resource industries: forestry, oil and coal extraction, mining, etc. Large area and low population implies fewer occasions where human activities and wildlife activities collide, suggesting lower numbers of species listings. At the same time these states may be more likely to have poorly performing economies because natural resource commodity markets have been skittish for the past two decades. Consequently, an analysis of the relationship between endangered species listings and economic performance that includes these states may be biased if it ignored these confounding correlations.

Likewise we could speculate that states with larger economies might tend to have more listed endangered species because they have larger populations and enjoy more aggressive land development, making encroachments into critical habitats more likely. "Big economy" states may also have stronger economic engines to drive stronger growth. Ignoring state differences in economic size could mask a fundamentally negative relationship between endangered species listings and economic growth. Therefore, we should reanalyze the data using statistical controls to adjust for characteristic differences among the states that are likely to be related to both the relative number of endangered species listings and economic performance.

TABLE 3 presents the results for a multiple regression that examines how growth in construction employment varies with the number of species

TABLE 3: Multiple Regression Analysis of the Impact of Endangered Species Listings on Construction Employment Growth

PREDICTOR	PERIOD		
	1975-1980	1980-1985	1985-1990
NUMBER of ENDANGERED SPECIES	0.407*** (3.718)	0.164* (2.599)	0.019 (0.325)
Land Area	0.315 (0.639)	-0.777 (-1.139)	0.933 (1.222)
Size of Economy	-1.003* (-2.241)	-0.378 (-0.575)	-0.394 (-0.523)
Percent Extractive Industry	0.677 (0.695)	-3.400** (-2.770)	-4.740** (-3.237)
	<i>N</i>	48	48
	<i>R-SQR</i>	0.36	0.33
	<i>Adj. R-SQR</i>	0.30	0.28

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

listings after taking into account some key differences among the states in the form of the nuisance variables: area, economy size (gross state product), and extractive industry dependency (percent of gross state product derived from extractive industries).⁷

Comparing the coefficients and probabilities for **NUMBER OF ENDANGERED SPECIES** between TABLE 1 and TABLE 3 we see that the strength of the positive relationship between construction employment growth and species listings increases after taking the nuisance variables into account. Moreover the 1980-1985 series crosses the 0.05 threshold of statistical significance. Clearly there is something interesting here.

In particular the declining magnitude and statistical significance of the coefficients linking **NUMBER OF ENDANGERED SPECIES** and construction

⁷ Area, gross state product, and percent of industry in extractive industry are used in the estimating equation in log form. Log form is used to remove the confounding effects of non-linear relationships among the variables and heteroscedasticity in the residuals. It also turns out that these are log-normal variables. Population is excluded from the analysis because it is so highly correlated with size of economy (0.985). Economy size is an effective surrogate. Substitution produces the same results. Population density is implicit in the analysis using the log forms of area and population. Percent of urban population was also tried in early analyses but dropped when it failed to show any effect.

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employment growth over consecutive periods suggest that the positive association dissipates over time. In contrast the negative relationship between construction employment growth and extractive industry grew stronger over time. This is consistent with the fact that states with large energy producing

TABLE 4: Multiple Regression Analysis of the Impact of Endangered Species Listings on Gross State Product Growth

PREDICTOR	PERIOD		
	1975-1980	1980-1985	1985-1990
NUMBER of ENDANGERED SPECIES	0.21*** (4.05)	0.07** (3.19)	0.07*** (5.05)
Land Area	0.35 (1.51)	-0.32 (-1.30)	-0.27 (-1.49)
Size of Economy	-0.96*** (-4.58)	-0.28 (-1.19)	-0.59** (-3.29)
Percent Extractive Industry	0.19 (0.42)	-1.24** (-2.75)	-2.28*** (-6.56)
	<i>N</i>	48	48
	<i>R-SQR</i>	0.50	0.67
	<i>Adj. R-SQR</i>	0.45	0.63

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

sectors enjoyed good economic times the 1970s as a result of oil price shocks. This produced an expanding construction market (notice the positive, though statistically insignificant coefficient for PERCENT EXTRACTIVE INDUSTRY). The economic fortunes of these states changed in the 1980s and that is reflected in the negative coefficients for 1980-1985 and 1985-1990.

Regardless of what one thinks of this persistent counter-intuitive positive to null association between species listings and construction employment growth, state experiences during the period 1975-1990 do not conform to the notion that the Endangered Species Act has hurt economic performance, even after controlling for the nuisance variables.

Gross State Product Growth: TABLE 4 reexamines the relationship between gross state product growth and species listings with controls for state characteristics. Here again the relationship between species listings and gross state product growth is marginally stronger (compare with TABLE 2) -- the coefficients are larger and the associated significance levels get smaller -- when characteristic differences among the states are "controlled."

Indeed, all three time periods now show a statistically significant relationship between species listings and growth in gross state product. As we saw for construction employment, this relationship appears to have been

strongest during the earlier period. Similarly, the negative relationship between extractive industry dependence and economic performance grows over time.

Anecdotes notwithstanding, the data compel us to reject the argument that higher numbers of endangered species listings are associated with poorer economic performance.

ANALYZING A MORE SUBTLE FORM OF NEGATIVE ECONOMIC IMPACT FROM ENDANGERED SPECIES LISTINGS

Perhaps it is true, as the above results suggest, that states with higher numbers of listed species also tend to have stronger economies. Nevertheless, species listings could still exert a more subtle drag effect – a sort of negative feedback – that gradually and incrementally retards the rate of growth of state economies. You could argue that, regardless of what did happen in the 1970s and 1980s, states with higher numbers of species listings might have *further* economically outpaced the other states had they not had higher species listings.

The effect would be evident by comparing each state's growth rate in a given period against its prior and subsequent economic performance. If larger numbers of species listings decelerate economic growth, then when comparing the periods 1975-1980, 1980-1985, and 1985-1990 states with cumulatively higher numbers of species listings would show a tendency toward slower growth in subsequent periods relative to states with fewer listings.

This hypothesis is tested in TABLE 5 for growth in Gross State Product.⁸ As the first row shows the coefficients are positive, not negative as Endangered Species Act detractors would expect. As states accumulate species listings their economic growth rates do not decelerate; in fact they seem to accelerate. The best predictor of a slowing economy is dependence on extractive industries

TABLE 6 performs the same analysis for growth in construction employment and produces fundamentally the same results. The accumulation of endangered species listings over time is not associated with decelerating growth rates in construction employment. There is either a slight positive association or no association at all.

The data fail to find any basis for presuming that states that accumulated higher numbers of listed species over time would have enjoyed even stronger growth had the Endangered Species Act not been implemented.

⁸ Defining "Diff" as the difference in economic indicator growth rates between two consecutive five year periods, then the equation is:

$$\text{Diff}_{(p,p-5)} = \text{constant} + \text{Species}_{(p)} + \text{Nuisance Variables}_{(p)} + \text{Error}.$$

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TABLE 5: Multiple Regression Analysis of Impact of Accumulated Endangered Species Listings on Inter-Period Changes in Gross State Product Growth Rates

PREDICTOR	PERIOD	
	1980-1985	1985-1990
	vs. 1975-1980	vs. 1980-1985
TOTAL NUMBER of LISTED SPECIES	4.586** (3.306)	2.005 (1.682)
Land Area	-0.455 (-1.176)	0.004 (0.013)
Size of Economy	-0.147 (-0.374)	-0.343 (-1.068)
Percent Extractive Industry	-1.173 (-1.685)	-1.912** (-3.033)
	<i>N</i> 48	48
	<i>R-SQR</i> 0.28	0.24
	<i>Adj. R-SQR</i> 0.22	0.16
* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$		

TABLE 6: Multiple Regression Analysis of Impact of Accumulated Endangered Species Listings on Inter-Period Changes in Construction Employment Growth Rates

PREDICTOR	PERIOD	
	1980-1985	1985-1990
	vs. 1975-1980	vs. 1980-1985
TOTAL NUMBER of LISTED SPECIES	8.487* (2.640)	-0.422 (-0.114)
Land Area	-1.192 (-1.329)	1.505 (1.474)
Size of Economy	0.051 (0.057)	-0.044 (-0.044)
Percent Extractive Industry	-2.163 (-1.340)	-3.443 (-1.765)
	<i>N</i> 48	48
	<i>R-SQR</i> 0.24	0.09
	<i>Adj. R-SQR</i> 0.17	0.01
* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$		

ESTIMATING THE IMPACT OF ECONOMIC GROWTH ON ENDANGERED SPECIES LISTINGS AT THE STATE LEVEL

Of course the above results do not mean that we can stimulate state economic growth by intentionally increasing the number of listed endangered species. Then how can we explain these paradoxical results? *Reverse cause and effect*: strong economic growth is an engine for increases in species listings and subsequent economic growth. Therefore, the data series produce correlations between species listings and subsequent economic growth even though the causal relationship runs the other way.

The appropriate step is to reverse the causal direction in the analysis and reexamine the data predicting endangered species listings based on *prior* economic performance. The analysis here is conceptually straightforward. The pace of economic growth for each state during a given period is measured and then we ask how it is related to the *subsequent* rate of endangered species listings in that state. For instance, did states with higher rates of growth in gross state product between 1975-1980 experience larger increases in endangered species listings in subsequent years?

While this is a simple question conceptually some analytic gymnastics are required to answer it. First, case studies show that pressures on a given species develop slowly and are often unrecognized for a considerable period of time. The development activity that poses a threat to either the creature or its habitat may persist for many years before the threat is recognized. Second, studies of the listings process itself show that there is a substantial delay between the time authorities become aware that an animal or plant may be in danger and its eventual placement on the endangered species list. Indeed, many species in trouble never make it to the list at all. Several dozen have disappeared while in the waiting queue. Thus, we cannot not expect an instantaneous cause and effect.

Moderating that delay, however, are the efforts by U.S. Fish & Wildlife and many national and local environmental organizations supporting enforcement of and compliance with the Endangered Species Act, as well as the activities of local (NIMBY) interests wishing to block specific projects. Whatever the latter's motivation they nonetheless help to identify potential candidates for listing prior to development work. In short, there may be some lag between economic growth (cause) and consequent listing of species (effect) but it should not be extreme.

The multiple regression analysis in TABLE 7 attempts to predict the pace and distribution of new endangered species listings based on economic growth

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rates.⁹ It assumes a two-year delay between economic "cause" and species listing "effect". Economic activities between 1980 and 1985 are presumed to affect species listing rates between 1982 to 1987. Other lag values (0 to 5 years) do not substantially alter the results either way. For this analysis both indicators of economic development, the five-year average annual growth in gross state product and the five-year average annual growth in construction employment, appear as independent variables in the model together.

The results in TABLE 7 support our suspicions about the real links between state economic performance and endangered species listings. Gross state product growth is systematically and *positively* associated with subsequent growth in the number of listed species, after controlling for state

TABLE 7: Multiple Regression Analysis of the Impact of Development Pace on Endangered Species Listings

PREDICTOR	PERIOD		
	1975-1980	1980-1985	1985-1990
Gross State Product Growth	0.21** (3.35)	0.14** (2.83)	0.10** (2.71)
Construction Employment Growth	-0.03 (-1.15)	-0.01 (-0.30)	-0.004 (-0.386)
Land Area	-0.12 (-1.84)	0.13* (2.39)	-0.003 (-0.075)
Size of Economy	0.26*** (-4.04)	0.07 (1.46)	0.230*** (5.130)
Percent Extractive Industry	0.03 (0.26)	0.18 (1.82)	0.172 (1.458)
	N	48	48
	R-SQR	0.37	0.43
	Adj. R-SQR	0.29	0.37
	*p<0.05	**p<0.01	***p<0.001

area, size of economy and extractive industry dependence. In contrast, growth in construction employment does not seem important when the other variables are considered. Its coefficients, while uniformly negative, are for all intents and

⁹ The equation is:

$$\text{New Listings}_{t+2,t+7} = \text{constant} + \text{Gross State Product Growth}_{t,t+5} + \text{Construction Employment Growth}_{t,t+5} + \text{Nuisance Variables} + \text{Error}$$

The nuisance variables are in log form, as is the dependent variable: new listings. Analysis shows these are all log-normal variables.

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purposes "0", as indicated by their small values and failure to attain statistical significance. While at first glance this result might seem odd, it actually makes good sense. A zero coefficient means that when you hold growth in gross state product constant (as well as the other predictor variables) changes in growth in construction employment do not affect endangered species listings. This is entirely reasonable since growth in construction employment a direct result of an expanding economy. Therefore "controlling" the latter has the effect of controlling the former, and so no independent effect is registered.¹⁰

The table also shows that states with larger economies also tend to have larger numbers of listed species. This may be partially the result of greater economic dynamism: big economies expand more. It may also be related to the fact that big economies have big populations, implying significant population pressures on wildlife habits.

We can carry this exploration one step further if we consider the link between economic performance, development, and population trends. As noted earlier state population was not explicitly used in the analysis because it was effectively captured by several of the other variables.¹¹ But, as shown in TABLE 8 when change in state population (population growth) during periods is added This occurs because of the dynamic interaction among these two variables. People are attracted to states with expanding economies, and an influx of new workers and consumers further stimulates development and economic growth.¹² Therefore when both gross state product growth and population growth are included together in the analysis the former effect is nullified.

The Adjusted R-SQR values shown in TABLE 6 caution that we should not, however, push this argument too far. Only about 40% of the variation in new listings is accounted for the by the two statistically significant predictor variables: population change and size of economy. Thus most of the explanation for differences in species listings among the states continues to elude us. Studies by other researchers point to a host of bureaucratic, organizational, ecological, political, and economic influences that may account for much of the missing variation.¹³

¹⁰ The correlation between gross state product growth and construction employment growth is 0.82, 0.83, and 0.56, respectively for the three periods. The constraining effect on construction employment growth when gross state product growth is held constant is clearly seen in partial regression plots.

¹¹ In fact colinearity was so severe that it prevented model estimation.

¹² The correlation between population growth and growth in gross state product is 0.91, 0.45, and 0.78 for each of the three periods, respectively.

¹³ See, for example: Stephen L. Yaffe (1982) *Prohibitive Policy: Implementing the Federal Endangered Species Act* (Cambridge, MA: MIT Press); Richard J. Tobin (1990) *The Expendable Future: Politics and the Protection of Biological Diversity* (Durham, N.C.: Duke University Press); (continued)

TABLE 8: Multiple Regression Analysis of the Impact of Development Pace on Endangered Species Listings

PREDICTOR	PERIOD		
	1975-1980	1980-1985	1985-1990
Gross State Product Growth	0.054 (0.679)	0.067 (1.247)	0.085 (1.252)
Construction Employment Growth	-0.048 (-1.692)	-0.01 (-0.658)	-0.003 (-0.240)
Land Area	-0.163* (-2.577)	0.070 (1.254)	-0.012 (-0.200)
Size of Economy	0.278** (4.627)	0.089 (1.963)	0.228*** (4.978)
Percent Extractive Industry	-0.017 (-0.143)	0.038 (0.334)	0.170 (1.427)
Change in Population	0.342** (2.936)	0.176* (2.339)	0.018 (0.266)
	<i>N</i>	48	48
	<i>R-SQR</i>	0.48	0.50
	<i>Adj. R-SQR</i>	0.40	0.43

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

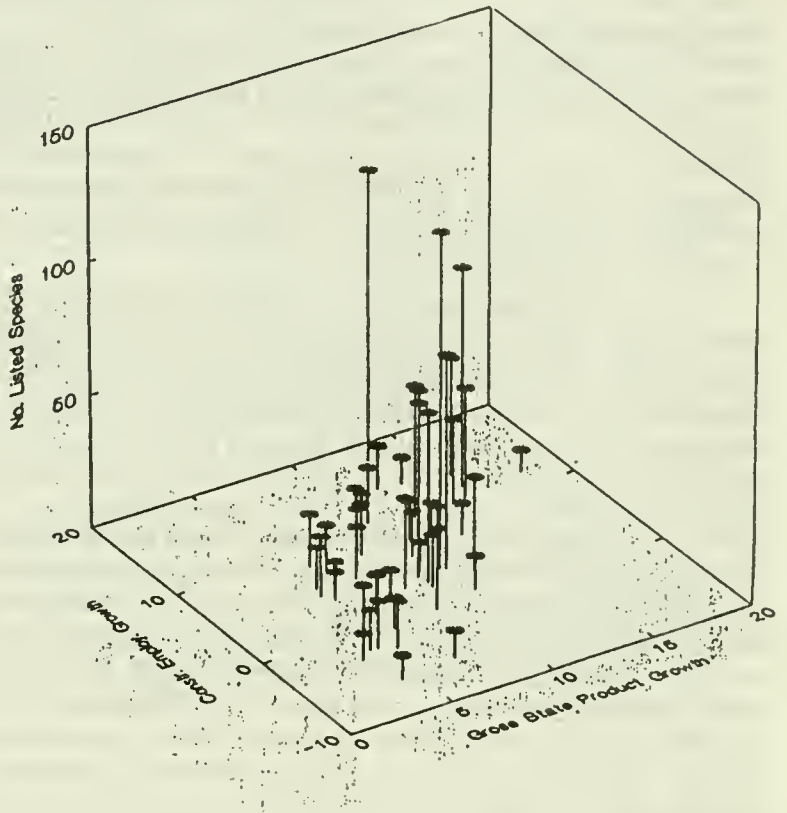
CONCLUDING OBSERVATIONS

The one and a half decades of state data examined in this paper strongly contradict the assertion that the Endangered Species Act has had harmful effects on state economies. Protections offered to threatened animals and plants do not impose a measurable economic burden on development activity at the state level. In fact the evidence points to the converse. The combination of robust development and population migration accelerates the rate of endangered species listings.

This relationship is clearly seen in FIGURE 3 which places each state in a three dimensional space. The floor of the graph is defined by the two growth indicators: growth in gross state product and construction employment growth over the entire period 1975-1990. The vertical axis corresponds to the total number of listed species in 1992, allowing for lags in the listings process. Each state is represented by a "hat pin" whose vertical height corresponds to total number of listed species. The long upward slope of the hat pins that ascends

and United States General Accounting Office (1993) *Endangered Species: Factors Associated with Delayed Listing Decisions* (GAO/RECD-93-152).

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Figure 3: Species Listings & State Economic Performance 1975-1992

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toward the top rear corner of the graph clearly suggests that endangered species listings are a consequence of strong economic performance over the 15 year period.

We must now return to the source of this inquiry and reconcile these findings with the anecdotes that find their way to the media. How can it be, given the well-publicized horror stories, that the Endangered Species Act does not leave a trace on state economies? The answer is simple: the economic effects of endangered species listings are so highly localized, of such small scale, and short duration that they do not substantially affect state economic performance in the aggregate. They are lost in the noise of background economic fluctuations. A rare toad may indeed impede construction of an ocean resort or golf course but such events do not ripple back through state economies.

Although detractors of the Endangered Species Act often describe it as blind to the needs of people and the economy, every government and academic examination of the endangered species process has reached the opposite conclusion: political, economic, and social considerations permeate the listings process.¹⁴ In fact, for every tale about a project, business, or property owner allegedly harmed by efforts to protect some plant or animal species there are over one-thousand stories of virtual "non-interference." In reviewing the record of 18,211 endangered species consultations by the Fish and Wildlife Service/National Marine Fisheries covering the period 1987-1991 the General Accounting Office found that only 11% (2050) resulted in the issuance of formal biological opinions.¹⁵ The other 89% were handled informally -- that is to say the projects proceeded on schedule and without interference. Of the 2050 formal opinions issued a mere 181 -- less than 10% -- concluded that the proposed projects were likely to pose a threat to an endangered plant or animal. And most of these 181 projects were completed, albeit with some modification in design and construction. In short, more than 99% of the projects reviewed under the Endangered Species Act eventually proceeded unhindered or with marginal additional time and economic costs. Given the political and economic screening that occurs in listings cases it is not surprising that no measurable negative economic effects are detectable.

It is not my intention to trivialize the economic or social effects at the sub-state level that may result from some individual species listing or habitat designation.¹⁶ Counties, cities, and towns are much more sensitive to single

¹⁴See the previous footnote.

¹⁵ United States General Accounting Office (1992) *Endangered Species Act: Types and Numbers of Implementing Actions* (GAO/RECD-92-131BR).

¹⁶Available case studies also suggest that local communities suffer far greater economic and social harm from over-dependence on extractive industries. The boom to bust story continues to be played out in coal country, hard-rock mining communities, oil towns, and timber
(continued)

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employer or single industry effects. Endangered species critical habitat listings may, under certain conditions, have demonstrable negative economic impacts at the local level. The evidence, however, remains to be collected and analyzed.¹⁷ But even conceding the possibility of systematic local effects, in terms of scale and scope they are a far cry from the national economic crisis that the Endangered Species Act's detractors depict.

Economic assistance, job training grants, and other localized programs can make a difference in such cases at modest cost. The revitalization of county economies in the Pacific Northwest following the listing of the Northern Spotted Owl is one example.¹⁸

Furthermore local economic effects must be considered in context. Hundreds of state and federal policies have far more injurious impacts on local economies than wildlife protection. For example, the recent series of military base closings have had economic effects hundreds of times greater than all the listings during the 20-year life of the Endangered Species Act. Even greater economic and social harm resulted from the ill-conceived deregulation of the savings and loan industry during the 1980s. The number of jobs lost to leveraged buy-outs in the 1980s exceeds by many times the wildest estimates of jobs lost to endangered species; and no social good was accomplished in any of these cases.

The evidence is clear: Based on the actual economic experience under the Endangered Species Act weakening the Act will not spur job creation and economic growth. It will not launch poor rural or western communities on the road to prosperity. It will not save overextended developers from bankruptcy. If "growing the economy" is the top priority of government then we should focus on policy options that can make a difference.

regions. Even the Spotted Owl case reveals that at worst the listing merely brought forward the date of collapse of segments of the Pacific Northwest timber industry. See, for example: William R. Freudenburg (1992) "Addictive Economies: Extractive Industries and Vulnerable Localities in a Changing World Economy," *Rural Sociology*, Vol. 57, No. 3, pp. 305-332.

¹⁷ One such study, by the Texas and Southwestern Cattle Raisers Association, attempted a regional analysis of this sort in which they did find endangered species listings depressed local property values. Unfortunately, several errors in their statistical methodology produced this result. When these errors were corrected the analysis produced the opposite findings: counties with endangered species listings enjoyed higher than average property value growth. See: *Comparison of Fair Market Value of Rural Land and Vacant Lots/Tracts in 33 Central Texas and Hill Country Counties 1989-1993* (October 1994) and the author's review of that report.

¹⁸ See: Jessica Maxwell (1995) "Back to the Woods," *Audubon* Vol. 97, No. 1 (January-February), pp. 88-91; Timothy Egan (1994) "Oregon, Foiling Forecasters, Thrives as IT Protects Owls" *The New York Times* (October 5), p.A1.



TESTIMONY
on
REAUTHORIZATION OF THE ENDANGERED SPECIES ACT OF 1973

presented to
The U.S. Senate Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries and Wildlife
by
Tom Christiansen - Chapter President

Casper, Wyoming
August 16, 1995

On behalf of the membership of the Wyoming Chapter of The Wildlife Society I thank the members of the Senate's Subcommittee on Drinking Water, Fisheries and Wildlife for inviting our testimony regarding reauthorization of the Endangered Species Act.

The Wildlife Society is an international nonprofit scientific and educational organization serving professionals in all areas of wildlife ecology, conservation, and management. Over 9,000 research scientists, resource managers, educators, communications specialists, conservation law enforcement officers, administrators, and students from nearly 70 countries belong to The Wildlife Society. The Wildlife Society was founded in 1937. Its mission is to enhance the ability of wildlife professionals to conserve diversity, productivity, and sustainability of wildlife resources for the benefit of society.

The Wyoming Chapter of The Wildlife Society consists of 180 wildlife professionals serving in both public service and private industry. The Wyoming Chapter includes members that are experts in all aspects of wildlife management including endangered species and I have consulted with key experts in preparing this testimony. I am here fulfilling my role as President of the Wyoming Chapter. My training and professional duties are broad and general in nature and are best described as that of a wildlife manager, and I respectfully submit the following testimony:

The Wyoming Chapter of The Wildlife Society believes that by preventing the extinction of species and populations, the People of the United States ensure that their environment remains healthy and capable of supporting the natural diversity characteristic of stable, functioning ecosystems. In turn, these healthy ecosystems supply humans with their lives and livelihoods.

We recognize that extinction is an integral part of the evolutionary process that continues to shape life on earth. But we consider current rates of extinction far above natural levels, dangerously high, and largely due to human action.

The Endangered Species Act of 1973 and amendments represent a safety net for the protection of rare plants and animals in the United States. There are three key components of the ESA which must be maintained for the Act to remain effective: 1) Decisions must be based on sound and objective science; 2) economic considerations must be used judiciously, and should not be allowed to overshadow the scientific and biological foundation of the Act; and 3) habitat conservation must be an integral part of the Act, for species survival is inextricably linked to the existence of habitat. These principles must be incorporated into the reauthorized law, and form the backbone of the following recommendations:

- * **Require independent scientific peer review of all proposals to list species and all draft plans to recover species.** The threatened or endangered determination should remain a biological judgement about the future viability of a species; economic considerations should not preclude the scientific determination of a species biological status. However, the Chapter does not support the imposition of additional study requirements and review procedures that would unnecessarily increase costs, delay results, and allow increased bureaucratic and political interference with species recovery.
- * **Include habitat degradation in the definition of "harm".** The loss of habitat is the leading cause of species endangerment. Habitat is directly linked to the welfare of a species, and therefore, habitat protection is a prerequisite for endangered species conservation.
- * **Delineate and conserve habitat that supports multiple species by creating a wildlife diversity act, to be used in tandem with the ESA, to strengthen species protection before economic activities need be curtailed severely.** A primary goal of the ESA is to protect the ecosystems upon which endangered species depend. Scientists generally acknowledge that ecosystem protection must play a key role in endangered species conservation. Ecosystem conservation protects multiple species which depend on the same habitat. By creating wildlife diversity legislation which takes a comprehensive, landscape-wide approach to species conservation, species listing may be prevented altogether. The ESA alone is a safety net, one upon which society relies too heavily. In so doing the symptoms of accelerated extinction are addressed without seeking a cure for what causes species to become endangered. We must act sooner to prevent the costly need to list species as threatened or endangered.
- * **Streamline and expedite both the listing process and recovery plans emphasizing biologically effective and realistic goals.**

Many species are being listed too late in their declines to provide a reasonable chance of recovery. This delayed action is creating a pool of potentially permanently endangered species. At the same time, the adoption, implementation and eventual phasing out of recovery plan actions upon successful species recovery is often slow and cumbersome. Creating "survival habitat", as defined by the National Research Council (NRC) in its report *Science and the Endangered Species Act*, at the time of listing could prevent a species from going extinct before a recovery plan is implemented. On the other end of the spectrum, it is often difficult to down- or delist a species and lessen regulatory protections once a species has recovered. In Wyoming, there has been some evidence of this regarding recovery of bald eagles, peregrine falcons and grizzly bears. Bureaucracy, politics, and public opinion have shaped decisions perhaps more than science.

* **Economic considerations should not preclude the scientific determination of a species biological status nor should they unduly influence formation of recovery plans.** Because many of the ecological benefits of a species are unknown, listing decisions and recovery plan actions should not be based on cost:benefit analysis. Audits conducted by the Federal Government and others have consistently shown that less than one-tenth of one percent of the projects reviewed under Section 7 of the ESA have been terminated as a result of endangered species concerns. The Wyoming Chapter supports expansion of the goals of the Act to include attainment of both economic and ecological sustainability, rather than short-term economic gain, at the expense of accelerated resource depletion, and unnecessary ecological damage. The Chapter also supports inclusion of language reflecting and clarifying the current goals of the interagency consultation process, which include consideration for economic viability and attainment of individual project goals, while minimizing harm to listed species.

Positive economic impacts of endangered species, and wildlife in general, are not often acknowledged. While the scientific and environmental communities have begun educational efforts aimed at promoting under-appreciated values of wildlife in general and endangered species specifically, the majority of the public is unaware, for example, that a large proportion of our current pharmaceutical arsenal is composed of by-products from plants and animals. They are unaware of examples of endangered species being used to treat serious diseases such as the use of taxol, a chemical derived from the endangered Pacific yew tree, being used successfully in the treatment of breast and ovarian cancer. We don't yet know of a similar use for the Wyoming toad, the

black-footed ferret or the razorback sucker, but if one of these or other endangered species holds a secret to the cure for cancer, heart disease, muscular dystrophy or other costly diseases, both the social and economic impacts could be tremendous. But we will never know if these species are allowed to become extinct.

Another example of the positive economic value of endangered species can be found in Wyoming. The immediate Past-President of our organization, Mr. Tom Segerstrom, is a classically trained biologist who worked in public service as a wildlife biologist for the Wyoming Game and Fish Department until his entrepreneurial spirit convinced him there was demand for a wildlife related private sector business. Thus he founded the Great Plains Wildlife Institute and has been conducting wildlife research using laypersons who pay the Institute for the opportunity to more intimately study wildlife than offered through a more traditional sight-seeing tour. The threatened and endangered species of northwest Wyoming, including bald eagles, peregrine falcons and grizzly bears are important subjects of Segerstrom's enterprise. Tom was the logical choice to present our testimony today because of his unique perspective, experience and eloquence, but he was unable to testify today.

- * **Increase support for partnerships and information sharing between federal, state, local and foreign governments, private individuals and corporations.** Open communication promotes trust. This recommendation would help address the concerns we express as well as those of critics of the ESA who seek dramatic reform at the expense of the purpose of the Act.

If these partnerships result in increases of authority or responsibility, the agencies or programs affected should receive adequate funding to fulfill that responsibility. Specific examples in Wyoming where this has not occurred include costs of managing black-footed ferrets, grizzly bears and wolves which have been directed to the state without sufficient funding to accomplish the task.

- * **Develop voluntary incentive programs for protecting endangered species.** The Chapter supports improved funding and simplification of programs such as Habitat Conservation Plans, when analyzed at the regional levels to evaluate cumulative impacts, and Conservation Agreements, which offer incentives for voluntary cooperation in reversing declines of listed and candidate species. The Chapter does not support payments to individuals or entities to offset the costs of mandatory compliance with the law or its implementing regulations.

In summary, the reauthorized Endangered Species Act must: 1) subject listing decisions and draft recovery plans to independent scientific peer review; 2) uphold biological emphasis of the Act by recognizing when biological and economic criteria are appropriate and; 3) recognize that both habitat conservation and species protection are critical to the effectiveness of the ESA. Additional legislation may be necessary to prevent species decline to threatened or endangered status.

In last week's Casper paper, Senator Thomas is reported to have stated he hoped testimony from The Wildlife Society would provide insight on how to incorporate unbiased science into the process of reauthorizing the ESA. We hope our testimony has been of value in this regard. We also urge the subcommittee to seek to implement those recommendations made by the Nation Research Council in its *Science and the Endangered Species Act*, the upshot of which is that the Endangered Species Act is firmly grounded in science. Their only recommended changes were aimed at improving the ESA's effectiveness in species and habitat conservation. Although Congress solicited this study and may already have the document available, we have appended a copy of its Executive Summary as part of our official testimony.

Finally, the Wyoming Chapter, as well as other state chapters and the parent organization, offer their continued expertise and participation in this and other issues relating to managing wildlife and their habitats. This offer extends to the development and/or review of possible legislation.

Thank you for the opportunity to testify today.

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**SCIENCE AND THE
ENDANGERED SPECIES ACT**

**Committee on Scientific Issues in
the Endangered Species Act**

Board on Environmental Studies and Toxicology

Commission on Life Sciences

1995

National Research Council

PREPUBLICATION COPY

Executive Summary

INTRODUCTION

Species extinctions have occurred since life has been on earth, but human activities are causing the loss of biological diversity at an accelerating rate. The current rate of extinctions is among the highest in the entire fossil record, and many scientists consider it to have reached crisis proportions. The 1973 Endangered Species Act (ESA) and its subsequent amendments are the latest in a long line of federal legislation designed to protect wildlife. The ESA is the broadest and most powerful law to provide protection for endangered species and their habitats. The economic and social costs of complying with the ESA have been controversial in some cases. Because of those controversies, and because the act is being considered for reauthorization, it has been receiving much attention recently. That attention led to the request for this study to be conducted by the National Research Council (NRC).

The ESA defines three crucial categories: "endangered" species, "threatened" species, and "critical" habitats. ("Subspecies" of plants and animals and "distinct population segments" of vertebrates can also qualify for protection as species under the ESA.) Endangered species and their critical habitats receive extremely strong protection; it is illegal to take any endangered species of animal (or plant in some circumstances) in the United States, its territorial waters, or the high seas. In addition to this direct prohibition, Section 7 of the act prohibits any federal action that will jeopardize the future of any endangered species, including any threat to designated critical habitat. The act also requires the secretaries of interior and commerce to use programs in their agencies in furtherance of the act and requires other agencies to "utilize their authorities in furtherance of the purposes of [the act] by carrying out programs for the conservation of endangered species and threatened species." The 1978 and later amendments to the ESA established a requirement for recovery plans to be prepared by the U.S. Fish and Wildlife Service for inland species and by the National Marine Fisheries Service for marine species, unless the secretary "finds that they will not promote the conservation of the species." Those plans are required to include specific population goals, timetables, and estimated costs.

The strength of the ESA lies with its stringent mandates constraining the actions of private parties and public agencies. Once a species is listed as threatened or endangered, it becomes entitled to shelter under the act's protective umbrella, a far-reaching array of provisions. Critical habitat must be designated "to the maximum extent prudent and determinable" and recovery plans, designed to bring the species to the point where it no longer needs the act's protections, are required if they will promote the conservation of the species. Funds for habitat acquisition and cooperative state programs are authorized. Federal agencies must ensure that their actions are not likely to jeopardize the survival of listed species nor adversely modify their critical habitats. Agencies are also required to use their authorities to promote endangered species conservation.

In addition to the Section 7 prohibition of any federal action that jeopardizes an endangered species or its critical habitat, Section 9 prohibits the taking of an endangered species of fish or wildlife¹ (or, by regulation, of threatened species). Sections 7 and 9 are major sources of the act's power as

¹ Section 9 provides somewhat lesser protection to plants, making it unlawful to "remove or reduce to possession any such species from areas under Federal jurisdiction . . . or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state . . .".

well as numerous controversies. In particular, the prohibition against taking endangered species has raised questions among private landowners: *taking* is fairly broadly defined in the ESA and even more broadly in some regulations. How broad the definition of taking in regulations should be is currently undergoing review by the U.S. Supreme Court. The court's decision will be important in determining the future of some of the controversies about the taking prohibition.

As human activities continue to affect species populations and their habitats, two major questions arise concerning the ESA. First, the focus of this report: is the ESA soundly based in science as an effective method of protecting endangered species and their habitats? The second question—of great public importance, but not part of this committee's charge—concerns the desired public policy with respect to protecting endangered species and their habitats, i.e., what are the costs and benefits, and to what extent is the public willing to incur the costs?

THE PRESENT STUDY

In November of 1991, Senator Mark Hatfield, Representative Thomas Foley, and Representative Gerry Studds wrote to the chairman of the National Research Council requesting a study of "several issues related to the Endangered Species Act." The request focused on scientific matters related to the act. After receiving funding from the U.S. Fish and Wildlife Service in September 1992, the NRC's Board on Environmental Studies and Toxicology convened the Committee on Scientific Issues in the Endangered Species Act. The committee's membership includes expertise in ecology; systematics; population genetics; wildlife management; risk and decision analysis; the legal, legislative, and administrative history of the Endangered Species Act; economics; and the implementation of the ESA from public and private perspectives. The committee's statement of task is based very closely on the letter of request from the three members of Congress (see Appendix A).

The committee was asked to review the following issues and to evaluate how they relate to the overall purposes of the Endangered Species Act:

- **Definition of species.** The committee was asked to review how the term *species* has been used to implement the ESA, and what units would best serve the purposes of the act.
- **Conservation conflicts between species.** The committee was asked how frequent or severe conflicting conservation needs are when more than one species in a geographic area are listed as endangered or threatened under the ESA, and to make recommendations to resolve these conflicts.
- **Role of habitat conservation.** The committee was asked to evaluate the role of habitat protection in the conservation of species and to review the relationship between habitat-protection and other requirements of the act.
- **Recovery planning.** The committee was asked to review the role of recovery planning under the act and to consider how recovery planning could better contribute to the purposes of the act.
- **Risk.** The committee was asked to review the role of risk in decisions made under the ESA (such as what constitutes sufficient "endangerment" to require listing of a species, what constitutes jeopardy, adverse modifications, reasonable and prudent alternatives, taking, conservation, and recovery). It was also asked to review whether different degrees of risk ought to apply to different types of decisions (e.g., should an endangered species be at greater risk than a threatened species to justify listing?) and to identify practical methods for assessing risk to achieve the purposes of the act better while providing flexibility in appropriate circumstances to accommodate other objectives as well.

• **Issues of timing.** The committee was asked to review the timing of key decisions under the ESA and to consider ways of improving such timing under the act to serve its purposes better while minimizing unintended consequences.

The committee held meetings in Washington, D.C., and Irvine, California, where it received briefings from federal officials, congressional staff, Senator Mark Hatfield, Secretary of the Interior Bruce Babbitt, members of private conservation organizations and of private industry, and other experts. It has also made use of many sources of information, including previous NRC reports; documents and studies done by other agencies; and relevant published literature from scientific journals, symposia, and books.

This report reviews scientific issues related to the ESA. The overall conclusion is that the ESA is based on sound scientific principles. Many scientific advances have been made since the ESA was passed in 1973, and they provide opportunities to improve the act's implementation, especially with respect to identifying species, subspecies, and distinct population segments, with respect to estimating risks of extinction, and economic and decision analyses. Although it is difficult to quantify the effectiveness of the act in preventing species extinction, there is no doubt that it has prevented the extinction of some species and slowed the declines of others. It is equally clear that the ESA by itself cannot prevent the loss of many species and their habitats. Instead, the ESA is best viewed as one part of a comprehensive set of ways of protecting species and their habitats. The committee was not asked to comment on the social and political decisions concerning the ESA's goals and tradeoffs, and it has not done so. Nonetheless, they are and should be an important part of the policy discussions about the ESA.

EXTINCTIONS

Extinction is an essential part of evolution. In the past 20 years, we have learned a great deal about the earth's physical and biological history. Over the past 500 million years, at least five mass extinctions have occurred, with as much as 84% of the genera of marine invertebrates disappearing from the fossil record. Those extinctions were associated with major physical events. Today, we are again witnessing a major extinction. Unlike the earlier ones, which affected some kinds of organisms and some kinds of habitats more severely than others, today's extinctions are affecting all major groups of organisms in all nonmarine habitat types (the marine environment has not yet been affected as much as terrestrial and freshwater environments).

We do not know how many species of organisms live on earth, but there are many ways of estimating the rate of extinction in various habitats and in various kinds of organisms. The major cause of the current extinctions is human activity, and most estimates suggest that human activity has significantly increased the background extinction rate², perhaps by orders of magnitude. Such activities include direct alteration of habitats by forestry, agriculture, fishing, and residential and commercial development; indirect alteration of habitats by pollution of water, air, and the soil; alteration of ecosystems by introductions of exotic organisms and the spread of diseases; removal or

²Although the number of documented extinctions might appear to be small compared with the number of species alive, it is the rate of extinctions that is important. Even the mass extinctions of the past took many thousands of years to occur; the current rate of extinctions appears to be comparable to the rates during those events.

alteration of sources of food and shelter for organisms by human use of natural resources, and unregulated harvesting, hunting, and fishing.

THE SPECIES CONCEPT

Species of organisms are fundamental objects of attention in all societies, and different cultures have extensive literatures on the history of species concepts. The Endangered Species Act (ESA) defines species to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." In the act, the term *species* is used in a legal sense to refer to any of these entities. In addressing its use in the ESA, one must remember, however, that *species* has vernacular, legal, and biological meanings.

Many societies have notions of kinds of organisms, usually organisms that are large and conspicuous or of economic importance. The term *species* can be applied to many of those kinds and can be accurate as a scientific and vernacular term, because the characteristics used to differentiate species can be the same in both cases. Largely for this reason, the question of what a species is has not been a major source of controversy in the implementation of the Endangered Species Act. Greater difficulties have arisen in deciding about populations or groups of organisms that are genetically, morphologically, or behaviorally distinct, but not distinct enough to merit the rank of species—i.e., subspecies, varieties, and "distinct population segments."

In particular, questions have arisen about how to recognize "distinct population segments." To help in identifying them, the committee introduces the concept of an evolutionary unit (EU)³. An EU is a group of organisms that represents a segment of biological diversity that shares a common evolutionary lineage and contains the potential for a unique evolutionary future. Its uniqueness can be sought in several attributes, including morphology, behavior, physiology, and biochemistry. Because any specified group of organisms can be claimed to have a unique evolutionary future, a basic characteristic of an EU is that it is distinct from other EUs. In most cases, an EU will also occupy a particular geographical area. Most currently recognized species and subspecies are EUs.

Distinction implies an *independent evolutionary future*. Estimates of distinctiveness (i.e., circumscription of EUs) are based on genetic, molecular, behavioral, morphological, or ecological characteristics. Any single method will often be inadequate to identify an EU (that is, to provide compelling evidence of distinctiveness). The question of distinctiveness and the associated inference of an independent evolutionary future usually requires the careful integration of several lines of evidence.

Committee Conclusion. The ESA is clear that species and subspecies of "fish or wildlife or plants"—defined in the act to include all members of the plant and animal kingdoms—are eligible for protection. The ESA's emphasis on distinct population segments—i.e., taxa below the rank of subspecies—is soundly based on science.

Committee Recommendation. The committee concludes that the ESA's inclusion of species and subspecies is soundly justified by current scientific knowledge and should be retained. Often, competent systematists will be required to delineate subspecies, and sometimes species as well.

Committee Recommendation. To help provide scientific objectivity in identifying population segments, the concept of the evolutionary unit (EU) should be adopted. The EU is a segment of

³ Similar but not identical to the National Marine Fisheries Service's Evolutionary Significant Unit; see Chapter 3.

biological diversity that contains a potential for a unique evolutionary future. To clarify the analyses, identifying an EU should be separate from deciding whether it is in need of protection.

Committee Conclusion. The ESA explicitly covers species and subspecies of all plants and animals. As currently written, however, it covers taxonomic units below the subspecies level (i.e., distinct population segments) only for vertebrate animals. There is no scientific reason (other than lack of knowledge) to exclude any EUs of nonvertebrate animals and plants from coverage under the ESA. Although the way organisms are divided into kingdoms has changed since the ESA was enacted in 1973, current scientific knowledge about how species concepts apply to these organisms does not lead us to recommend that coverage be extended to prokaryotes and most single-celled eukaryotes, such as yeasts.

Committee Conclusion. Application of the EU concept should not result in any substantial change in the application of conservation laws. We hope it will move decisions of eligibility for protection away from arguments only about taxonomic ranks and into a realm where more substantive views about the degree to which populations are evolutionarily significant and new techniques can be applied.

HABITAT

Habitat—the physical and biological setting in which organisms live and in which the other components of the environment are encountered—is a basic requirement of all living organisms. It embraces all components of a species' environment. The relationship, nationwide, between vanishing habitats and vanishing species is well documented. The ecological relationship is simple and fairly general: species diversity is positively correlated with habitat area. A corollary of this relationship is that if habitat is substantially reduced in area or degraded, species occurring in the wild will be lost. Therefore, habitat protection is a prerequisite for conservation of biological diversity and protection of endangered and threatened species. The Endangered Species Act, in emphasizing habitat, reflects the current scientific understanding of the crucial biological role that habitat plays for species.

The question has been raised whether critical habitat should be determined at the time of listing or whether it should be deferred to the time of recovery planning. Because of public concern over economic consequences, the designation of critical habitat is often controversial and arduous, delaying or preventing the protection it was intended to afford.

Committee Recommendation. Because habitat plays such an important biological role in endangered species survival, some core amount of essential habitat should be designated for protection at the time of listing a species as endangered as an emergency, stop-gap measure. As discussed below, it should be identified without reference to economic impact. Economic review may need to remain linked to critical habitat determination in the ESA, and determination of areas essential to the recovery of a species, including areas not currently occupied by that species, can be especially complex. Hence we suggest designation of survival habitat.

Survival habitat would be designated at the time of listing of an endangered species, unless insufficient information were available or harm to the species would occur. For this purpose, survival habitat would mean the habitat necessary to support either current populations of a species or populations that are necessary to ensure short-term (25-50 years) survival, whichever is larger; survival habitat would receive the full protection that the ESA accords to critical habitat. Because of its emergency nature, no economic evaluation would be conducted before designating survival habitat. The designation of survival habitat (and its protection under the ESA) would automatically expire with the adoption of a recovery plan and the formal designation of critical habitat. Subsequent recovery

planning would include designation of critical habitat as currently defined in the ESA (including economic evaluation) to include areas necessary for species recovery.

Because essential survival habitat is identified in our recommendation without reference to economic impact, and because it might not be sufficient to ensure long-term survival and recovery of endangered species, the committee views it as an emergency, stop-gap measure until critical habitat can be designated and a recovery plan can be completed, not as a substitute for those measures. Indefinite delays in designating critical habitat and formulating recovery plans after designation of survival habitat might cause harm to economic interests and to the endangered species itself. Therefore, implementation of this recommendation needs to include ways of preventing that delay from occurring.

Committee Recommendation. The committee endorses regionally based, negotiated approaches to the development of habitat conservation plans. Guidance from FWS for the development of such plans should include advice on the development of biological data, such as demographic and genetic analyses, habitat requirements of the species involved, reserve design, and monitoring, and it should also include advice on descriptions of management options and application of risk analyses in consideration of alternatives.

RECOVERY

The ultimate goal of the ESA is to recover threatened and endangered species. Recovery is "the process by which the decline of a threatened or endangered species is arrested or reversed, and threats to its survival are neutralized, so that its long-term survival in nature can be ensured." Despite increased attention from Congress, recovery plans are developed too slowly and recovery planning remains handicapped by delays in its implementation, goals that are sometimes not scientifically supported, and the uncertainty of its application to other federal activities.

No recovery plan, however good it might be, will help prevent extinction or promote recovery if it is not implemented expeditiously. Indeed, the failure to implement a recovery plan quickly can also increase the disruption of human activities, because of the resulting uncertainty among other causes.

Committee Recommendation. To reduce uncertainty and permit the planning of activities not directed at species recovery, all recovery planning should include an element of "recovery plan guidance," particularly with regard to activities anticipated to be reviewed under sections 7, 9, and 10 of the ESA. FWS should convene a working group to develop explicit guidelines for the application of data to the construction of recovery objectives and criteria. To the degree possible, the guidance should identify activities that can be assumed to be consistent with the requirements of those sections, activities that can be assumed to be inconsistent with them, and activities that require individual evaluation. Topics would include a habitat-based approach to recovery; a logical, hierarchical approach to analysis of ecological and genetic data on the species; guidance for demographic modeling, stressing the inherent uncertainty of such modeling; outlining future research needs and how the research will contribute to species and habitat management; and an effective monitoring scheme.

Several habitat-related features of the ESA differ without scientific basis, in particular, standards applicable to the protection of plants and to the determination of jeopardy and modification of critical habitat, and different standards of protection on public and private lands. For example, Section 9 fails to protect endangered plants from habitat modification to the same degree that it protects animals, especially on private lands.

Committee Conclusion. The biological differences between animals and plants underlying their taxonomic separation offer no scientific reason for lesser protection of plants. The biological and

physical requirements of species—including endangered and threatened species—do not vary according to the ownership of the habitats that they occupy. Therefore, there is no *biological* reason to have different standards for determination of "jeopardy," "survival," or "recovery" on public and on private lands (there could of course be other kinds of reasons).

Committee Conclusion. Public agencies and individual public servants on public lands behave differently from private landowners, both corporations and individuals, on private lands, because their rewards and incentives are different. Therefore, requirements applied equally on private and public lands will not necessarily provide the same degree of protection, although the *biological* standards or criteria on which the regulations are based are the same. It follows, then, that different mechanisms may be needed for avoiding endangerment and achieving recovery on public and private lands.

Committee Conclusion. The act and its regulations distinguish between species "survival" and "recovery" for purposes of determining jeopardy to species and adverse modification of their critical habitats. Survival and recovery are points on a continuum. Clearly, if a species does not survive, it cannot recover. It is less obvious, but still true, that any action that jeopardizes recovery also decreases the probability of long-term survival.

Committee Recommendation. To permit a rational evaluation of survival and recovery goals, estimates should be provided of probabilities of achieving various goals over various periods. The periods should be expressed both in years and in generation times of the organism of concern. Evaluation of long-term and irreversible impacts should be conducted in terms of long-term recovery of the species. Although it will often be difficult to make these estimates, even the attempt to make them will have value by requiring an objective analysis and by requiring assumptions to be specified.

CONSERVATION CONFLICTS BETWEEN SPECIES

Because plants and animals are linked to other organisms in ecosystems in a variety of ways, it is inevitable that conflicts will arise when attempts are made to protect individual species of plants or animals. One of the charges presented to the committee concerned conservation conflicts between species.

Committee Conclusion. We have found few well-documented cases where management practices focusing on particular species protected under the Endangered Species Act result in direct conflict with the needs of another.

It is possible that this low number stems from lack of knowledge of the ecological networks of which threatened and endangered species are part; from the fact that comparatively few species are currently listed and that recovery plans have been formulated for even fewer; and from the inadvertent protection for other listed species under some current recovery plans. We expect that our knowledge of such conflicts and the potential for their occurrence will increase as ecologies of listed species become better known, more recovery plans are formulated, and habitat for conserving endangered species becomes more constricted.

Committee Conclusion. Under current policies, the greatest potential for conflicts in protecting species and for management of individual species will arise in situations in which habitat reductions—especially extreme reductions—themselves are the causes of endangerment and the habitats of listed species are largely overlapping.

Committee Conclusion. The most effective way to avoid conflicts resulting from management plans for individual species is to maintain large enough protected areas to allow the existence of mosaics of habitats and dynamic processes of change within these areas. In addition to, and as part of, this strategy, multispecies plans should be devised to ensure the maintenance of habitat mosaics and ecological networks. Habitat (in the broadest sense) thus plays a crucial role in protecting individual target species and, ultimately, in reducing the need for listing additional species. When insufficient habitat is available to resolve such conflicts, other factors must be evaluated to resolve the conflicts, such as the consequences of various management options on each species, the ecological importance of the species, and the distribution of the species.

ESTIMATING RISK

The concept of risk is central to the implementation of the ESA. The main risks involved in the implementation of the Endangered Species Act are the risk of extinction (related to the probability of both biological and nonbiological events) and the risks associated with unnecessary expenditures or curtailment of land use in the face of substantial uncertainties about the accuracy of estimated risks of extinction and about future events. Since the passage of the ESA, there have been enough developments in conservation biology, population genetics, and ecological theory that substantially more scientific input can now be used in the listing and recovery-planning processes. Numerous models have been developed for estimating the risk of extinction for small populations. Although most of these models have shortcomings, they do provide valuable insights into the potential impacts of various management (or other) activities and of recovery plans. In particular, they are valuable for comparing the likely effects of alternative management options and of alternative adverse effects on the species.

Despite the major advances that have been made in models for predicting mean extinction times, the existing methods still have substantial limitations. Often, risk factors are not well known. Most of the models deal with only one risk factor at a time and fail to incorporate the interactive effects of multiple risk factors on reducing the time to extinction. This might result in a tendency for such models to underestimate the risk of extinction. Efforts to integrate various sources of random variation (genetic, demographic, and environmental) into spatially explicit frameworks are badly needed.

Most extinction models primarily address the mean time to extinction. Because decisions associated with endangered species usually are couched in fairly short time frames—less than 100 years—models that predict the cumulative probability of extinction through various time horizons would have greater practical utility than current models.

Committee Conclusion. With only a few exceptions, biologically explicit, quantitative models for risk assessment have played only a minor role in decisions associated with the ESA. They should play a more central role, especially as guides to research and as tools for comparing the probable effects of various environmental and management scenarios.

Committee Conclusion. Results from population-genetic theory provide the basis for one fairly rigorous conclusion. Small population sizes usually lead to the loss of genetic variation, especially if the populations remain small for long periods. If the members of the population do not mate with each other at random (the case for most natural populations), then the effect of small size on loss of genetic variation is made more severe; the population is said to have a smaller *effective size* than its true size. Populations with long-term mean sizes greater than approximately 1,000 breeding adults can be viewed as genetically secure; any further increase in size would be unlikely to increase the amount of adaptive variation in a population. If the effective population size is substantially smaller

than actual population size, this conclusion can translate into a goal for survival for many species of maintaining populations with more than a thousand mature individuals per generation, perhaps several thousand in some cases. An appropriate, specific estimate of the number of individuals needed for long-term survival of any particular population must be based on knowledge of the population's breeding structure and ecology. If information on that species is lacking, information about a related species might be useful.

MAKING ESA DECISIONS IN THE FACE OF UNCERTAINTY

To ensure that ESA decisions protect endangered species as they are intended to in a scientifically defensible way requires objective methods for assessing risk of extinction and for assigning species to categories of protection according to that risk. Standards for assigning species to categories should be quantitative wherever possible and, when this is not possible, qualitative procedures should at least be systematic and clearly defined. Major advances in both theory and methods of estimating risk of extinction allow us to base listing and recovery decisions on scientific principles. In the past, many ESA decisions have failed to meet the guidelines suggested by current scientific thinking, listing species as endangered only when populations had dropped to the point where extinction was imminent and proposing recovery goals that left the species still at high risk of extinction.

Committee Conclusion. We can find no scientific basis for setting different levels of risk for different taxonomic groups, such as plants or animals, or for public versus private actions that may affect listed species. However, it is critical to understand that because public and private entities may behave differently, different management policies may be required for public and private lands in order to achieve the same *biological* risks for listed species in the two settings. No implementation of the ESA can be fully successful without recognizing these differences.

Committee Recommendation. To the degree that they can be quantified, the levels of risk associated with endangered status should be higher than those for threatened status. Once a species no longer qualifies for threatened status, it should be considered recovered and delisted. Levels of risk to trigger ESA decisions should be framed as a probability of extinction during a specified period (i.e., $x\%$ probability of extinction over the next y years). Although some crises may call for short time horizons (on the order of tens of years), ordinarily it will be necessary to view extinction over longer periods (on the order of hundreds of years) so that short-term solutions do not create long-term problems. The selection of particular degrees of risk associated with particular periods as the standards for listing species as endangered or threatened reflects both scientific knowledge and societal values.

Although the objectives of the ESA are not intrinsically conflicting, the act must be implemented with limited budgets, and so conflicts can arise in determining how to allocate funds among listed species, all of which qualify for the act's protection. Scientific considerations, such as whether a species or its habitat possesses unusually distinctive attributes or whether protection of a taxon would confer protection on other candidate taxa and their habitats, should be used to help set priorities for action. Decisions to set priorities for implementation of the act are often difficult and controversial, and the procedures for making them should be explicit and well documented. Structured methods, such as decision analysis, can improve both the substance of these decisions and the justifications offered for them.

Meeting the objectives of the act can sometimes conflict with other human objectives, such as development of private or public property harboring listed species. The act prohibits consideration of human objectives unrelated to species protection in decisions regarding listing, "take," and "jeopardy."

but directs that these other objectives be taken into account in decisions about critical habitat and implementation of recovery plans. Tradeoffs between species protection and economic or other benefits or costs must be evaluated. Again, because these tradeoff decisions are often difficult and controversial, it is important to use well-structured and explicit methods for making them.

ESA decisions are inevitably based on limited information, and so agencies are obliged to act in the face of uncertainty about species status and the impacts of proposed activities. Decisions in the face of uncertainty carry the prospect of being wrong in various ways and with varying, and often asymmetrical, consequences. For example, managers concerned with delisting a formerly endangered species must be wary of two types of errors: delisting when the species is actually still in peril, and failing to delist when the species has truly recovered to the target level. Each type of error has both biological and nonbiological consequences. The first error has adverse biological consequences for the endangered species—it would be irreversible if the species became extinct—and, perhaps, positive socioeconomic consequences for sectors whose activities may have been constrained by recovery guidelines. The second error has neutral to positive consequences for the species but potential negative socioeconomic consequences. It is not possible to minimize the risks of both types of errors simultaneously. A decision rule that guards against the first will allow too many of the second and vice versa. To set acceptable rates for each type of error, both the likelihood and the magnitude of biological and nonbiological benefits and costs must be weighed in a decision-analytic framework. These decisions are too complicated and too consequential to be entrusted to unaided intuition.

If not examined explicitly, this asymmetric error structure can bias decisions under the act to the detriment of endangered species, especially if they are based on analyses that do not take the asymmetric risk function into account. Although the wording of the ESA suggests that the "burden of proof" to show no effect is on those proposing to modify habitat or harm a listed species, the way that hypothesis tests are phrased and error rates are set can put the burden on those attempting to show that a species should be listed or that a development proposal should be denied or modified.

Committee Recommendation. Because the structure of hypothesis testing related to listing and jeopardy decisions can make it more likely for an endangered species to be denied needed protection than for a nonendangered species to be protected unnecessarily, decisions under the act should be structured to take explicit account of all the types of errors that could be made and their consequences, both biological and nonbiological. The phrasing of the null hypothesis and setting of error rates should reflect societal, as well as scientific, judgments about what level of risk is acceptable for which types of errors.

TIMING

The committee's comments on the timing of key decisions under the ESA are incorporated in discussions of various other topics. In particular, timing is considered in discussions of recovery planning (where the committee concludes that recovery plans are developed too slowly and recovery planning remains handicapped by delays in implementation) and identification of survival habitat (whose designation is recommended to overcome the effects of delays in designation of critical habitat).

BEYOND THE ENDANGERED SPECIES ACT

The Endangered Species Act's goal is the prevention of species extinction, and its legal apparatus to protect endangered species is strong. It does not appear to have been intended as an

overall policy act for the preservation of all of the nation's ecosystems and biota. It is, as the committee understands it, intended as a safety net.

Committee Conclusion. Although it is impossible to quantify the ESA's biological effects—i.e., how well it has prevented species from becoming extinct—the committee concludes that fewer species have become extinct than would have without the ESA. In other words, the ESA has successfully prevented some species from becoming extinct. Retention of the ESA would help to prevent species extinction. Some changes, as outlined in this report, would probably make the act more effective and predictable, and provide a more objective basis for its implementation.

Committee Conclusion. It is also clear that some species have become or are almost certain to become extinct despite the protection of the ESA. In other words, the ESA cannot *by itself* prevent all species extinctions, even if it is modified. Therefore, the committee concludes that additional approaches to the management of natural resources will need to be developed and implemented as complements to the ESA to prevent the continued, accelerating loss of species. Indeed, many federal, state, and local governments and private organizations are developing such approaches.

- **Ecosystem management.** Despite diverse definitions of ecosystem management and despite scientific uncertainties, it is clear that managing ecosystems and landscapes as an addition to the protection of individual species can lead to improved natural-resource management and can help reduce species extinctions. Properly implemented, it can also help to reduce uncertainty and thus reduce economic disruptions.

- **Reconstruction or rehabilitation of ecosystems.** Restoration ecology is a growing discipline. Many ecosystem functions have been improved or restored by such activities, and reconstruction or rehabilitation of ecosystem functioning holds much promise for the protection of endangered species. It is not usually possible to return an ecosystem to some prior pristine condition, however. Many ecosystems have been so altered that it is difficult to decide what prior condition we might want to return to. The trajectory taken by the ecosystem to get to its current condition is not retracable in the way that a highway is, because many events occur in an ecosystem's history that are not precisely reversible. Genetic variability is lost; evolution occurs; exotic species are introduced; human populations in the region increase, and people develop dependence on a variety of modern technologies, cultures, and economic systems; and other natural and anthropogenic environmental changes affect the range of biophysical and socioeconomic possibilities for future states of the system. In brief, the past provides opportunities for the future but also constrains it. Thus, attempts to rehabilitate ecosystem functioning should keep these constraints in mind, so that inappropriately high expectations are not generated.

- **Mixed management plans.** Often, resource managers manage areas either for protection of biota or for human use. It is increasingly difficult to keep people and the effects of their activities separate from wildlife sanctuaries. Although such sanctuaries (e.g., national parks, wilderness areas, wildlife refuges, marine sanctuaries) are indispensable for protecting endangered species, greater attention needs to be paid to developing mixed-use areas. These would be urban recreation areas or residential and commercial developments adjacent to untrammeled areas designed to improve opportunities for wildlife while maintaining opportunities for human activities. Although the value of this approach is becoming increasingly recognized, its development is still in the early stages.

- **Cooperative management.** Various experiences with cooperative management—the sharing of planning and decision making by various government and nongovernment groups—have had some success. To some degree, habitat conservation plans represent an example of this approach, but it is likely that cooperative management will be necessary in cases where the strict requirements of the Endangered Species Act have not yet been applied. It is important to include the major interested parties without having so many interests involved that consensus is difficult to reach.

- Revised economic accounting. Too often, economic calculations underlying public and private decision making are incomplete. Often, they cover too short a time span, and they often exclude nonmarket values. A short-term loss might turn into a long-term gain: for example, losing an economic activity today might provide opportunities for greater economic activities of different types at some time in the future. Again, the validity of expanding economic accounting to cover longer periods and to include nonmarket values is becoming more widely recognized but it is still in the early stages of development.

SCIENCE, POLICY, AND THE ESA

This committee was asked to review the scientific aspects of the ESA and it has done so. It has not uncovered any major scientific issue that seriously hinders the implementation of the act, although its review has suggested several scientific improvements. Many of the conflicts and disagreements about the ESA do not appear to be based on scientific issues. Instead, they appear to result because the act—in the committee's opinion designed as a safety net or act of last resort—is called into play when other policies and management strategies or their failures, or human activities in general, have led to the endangerment of species and populations. In some cases, policies and programs have been based on sound science, but other factors have prevented them from working. The committee does not see any likelihood that those endangerments will soon cease to occur or that the ESA can or should be expected to prevent them from occurring. It therefore concludes that any coherent, successful program to prevent species extinctions and to protect the nation's biological diversity is going to require more enlightened commitments on the part of all major parties to achieve success.

To conserve natural habitats, approaches must be developed that rely on cooperation and innovative procedures; examples provided for by the ESA are habitat conservation plans and natural community conservation planning. But those are only a beginning. Many other approaches have been discussed in various fora. They include cooperative management (sharing decision-making authority among several governmental and nongovernmental groups), transfer of development credits, mitigation banks, tax incentives, and conservation easements.

An analysis of these and other policy and management options is beyond this committee's charge, but sound science alone will not lead to successful prevention of many species extinctions, conservation of biological diversity, and reduced economic and social uncertainty and disruption. But sound science is an essential starting point. Combined with innovative and workable policies, it can help to solve these and related problems.

TESTIMONY

OF

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SUBMITTED TO

**THE SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS'
SUBCOMMITTEE ON
DRINKING WATER, FISHERIES, & WILDLIFE**

CASPER, WY

AUGUST 16, 1995

To: The Senate Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries and Wildlife

From: Jack Turnell
Pitchfork Ranch
Meeteetse, WY 82433

I would like to first explain my background to this committee. I am manager and president of the Pitchfork Ranch at Meeteetse, Wyoming. Our ranch has a long history of improving wildlife and habitat. In the early 1900's, the Pitchfork raised antelope, to insure their survival, and protected the range from game and market hunters. Many species were in danger of being exterminated. In the 1970's and 1980's, we again closed the area due to low game numbers. In 1981, the most endangered mammal in North America, the Black Footed Ferrett (believed to be extinct), was discovered on our ranch and the surrounding area. I was very involved and instrumental in the ferrett recovery effort. This effort could have been a very big problem to our ranch and to the ferretts' recovery. Fortunately, the Black Footed Ferrett Advisory Team, that was formed, was able to reach consensus on management and goals. I remained on the team for 14 years. The success was rooted in grass roots problem solving, not government rules, regulations, and enforcement. Obviously, whatever the ranch had done in the past was good because we had the only Black Footed Ferretts. The habitat area had oil development, seismographing, cattle grazing, horses, hunters, fishermen, and campers.

I have also been very involved in forming the Wyoming Riparian Association to improve water sheds, lakes, and wetlands. I have promoted Co-ordinated Resource Management, in the state, to help grass roots people come to consensus, solutions, education, communication, and co-operation.

The Endangered Species Act and many other acts have created confrontation, economic loss, takings of property, and division within this country. I have attached several articles that support my views. The philosophies of agencies, government and other groups, through such things as the Endangered Species Act, have at times ruined families, companies, and communities. A good example is the timber industry, driving building costs so high that many people cannot afford to build. Dubois, Wyoming almost died economically when timbering was stopped. The

town worked hard to grow in tourism and now the battle is over zoning and planning development.

Our Park County evaluation has dropped from \$750 million to \$275 million, which hurts education and all other services. Oil companies are moving out due to Endangered Species, environmental assessments, taxes, archaeological sights, and so on.

Most landowners will not co-operate to find and identify endangered species, wetlands, riparian areas, etc., due to the threatening philosophy of the various acts. This has caused mistrust and dislike for government and the conservation movements. I believe, as do 90% of my neighbors, business associates, and resource users, that we must work toward clean air, clean water, resource use that protects the environment and saving the various species. Forcing people does not work well. Montana, Wyoming, and Idaho, as a whole, opposed the wolf introduction, but were totally ignored. Economics were ignored, total resource management was ignored and the wolf is not an endangered species. Grizzly bears continue to expand and are causing many conflicts with man. We have begun to lose cattle, our cabins have been torn apart three times, and our families cannot now go everywhere freely. Management plans and goals have apparently disappeared.

I think there are solutions, but the philosophy must change.

- #1 - The Endangered Species Act must offer incentives, not threats and punishment. One specific incentive is to allow resource users to continue their business without threat of economic loss or change of life style. This requires education, communication, and co-operation.
- #2 - The government and scientists should help educate and identify the reasoning and goals behind various species management.
- #3 - The Act must move towards grass root solutions and management. The Co-ordinated Resource Management approach is a good example of building consensus.
- #4 - Disarm the federal agents and issue search warrants

sparingly.

- *5 - Identify and search for endangered species through a local level co-operative effort.
- *6 - Put the effort of identification and management of

species in the hands of states, local communities, resource users and universities. The Federal Government could help, when asked, and set basic minimal guidelines.

- *7 - In the case of an endangered species that is essential and is not being managed through a local or state effort, using the above philosophy, then the Federal Government, could develop the management plan.
- *8 - The Act must take into account that the world population is growing and we need resources for medicine, housing, food, jobs, and to maintain a lifestyle. This must be planned.

In conclusion, we can protect the environment, wildlife, plants, etc., but we need a new plan and philosophy. Think about the history of evolution. The very spot we are sitting on was once an ocean, once of the Ice Age, once a tropical area with dinosaurs and other species, once an area of massive volcanoes that covered and destroyed the tropics and most plant and animal species. The last 50 or 100 million years of evolution puts us at today with new species and challenges. We should take care of the planet, but I believe we are quite insignificant in the long term scheme of things.

I would like to submit the following changes to the Endangered Species Act, which were prepared by the Wyoming Farm Bureau.

The purpose of this document is to identify provisions of the Endangered Species Act that have caused problems for agriculture, and to suggest how those sections could be amended to remove those problems.

GENERAL AMENDMENTS

The ESA should be amended to specifically include the compensation requirements when private property is diminished in value, risk/benefit criteria, the unfunded mandates requirements, and any other regulatory reform measure passed by Congress. Even though these elements might be in general legislation applicable to the ESA, it would be advantageous to incorporate that same language into the ESA.

The regulatory reform legislation is needed because of documented abuses in the regulatory process. Many of these stories concern administration of the Endangered Species Act. Even if such legislation were not being considered concurrently in Congress, the principles of such bills would be necessary elements of ESA reauthorization.

The American Farm Bureau Federation sees enactment of these principles as going a long way toward solving many of the problems that our members have with the Act. Enactment of these amendments is a priority for the American Farm Bureau Federation in the reauthorization of the Endangered Species Act.

SECTION TWO. CONGRESSIONAL FINDINGS AND PURPOSES OF THE ACT. 16 U.S.C. 1531.

The findings and purposes of the Act are stated in such a way that they are often cited for the proposition that it was Congressional intent that conservation of troubled species should have the highest priority. In addition, the statement in subsection (b) concerning preservation of "the ecosystems upon which endangered and threatened species depend" has bolstered the proposition that "habitat preservation" is a prime goal of the Act and has also given rise to the biodiversity concept within the Act.

Even though this section has no substantive requirements as contained elsewhere in the Act, this section sets the tone for the Act and is often cited as evidence of Congressional intent.

Suggested Amendments: In section (a) (1), add a statement that recognizes extinction by natural processes. In subsection

species, or (3) its listing is determined by credible scientific evidence to be necessary for the survival of the species as a whole.

Endangered Species and Threatened Species -- Current definitions provide for listing if threatened with extinction/endangerment "throughout all or a significant portion of its range." This terminology is ambiguous, because it is unclear whether range refers to "current" range or "historical" range (where the species once existed). "Significant" is a term whose meaning has been stretched. We suggest elimination of this phrase. It serves no purpose, and re-focuses the intent of the Act on the actual status of the species as a whole.

Take -- The definition of "take" should be tightened to include only any act that "directly" impacts the species. The terms "harm" and "harass" should be separately defined in the statute to include only direct impacts and to exclude habitat modification.

The definition should also be amended as follows: "Take shall not include any act or omission committed in self-defense or in defense of others or in defense of one's own property."

The Act should include separate definitions for "take" of endangered and threatened species, with lesser restrictions in the take of threatened species.

Isolated Population -- This is a new concept that is a corollary to the "distinct population segment" idea. An "isolated population" would be defined as "a population of a species, which although few in number in a particular habitat, is of a species that is not otherwise endangered or threatened throughout the United States, Mexico and Canada." Such populations would not be eligible for listing.

This gets to the issue of species that might be low in numbers in the U.S. but which might be plentiful elsewhere in the world. Canada and Mexico were singled out because (1) species in Mexico and Canada are more apt to be extensions of U.S. populations, and (2) Mexico and Canada are more likely to cooperate in conservation efforts if a species is in danger. There are several species that are listed in the U.S. but which are plentiful in Mexico and/or Canada (e.g., gray wolf). Under this concept, they would not be listed.

SECTION FOUR. DETERMINATION OF ENDANGERED AND THREATENED SPECIES. 16 U.S.C. 1533

This section contains procedures and requirements for

species, de-listing species, and designating critical
 at.

1. Listing of Species

The evidence clearly shows that the current provision is not working and needs to be changed. As currently defined, anybody can propose a species for listing, and a species can be listed with little or no supporting scientific data. The government does little independent investigation of the status of proposed species.

This loose procedure leads to many species being listed that are neither threatened or endangered. The current procedure, with no required scientific baselines, deters investigation of a species beyond its immediately defined area. Similarly, listing a species, thereby invoking the restrictions of sections 7 and 9, stifles development of a management plan for the listed species.

Because the Act forbids the consideration of economic and social impacts in the listing determination, and because the section 7 and 9 prohibitions stifle development of management strategies, the impacts of listing on agriculture and other affected industries can be devastating.

The procedure and requirements for listing a species needs a complete overhaul. The new section should contain the following elements:

a) Require the submission of a draft species management plan with every proposed listing. The management plan would consider economic, social, and other community factors in deciding how to manage the listed species. This procedure keeps economics, et al. out of the listing process (as it should be) but gives consideration to these factors at the time a listing is made. The Act should also require an affirmative finding, supported by credible and verifiable scientific evidence, that listing a species and resultant management plan will benefit the species. Such a measure also helps the species by providing an active management plan for that species.

b) Require that listing determination must be made "on the basis of competent and credible verifiable scientific evidence necessary and sufficient to support that determination," or words to that effect. This creates a scientific standard for making ESA decisions that holds the government to a specific burden of proof. The current standard of "best scientific and commercial data available" is no standard at all.

c) Provide for three-person Peer Review Panels to review all proposed listings for sufficiency of scientific

information. The same panel would also review the proposed final rule to see if there is sufficient credible scientific information to justify the listing. Panels should be: randomly selected from impartial scientists for each rule, and specifically exempt from the Federal Advisory Committee Act (FACA). Panel findings would be part of both the proposed rule and the final rule, with the Secretary responding to points raised in the panel report.

(d) Prohibit the listing of "isolated populations," and any species where more than 75% of the range or population is outside the United States.

(e) Require at least one public hearing in the area where the species proposed for listing occurs. If the species occurs in more than one state, a hearing should be held in each affected state.

2. Critical Habitat Designation

An integral component of the Congressional scheme for protecting listed species is the designation of critical habitat. The concept is based on a determination of the amount of habitat necessary for a species to survive, and designation takes economic and social factors into account (one of the two places in the Act where economic factors are specifically considered). Designation of critical habitat forces the government, in at least a limited way, to balance the needs of the species with human needs.

While the Act states that critical habitat "shall" be designated, it allows the Secretary to make certain exceptions. These "exceptions" have been abused to the point where critical habitat has only been designated in 16% of the cases.

Section 4 of the Act must be amended by:

a) removing most of the exceptions for designating critical habitat, so that the only exception is if designation would result in the extinction of the species.

b) The "economic impact" of designation is interpreted by the government to mean the impacts over and above listing, which creates a false statement of such impacts. The Act should be amended to specify that cumulative economic impacts should be analyzed and considered in the designation process.

c) Designation of private property as critical habitat should trigger either voluntary participation of the landowner in a Critical Habitat Reserve Program, or

compensation for taking of private property. Both of these are described below.

3. De-Listing Process

While the Act briefly mentions that the procedure for consideration of de-listing petitions is the same as for listing petitions, the de-listing part of this provision should be spelled out in more detail.

In addition, the Act should be amended to provide that the government shall de-list species when population goals set forth in the recovery plan have been met. Such goals have been met in many cases, but species are not removed from the list.

In addition, many species are added to the list and nothing is ever done to put that species on the road to recovery. Hopefully, the addition of a draft and final management plan as a condition of listing will prevent such species from falling through the regulatory cracks. However, a provision should be added to the ESA to the effect that if no affirmative federal action is undertaken to implement the species management plan and recovery plan within five years, then the species should be de-listed. The five year period coincides with the review cycle mandated in the Act.

Similarly, if a species has not been sighted for five years, then it also should be either considered extinct or de-listed.

4. Equal Opportunity for Judicial Review

Section 4(b)(3)(C) of the Act provides for judicial review of any negative finding on a petition to list or de-list any species, but no right of review if the government determines that species should be listed or de-listed. The Act should be amended to allow for judicial review of any finding of the government upon a petition to either list or de-list.

5. Recovery Plans

The Act should be amended to provide that recovery plans should be developed in conjunction with approved management plans and critical habitat designations. Recovery goals should reflect the intent of the ESA and be set at levels where species are no longer endangered or threatened with extinction.

If the FWS determines that recovery plans are appropriate for the species, then these recovery plans should be required to be in place no later than one year after listing.

SECTION FIVE. LAND ACQUISITION 16 U.S.C. 1534

This section should be amended to include a provision requiring compensation for diminution in value of private property as a result of ESA actions. This amendment should be reflected in adding this concept to the title of the section.

It appears to be the original intent of Congress in enacting this section that lands required for habitat for listed species should be purchased by the federal government and managed by them. This intent should be reiterated and more clearly stated in the amendments to the Act.

The Act should add a section to this provision to the effect that whenever any activity taken under the ESA diminishes the value of privately owned property, or results in the loss of use or enjoyment of any valid use of federal or state lands (e.g., grazing permit), then the government is required to pay compensation to the injured party.

SECTION SIX. COOPERATION WITH STATES. 16 U.S.C. 1536.

This section sets forth the relationship between the federal government and states. It should be expanded to include federal relationships with local governments and willing landowners as well. The Farm Bureau Critical Habitat Reserve Program described in our policy should go in this section. That program is outlined in a separate document.

This section should be further amended to authorize entry into cooperative agreements with states and local governmental agencies to preserve and protect listed species in accordance with the management plans that have been developed as part of the listing process. Any such agreements should be voluntary so as not to impose any unfunded mandates.

To further encourage states and local governments to seek workable solutions to these issues, the federal government should recognize and encourage state and local conservation efforts as an alternative to listing. State and local authority and control over listed species should be recognized and expanded, and federally funded accordingly. State and/or local management is more likely to reach solutions that accommodate the needs of both the species and the community. Not only does this preserve federal-state relationships, but also results in more attention provided to the species and its conservation. The provision that allows states to take more restrictive measures to protect endangered or threatened species than the federal government should be eliminated.

A very important amendment is the addition of the Farm Bureau Critical Habitat Reserve Program, which provides incentives to private landowners to protect listed species on their property instead of penalties if they do not. It should be a voluntary program that provides for active management of listed species on private property. Such a program will do more to save listed species than any other provision in the ESA.

SECTION SEVEN. INTERAGENCY COOPERATION. 16 U.S.C. 1536

Section 7 of the ESA contains provisions relating to how federal agencies proceed under the ESA. These include requirements for pre-project consultation with the FWS or NMFS, and obtaining exemptions from the requirements of the ESA.

(a) Consultation

Section 7 of the ESA has two separate and distinct provisions relating to how federal agencies must proceed under the ESA. The best known provision is the requirement that for any action "authorized, funded or carried out" by any federal agency, it must consult with either FWS or NMFS, as appropriate, to ensure that the proposed action "is not likely to jeopardize the continued existence of" the listed species. It involves, in some cases, the preparation of a "biological assessment" by the action agency, and a "biological opinion" by FWS or NMFS regarding the impacts of the project on the listed species, as well as possible "reasonable and prudent alternatives" that might be employed to remove any jeopardy findings. Consultations can be formal or informal.

The consultation process should be amended as follows:

(1) Allow a private permit or applicant for a license to participate in the consultation with the action agency and FWS.

(2) Provide a maximum time limit for completion of consultation that is reasonable.

(3) Recognize that activities that are taken in conformance with approved Habitat Conservation Plans (HCP) and final management plans as provided in these amendments shall not require section 7 consultation. A finding of conformance with either the HCP or management plan would be sufficient.

(4) Require within the context of species management plans that activities be delineated which will have minimal or no adverse impacts on listed species. Such activities

would be categorically excluded from section 7 consultation requirements and from section 9 take provisions.

(5) Where a jeopardy opinion results in a conflict between the ESA and the agency's responsibilities and duties under applicable statutes and regulations, then the President should resolve the conflict.

(b) Conservation

The second provision provides for federal agencies to "use their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species ..." (Section 7(a)(1))

Certain interests are pushing for an interpretation of this clause that would require agencies to initiate programs and projects to enhance endangered or threatened species populations above and beyond the requirements of the ESA. In other words, these interests are pushing for an affirmative duty on federal agencies to make ESA considerations the primary mission of the agency over all other interests.

Section 7(a)(1) might be amended to state that federal agencies shall cooperate with the Secretary in the administration of the ESA. We believe that is the intent of the section. Otherwise, this section should be deleted.

(c) Endangered Species Committee

The process devised in 1978 to resolve the snail darter conflict has proven unworkable in actual practice. The Committee has only been convened twice since the snail darter situation.

The ESA should be amended to present a more streamlined approach to resolving federal conflicts and to provide for exemptions. In addition, any such process should involve the governors of the affected states as members of any decision-making body.

SECTION EIGHT. INTERNATIONAL COOPERATION 16 U.S.C. 1537

This section relates to the cooperation between the United States and foreign countries with regard to protection of endangered and threatened species. It does not directly affect U.S. agriculture, except that it provides an authority for entering international compacts such as the Biological Diversity Treaty.

SECTION NINE. PROHIBITED ACTS. 16 U.S.C. 1538

This section includes the prohibition against "taking" listed species. We would re-define "take" to include only direct impacts on species, and exclude indirect impacts such as habitat modification. The definition would also exclude any activity taken in self-defense, or in defense of others or property. This section can clarify that any action taken to repair or maintain an existing facility, structure or piece of ground shall not constitute a "take" under the ESA.

As subsection (a) (1) only applies to endangered animals, there should be a second corresponding section that pertains to threatened animals. It should put the burden on the government to affirmatively develop special rules for each threatened species, subject to notice and comment. The section should provide that these special rules shall constitute the only restrictions resulting from threatened species. In other words, if not specially promulgated, there are no restrictions.

The prohibitions applied only to threatened species would be less stringent than those applied to endangered animals. For example, the 5 acre or less exclusion proposed by Secretary Babbitt is a good example of this, and might be a good starting point for amendment.

The section should also be amended by adding the following: "Any activity or omission of a non-federal entity is deemed not to constitute a take of a species under this section if the activity or omission

(a) was authorized as part of an approved Habitat Conservation Plan, and/or an incidental take permit issued in conjunction therewith,

(b) is authorized pursuant to participation in the Critical Habitat Reserve Program,

(c) the activity underwent consultation pursuant to section 7 of the Act and either no jeopardy was found or the activity is a reasonable and prudent alternative as provided in the biological opinion."

SECTION TEN. EXCEPTIONS. 16 U.S.C. 1539

This section deals with incidental take permits, habitat conservation plans and experimental populations. In all three cases, amendments will improve administration of the Act and impacts on agriculture.

(a) Incidental Take Permits

The FWS and NMFS have proposed the addition of certain new chapters to their respective agency manuals that increase the flexibility of incidental take permits and habitat conservation plans. Many of these additions have some merit and should be codified.

For example, the proposal sets outer limits for the approval of incidental take permit applications. Since many such applications have languished within the agency for years, such an amendment would be beneficial.

The proposal also provides for different levels of incidental take permit applications depending on the intensity of the impacts that the applicant will have on listed species. This distinction thus separates the interests of the big developers or the county from the small producers who want to take advantage of the process as well. A statutory amendment incorporating these levels of permits will help in this regard.

The key issue is flexibility. The statute needs to adapt to greater or lesser impacts, to whether species of interest are listed as endangered or threatened, and even to levels of how endangered some species might be.

(b) Habitat Conservation Plans

These are the main components of applications for incidental take permits. Many of the same amendments described above apply to Habitat Conservation Plans as well. It should be made clear in this section that activities authorized pursuant to an approved HCP will not be considered as a "taking" and will not be subject to consultation under section 7.

Habitat Conservation Plan requirements must be made less burdensome and more flexible.

(c) Experimental Populations

The statute must be amended to clearly provide

(1) There is a distinction between reintroduction of a species and augmentation of existing species by bringing in other members of the same species from other areas to an existing population. Both situations should be defined in the section, and both should be subject to the same restrictions.

(2) Populations can only be introduced into areas of known historic range of the species, based on accepted scientific evidence. Different subspecies cannot be put

into areas where that subspecies did not once exist.

(3) No reintroduction can occur where any members of a naturally occurring species might overlap with any members of the experimental population. For purposes of this section, no augmentation of species by bringing in other members of the same species is allowed, unless the Secretary determines on the basis of sound, credible, verifiable scientific evidence that such augmentation is necessary to save the species from extinction.

(4) No species can be reintroduced or augmented without a designation as an "experimental population."

(5) The special consultation rules of 50 CFR 17.81 should be codified. These rules require the FWS to specially consult with state and local governments and affected landowners, and to reach agreement to the maximum extent practicable.

(6) The law should provide that no reintroduction or augmentation shall occur without the express approval of the affected state or states. That could mean approval by the governor or the legislature, if that is the mechanism provided by state law.

(7) The law should provide that the federal government is liable for any damages, losses to property or diminution in property value resulting from any reintroduced or augmented species and its progeny. In this respect, this section will supercede the provisions of any independent takings legislation passed by Congress.

(8) The law should be amended to provide that any proposed reintroduction or augmentation is subject to NEPA, and further that it shall be subject to the same notice and comment provisions as for listings, etc. The provision should also be amended to require at least one public hearing in each affected area.

SECTION ELEVEN. PENALTIES AND ENFORCEMENT. 16 U.S.C. 1540

The primary focus in this section is on the citizen suit provision, 16 U.S.C. 1540(g). This section should be amended by:

(1) Adding a subsection 1(D) that specifies that a citizen suit may be brought to challenge any action taken under the ESA, as provided in subsections (A), (B), and (C), above) to protect economic, social, biological or environmental interests. This is necessary because some courts are denying standing to plaintiffs alleging economic

injury.

(2) Delete "any person, including" from section 1(A). This eliminates suits against private citizens. An alternative is to require plaintiffs suing private defendants to post a bond equal to the entire value of the property at issue, but that would be a back-up position.

Environmentalism is Society's Most Grave Threat Says Scientist

The Environmental Movement represents the most grave threat that our modern society is facing, warned Edward Krug, a key member of the National Acid Precipitation Assessment Program (NAPAP). Krug earned the hatred of environmentalists when his final NAPAP report stated that Acid Rain did not pose any danger to the environment. Krug told the audience at the Doctors for Disaster Preparedness conference that "environmentalists have taken the characteristic dogmas of oppression and turned them into a virtue of conservation."

Comparing environmentalism to socialist dictatorships, he said that while socialism meant the redefinition in the nature of the relationship from man to man, environmentalism is more dangerous because it is "redefining the man to nature relationship." Environmentalism, he concluded, "means the end of religion and society as we know it."

September 12, 1994

Scientists combat enviro-extremism

More than 100 scientists, doctors and activists met in Tucson, AZ, to lay out a strategy to combat the rampant irrationalism being spread by the environmental movement. The conference, sponsored by the Doctors for Disaster Preparedness (DDP), brought together some of the world's leading scientists to discuss environmental myths and frauds, but most important to lay out solutions to the problems faced by scientists today when confronting the environmental juggernaut. The conference took place August 27 and 28. The keynote speech was given by Dr. Frederick Seitz, former president of the National Academy of Sciences and president emeritus of Rockefeller University. Seitz gave an impassioned speech describing the sea of scientific fraud now drowning modern science and outlined the need to restore scientific myth.

Other speakers included: Dr. Fred Singer, who gave a hilarious presentation of the ozone depletion fiasco; Dr. Robert Balling from Arizona State University who thoroughly debunked the global warming scare; Dr. Sherwood Idso who detailed his experiments demonstrating that an increase in the atmospheric concentration of carbon dioxide will green the deserts and greatly benefit the earth's biosphere; Dr. Bernard Cohen from the University of Pittsburgh who demonstrated that there was little threat from radon, and furthermore, it may actually be quite beneficial; Dr. Jay Lehr, who outlined the need for skepticism against scientific illiteracy; Dr. Howard Maccabee who debunked the scandal regarding radiation experiments in the 40's and 50's; Dr. Edward Krug, who warned that the environmental movement is the most severe threat our civilization is facing; and Dr. Arthur Robinson who discussed the "98% Fact-Free diet the environmentalists are feeding the public."

Doctors for Disaster Preparedness (DDP) was created 12 years ago to oppose the antinuclear disarmament dogma of Physicians for Social Responsibility and other such radical organizations. They strongly support the Strategic Defense Initiative (SDI), and have promoted civil defense, pointing out that the

Environmental preservationists sharpening anti-property-protection rhetoric

By Carl Rieckmann

Environmental preservationists and obstructionists—aghast that growing congressional and court sensitivity to private property rights could make their agendas vastly expensive—are fine-tuning a rhetoric all of their own to rationalize away constitutional Fifth Amendment protections.

On the Washington scene, that verbiage most notable comes these days from Chairman George Miller, D-Calif., of House Natural Resources Committee and from the chairman of his subcommittee that oversees such topics as wilderness, endangered species and national parks.

They have held forth in various floor debates that the Fifth Amendment is not absolute, that its protections are tempered by heavier needs for the greater public good.

The other day, Rep. George Brown Jr., D-Calif., added to the defining of the environmental rhetoric.

Brown views the push for sharpening up protections as "an interpretation of one portion of the Fifth Amendment which would justify bankrupting the federal treasury, eliminating all government regulation of private

property owners, and create precedent for federal interference in state and local affairs."

In what fashion private property rights are recognized in future legislative endeavors such as the reauthorization of the Endangered Species Act (ESA) clearly could have a bearing on costs to federal taxpayers as a whole.

And, with a recent U.S. Supreme Court ruling recognizing a property owner in a right-of-way dispute in a Oregon community, Brown suggests that property right advocates may be seeking to destroy traditional local land-use controls—a thought that will play with mixed feelings across America.

"If a community adopts an ordinance requiring their residents to maintain their property, fence off swimming pools or to deny them the right to dispose of trash or keep zoo animals on their property, do these ordinances constitute a taking of those properties?" Brown poses.

"Should local communities then be required to purchase at fair market value an individual's home or property if that individual does not agree to comply with the ordinance?"

Most citizens would agree with Brown's simple (Continued on Page 4)

(Continued from Page 1) observation about finding a balance between individual desires and rights and community responsibility, but many would not be sure they could ride with where he might draw the line.

Notwithstanding the Fifth Amendment's due-process and just-compensation property guarantees, Brown adds, "It was never intended to prohibit the protection of our common and community properties of air, water and other biological resources or the protection of a community from the misuse of property by one owner."

Moreover, he believes, the recent high court ruling "should give very little comfort to those who would expand the takings doctrine to include compensation for any adverse economic impact resulting from public regulation to protect broad community interests."

The preservationists have tried to seize the ground that actions under ESA and other property-impacting statutes really represent a balance.

Others will point out the rhetoric of balance has cluttered private enterprise and robbed even workers of their job rights.

For that matter, when the Fifth Amendment talks about "private property," the concept certainly goes beyond simple real estate to other properties.

Sen. Slade Gorton, R-Wash., and others point to President Clinton's timber plan to protect the northern spotted owl as a case in point.

In begging for a reform of ESA now, Gorton maligns Clinton's promise to bring balance to the Pacific Northwest in reconciling needs of humans whose lives and communities depend on the Pacific Northwest ecosystem.

"The plan he delivered last year is in no way balanced," says Gorton, who notes it will be years before minimal and inadequate timber harvest levels included in the plan are reached.

"I should like to believe that President Clinton was sincere when he said he wanted balance. But no amount of sincerity or

goodwill can change the fact that the ESA is an expansive, loosely worded statute that preservationist groups have used to bring any number of beneficial activities to a grinding halt."

Gorton thinks the too-broad ESA creates "stakes too high to risk on the vagaries of an administrative initiative" that pledges to seek balance or use scientific evidence more in the process.

Additionally, he notes, the Pacific salmon controversy threatens thousands of jobs.

"While the vast majority of the people in the region badly want to save those salmon runs, some of the recovery measures that have been proposed are exorbitantly expensive and would devastate many communities that depend upon the Columbia River system," he asserts.

In some cases, the ESA has infringed upon certain segments of individuals even in a public venue.

The Senate recently passed a sense-of-the-Senate resolution aimed at giving the city of San Anto-

nio, Tex., and agricultural irrigators in southcentral Texas some leeway in dealing with an ESA-sparked lawsuit threatening the water supply.

It's all because the Sierra Club filed a suit to protect five endangered species living in the Edwards aquifer—including a blind salamander less than two inches long, another salamander and two fish about the same size.

A federal judge said pumping from the aquifer may have to be limited during the current drought, and the state legislature appointed a board to monitor and determine how water would be allocated. But the U.S. Justice Department said the board somehow violated the Voting Rights Act.

The resolution called for a local solution and instructed the U.S. Department of the Interior to look for ways to minimize economic damage and human impacts in working through the problem.

"He should use his powers to grant an emergency incidental taking permit so (Continued on Page 11)

by Lee Pitts

Green Advisory Groups (GAG's) are pulling out all the stops in an effort to convince the Senate to ratify the Biodiversity Treaty during this session of Congress. When you read some of the preliminary provisions in the Treaty it really is enough to make a person GAG.

For example ... how can the Senate possibly ratify a document that calls for the eradication of undefined "alien species" which may include cows, horses, sheep, chickens and virtually all livestock?

How can the Senate ratify a document which says the "United States shall take legislative, administrative or policy measures to facilitate the transfer of technology to the governments and private sector of third world countries, without knowing what technology is to be transferred or how the owners of the technology are to be compensated?

How can the Senate commit the United States to provide "new and additional financial resources" to developing countries as required by Article 21 of the proposed Treaty, without knowing how

much, how often and to which countries the money will go?

These are some of the questions being asked in a letter that is being sent to every single member of the U.S. Senate by organizations opposing the Convention on Biodiversity. Such is the level of opposition to the Treaty that during the first day in which organizations were asked for support 78 different groups signed the letter opposing the Treaty.

These groups include some of those you'd expect to find fighting for freedom including Putting People First and the Alliance for America. Several agricultural organizations have approved the letter despite the fact that the Farm Bureau and NCA have not. Even though the national Farm Bureau has withdrawn its opposi-

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Action Alert

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tion to the Biodiversity Treaty several state Farm Bureaus see its dangerous implications, have vigorously opposed it and signed the letter. Many county cattlemen's organizations are not going along with the NCA on this issue and have signed the letter in opposition to the Treaty.

This letter campaign is a real grassroots effort that includes such diverse groups as the Alaska Loggers Legal Defense Fund, Pennsylvania Flyers Association, Eartheare Contractors Association, Wild River Conservancy Federation, League of Private Property Voters, Coeur d'Alene Snowmobile Club, Oregon Sportsmen Defense Fund and numerous other more well known groups.

An organization known as ECO is attempting to get 500 groups and organizations to sign the letter in opposition to the Biodiversity Treaty. It is felt that "such a display of grassroots strength could stop the treaty and spare the nation the consequences of this horrible document."

Some national organizations, such as the NCA, seem to believe the current administration when it says it understands our concerns. The State Department issued a

Memorandum of Record (MOR) which basically promised that the NCA would have a seat at the negotiating table and that nothing would be in the treaty that would hurt cattlemen.

We cannot have a seat at the negotiating table as promised by the State Department because that table will be at the International Court of Justice. At this time the United States doesn't even have a seat at the negotiating table! The Biodiversity Treaty cannot be changed by the U.S. to satisfy cattlemen, loggers or snowmobilers at a later date because once the Treaty is formalized it cannot be amended. Once formalized it will not be brought back to the NCA to approve or disapprove. "No explanation of-

fered by the administration or the State Department can supersede the authority of the Document itself," according to ECO. The International Treaty is just that, international. It will not be written by U.S. authors so how can we feel comfortable American cattlemen's concerns will be met?

We can't.

Because of a groundswell of grassroots support we have a very real chance to stop this country from signing the Biodiversity Treaty. If your county cattlemen's organization, Farm Bureau or other group is likewise concerned about this dangerous document please call ECO at 901/986-0099 to find out how your group can be included in the fighting five hundred.

The Tree Police

by Lee Pitts
A Digest Exclusive

Some of the most popular shows on television these days are cop shows that feature real live law enforcement incidents. In the following story we feature four incidents involving the BLM, Forest Service, and Fish and Wildlife Department that you will probably never see featured on television as sterling examples of police actions.

Going To Blow Your Head Off!

You can't tell a New Mexico family that all the Bureau of Land Management does is to look after the welfare of our federal lands. In July of this year BLM Rangers allegedly shot out their car's tire, maced the driver twice, kicked one woman, stomped another and broke her ankle and told other family members they would have their heads blown off. What was this family doing wrong you may ask? Who knows! The BLM Rangers to this day have failed to file any charges.

To win, all you gotta do is get up one more time than you fall.

Trail Talk

Unbelievable? Not really. It is just one of a growing number of incredible incidents involving agencies of Bruce Babbitt's Interior Department.

On July 21 of this year a New Mexican family was on a family outing to the Santa Cruz Lake area in the northern part of the state. After fishing and picnicking for two hours the family loaded up their car and were leaving the area when they were stopped by a BLM Ranger. According to a complaint filed by the family's attorney, the BLM Ranger approached the vehicle carrying a shotgun and

ordered everyone out of the car using threats of bodily harm laced with profanity. The BLM Ranger fired his shotgun at the car to show that he meant business.

The complaint continues: Three men got out of the car and asked why they were being stopped. They asked if it was for fishing without a license but they were never asked for their fishing licenses. When one man and the women and children tried to leave the BLM Ranger shot out the car's tire and the driver got out of the disabled car with his hands outstretched to be hand-

cuffed. It is alleged that the BLM Ranger then maced the driver and handcuffed him. The driver's girlfriend who was also handcuffed tried to help the driver by kicking the mace out of his eye and was kicked twice by the BLM Ranger to stop her from helping the driver. The driver's mother tried to help her son but was knocked to the ground by the ranger who then stomped on her leg before handcuffing her. After handcuffing the mother the BLM Ranger went back to the driver and sprayed him again in the face with mace. All the time the children were crying and the ranger yelled at them to shut up. According to the complaint the BLM Ranger said he was going to blow their (capsule deleted) heads off. Only the timely arrival of a deputy sheriff and a tribal police officer may have kept the rangers from brutalizing the family further.

It gets worse. When one of the men picked up one of the children to comfort him the BLM Ranger put his shotgun to the child's head and ordered the man to put the child down. Two

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Q

The Tree Police

other BLM Rangers allegedly arrived and began waving their weapons around as well. The BLM Rangers refused to call an ambulance for the lady who has suffered a broken ankle and the BLM Rangers refused to say why they had stopped the family in the first place. The adults were incarcerated and the BLM

Rangers did not notify the Attorney General as they were required to do. Although records at the Santa Fe jail indicate six adults were arrested on charges of assault and hindering a federal employee, a U.S. magistrate released all of those jailed because the BLM did not produce a written complaint and no

formal charges were made. To this day the family still has no idea why they were arrested.

The Fowle Felon

You think that such a thing could never happen to you or one of your friends? Consider the case of Dwight Hammond, a gentle soul if ever there was one.

Dwight's herders are alleged to have been another of Babbitt's Gestapos, the Fish and Wildlife Department.

In the 1930's the Hammond family of Oregon won a precedent setting court case that ruled that Hammond could be watered by ponds the Malheur National Wild-

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Refuge. That court decision has apparently been eating on the folks at Fish and Wildlife for years so they decided to fence off the water source for the Hammond cattle.

The Hammond Ranch in Oregon is hour glassed in shape. For years the Hammond family has had to move their cattle across Refuge land to get from one pasture to another. So, to make life even more difficult for the Hammonds Fish and Wildlife not only fenced off the water from Hammond cattle but fenced off the right of way for the cattle to get from one pasture to another.

**"Forest Service Law
Enforcement Officers
are just accidents
waiting to happen.
They are going to
kill someone for
absolutely no reason."**

In an attempt to stop construction of the fence Dwight Hammond parked a bulldozer in the way and drained the gas out of it. He said it was so he would know when they returned. When Fish and Wildlife officials came to finish the fence they brought with them two federal marshals. When Hammond refused to move the bulldozer he was handcuffed, placed in leg chains and hauled off to jail. He was held in the Burns jail overnight, transported in handcuffs and leg chains to Portland where he was held overnight in a drunk tank before being released. But not before he was charged with a number of offenses including threats to the officers involved. Witnesses say that Hammond did nothing to prevoke the agents.

If convicted of the charges Hammond faces three years in prison and a \$250,000 fine.

Get Lost

Another story you haven't seen on 60 Minutes involves a lost 14-year-old Boy Scout who had been missing for two days in a New Mexican forest when a State Police helicopter spotted him in a clearing. The helicopter's pilot requested permission from the Forest Service to land the helicopter in the National Forest and pick up the Boy Scout. In their infinite wisdom the Forest Service decided that it was not a life and death situation for the boy so they would not allow the helicopter to land because it was in a wilder-

ness area. Instead of landing, the helicopter pilot tried to communicate with the lost hiker by throwing down a notebook with the message to "stay put." Understandably, the notebook got lost in the brush and the boy never found it.

After spending another night lost in the forest the next day the Forest Service sent in a crew on foot to find the lost Scout. Somehow the Forest Service crew got lost. Only then did they call in a helicopter to locate and rescue the lost boy.

What's A Donion To Do?

Don Duval and his wife are simple, law abiding people who ranch in Nevada's Ruby Valley. Last year Don was brought up on criminal charges by the U.S. Forest Service. What was Don's crime? Was he an arsonist, did he rob or maim someone?

No, Don's crime was that he improved a spring on land managed by the Forest Service. Duval turned a seepage and a mud bog into a watering hole for cattle and wildlife by putting in a collection box and running 350 feet of plastic pipe to a water trough on to his private property. The problem was the spring was on Forest Service ground where Duval had a grazing permit. After making these improvements to the spring Duval filed for water rights and those rights are now being adjudicated by the courts.

After being continually harassed Duval agreed in 1993 to a plea bargain with the Forest Service. Duval pleaded guilty to damaging a natural feature on public land and building an

5033.025 declares that all water above or beneath the ground within the boundaries of the state belongs to the citizens of Nevada. Further more, it is now being argued that if Mr. Duval takes out the spring it will create irreparable damage to the wildlife, riparian area, and flora created by the spring.

So what is Mr. Duval to do? He could comply with the order, do what the feds want and change the spring back into a mud bog. Or he could adhere to state laws and face a possible \$10,000 fine and find himself in court again facing a lengthy jail sentence.

An Accident Waiting To Happen

Agencies of the Interior Department are acting more and more like SWAT teams. Buying ammunition by the truck load and carting citizens off to jail in leg irons. What is shocking about these incidents and countless others is that there has not been more public outrage. With kids being killed in the streets and violent criminals on the loose ranchers are being arrested and put in jail for cutting fences and developing springs.

But the actions of these federal officials do not surprise one ex-BLM employee who spoke to a New Mexico newspaper following the Santa Cruz Lake incident. "What those rangers did is no surprise to me," said the ex-BLM employee. "Many of them are thugs, goons and misfits, dumb as a rock, and believe they are above the law. This is a prime example of how things will be with the new federal police force. Big brother has arrived."

It is alleged that the BLM Ranger then maced the driver and handcuffed him. The driver's girlfriend who was also handcuffed tried to help the driver by licking the mace off his eye and was kicked twice by the BLM Ranger to stop her from helping the driver. The driver's mother tried to help her son but was knocked to the ground by the ranger who then stomped on her leg before handcuffing her. After handcuffing the mother the BLM Ranger went back to the driver and sprayed him again in the face with mace. All this time the children were crying and the ranger yelled at them to shut up.

unauthorized structure. He was fined \$200 and placed on probation. In addition he was ordered by the court to rehabilitate the area to its natural state to the satisfaction of the Forest Service. In the meantime the question arose as to who actually owned the water in the first place. Nevada Revised Statutes

Another ex-employee of the Interior Department stated that "Forest Service LEO's (Law Enforcement Officers) are just accidents waiting to happen. They are going to kill someone for absolutely no reason."

Maybe then Babbitt's Gestapo will get the national attention it deserves.

More Environmentalist/ Government Lies

You've probably heard about wetlands being lost at alarming rates. But, never fear, the government is coming to the rescue; with a vengeance. Wetlands regulation got a boost under President Bush and his "no-net-loss of wetlands" policy. Then the wetlands police really got into gear and at least a half-dozen decent Americans are now in prison; for everything from creating wetlands without a permit to dumping clean fill sand on a private property.

Now *The Wall Street Journal* reports that a few weeks ago the government released a massive five-year study showing that the United States, in 1994, will create almost 100,000 acres of wetlands over and above the 66,000 acres that will be converted to other uses. Last May, EPA Administrator Carol Browner claimed before Congress that the nation was losing 300,000 acres of wetlands per year. The EPA and its green police have been treating wetland regulations as an environmental crisis. Maybe they should be forced to acknowledge the crisis is over before they ruin any more innocent Americans.

Parting Shot

The number of laws we have to obey has grown by 3,000 percent since the turn of the century and government tyranny has grown at the same rate. Each wave of government regulation increases the arbitrary power that bureaucrats and prosecutors have over us. Congress and the courts have been unwilling to stop unelected bureaucrats from making the country's laws.

— Paul Craig Roberts

The Unholy Trinity

by Stewart Tuelson

Call it the "unholy trinity" as environmental groups do, or call it a paroxysm to big government. What it's all about is the attempt by citizens to regain control of the federal government. Unholy trinity, a sacrilegious-sounding description, was coined by environmental groups when they realized a formidable trio of issues was putting the brakes on their agenda in Washington, D.C.

The unholy trinity refers to legislative amendments to protect property rights, block unfunded federal mandates and promote risk assessment and cost-benefit analysis of federal regulations. All three reflect common sense thinking that is sorely missing in Washington. But not this time. Many members of Congress are solidly supporting these safeguards.

Protection of property rights has become an issue because of the Endangered Species Act, wetlands regulations, the National Biological Survey and other environmental laws and initiatives that have little or no precedent for the

issue was sparked recently by U.S. Fish and Wildlife Service plans to designate 33 Texas counties as critical habitat for the golden-cheeked warbler, a songbird and part-time resident of the state. Ranching and rural economic development are at stake. In California, a farmer had his tractor seized by federal agents and was threatened with prison and fines because an endangered rat was accidentally killed during fieldwork.

Property rights is a big issue in rural America, but unfunded federal mandates are getting a lot of attention in our cities. Greg Lashutka, mayor of Columbus, Ohio, is tired of having the federal government mandating what his city should do with its limited budget. He feels the community and its officials are better able to decide priorities. "With unfunded mandates other officials at state and federal levels, and sometimes the unelected bureaucrats take those decisions away from us," says Lashutka.

Cost/benefit analysis of federal regulations and assessment of risks

Whether we think the federal government has gone too far or not, we ought to heed what Cass Sunstein says about federal regulatory programs in his book, *After the Rights Revolution*. No regulatory program can be indifferent to cost. "Regulatory expenditures, if sufficiently high, will endanger the economy, increase unemployment and poverty, and eventually risk both life and health as a result," says Sunstein.

a University of Chicago professor of law and political science. The federal government has been indifferent far too long when it comes to imposing regulations. It has disregarded property rights, made local governments bear enormous burdens with its mandates and hasn't cared about the costs of regulations or weighed the risks against the benefits. There is nothing unholy about changing this.

What does it really cost to feather a few more nests for the golden-cheeked warbler? In the issue of pesticide safety, for instance, how safe is safe?

Farmers Protest Endangered Species Act in California

More than 1,500 farmers and activists held a three block parade and rally in Fresno, CA in late August. They marched to chants of "farming is not a crime," and in support of Taiwanese immigrant Taung Ming-Lin who faces a year in jail and \$2,000 dollar fine if convicted of running over rats and endangering their habitat while tilling his farm. This was a bi-partisan rally.

State Senator Phil Wyman, Republican from Hanford, CA, called the US Fish and Wildlife Service, as having "a near Gestapo mentality" that says rats are more important than raising food. Democratic Assemblyman Jim Costa, who is running against Wyman, said, "I never had to wake up and worry about running over a rat."

An article in the local press strongly implied that these charges are actually being used to seize land, since the farmers cannot pay the fines. The article sites a case in Tulare county where a farmer who was fined \$5,000 for disturbing a blunt-nosed lizard had to surrender land rather than pay the fine.

WYOMING RANCHERS' ANGER OVER 'NEO-HIPPIES' GATHERING

'Neo-hippies' move on rancher

Authorities, ranchers on guard



The vanguard of what organizers say will be at least 25,000 people, described by local residents as "neo-hippies," moved in on northern Arizona ranches last week and were already disrupting one grazing allotment and threatening to cause serious resource damage, sources there said Thursday.

Flying the banner of "World Unity" the gathering, similar to those held in Montana, Wyoming and Colorado over the last three years, apparently includes a wide range of organizations identified as environmentalist, religious and "peace" oriented.

One area rancher said "Rainbow Family" signs were seen in the encampment of the first group to move in.

The Jim Naggler family of Groden holds grazing permits on the area being used by the

vanguard encampment, and family members reported last week that a 19-mile pipeline serving cattle on their Vista Verde allotment had been turned off, and tampered with, several times since the first of the groups arrived.

The organizer of the World Unity meeting, identified as Ed Paul B. Martin, who used on radio last week that he and the early arriving group camped out in the Wulab National Forest, in the Cleveland District, had discussions with one another. A spokesman for the campers told local ranchers and U.S. Forest Service personnel they had split with Martin over the fact that he had not, as promised, provided water, sewer and sanitation facilities.

When informed they had no permit to camp on the forest lands, the group said it was exercising its constitutional rights to assemble peacefully for religious purposes.

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Temper: flare in wake

A WJ Staff Report



A long-running dispute between U.S. Fish and Wildlife Service (USFWS) and an Oregon ranching family has erupted again, this time resulting in the arrest of Dwight Harney and Diamond on felony charges.

The arrest has sparked the multi-agency, anti-government feeling in Harney County. Or sources said last week, a crew more than 150 people to rally in Bond, Ore., at which names of nine officers who were used into the arrest of the rancher were posted on a "wall shame" as it was described by rally organizer.

Rally organizers said they intended to identify the officers including members of a federal SWAT team, publicly in retaliation for what most say was an illegal arrest.

A legal defense fund for the rancher has been established as a result of the meeting, which included a number of pleas from both sides of the dispute for the heads to prevail, and urged that violence be controlled in this matter.

"For Lord's sake, don't shoot" (Continued on page 6)

Oregon rancher jailed in FWS confrontation

(Continued from page 1) somebody," said Drewsey rancher Jim Bentz. "That would hurt where we are now."

Chuck Cushman, head of the National Inholders Association and multiple use advocate, told the rally crowd that, "The person who shoots first loses. There is never any excuse in American political life for violence."

However, there were a great deal of "hard feelings" expressed.

Cushman's organization, also known as the American Land Rights Association, has called for a national rally to support the Hammonds and to call attention to the manner in which the federal agents acted.

"We don't want a report of this, where armed federal agents come in and harass and intimidate our families," rancher Fred Otley told the overflow crowd at the Burns Senior Center, where the rally was staged.

Otley, a friend of the

Hammond family, insisted Hammond "never even lost his temper. I probably would have if I'd been in his shoes."

The latest round began when the Fish and Wildlife Service fenced off access to Hammond's hay meadows and blocked his truck. He cut the fence, since the narrow road would not allow him to turn around or back up, one source reported last week.

When the USFWS began to fence off a long-standing traditional water source for Hammond cattle, a large scraper was parked in the proposed fence line to assure the Hammonds would know when the service's fence crew returned to complete the fencing operation.

Hammond was not on the property when the fence crew arrived and confronted Hammond's wife and a son, Steve. Young Hammond said he was not skilled in the operation of the machine and could not move it.

Sources said attempts by

FWS officers to move it almost resulted in a collision with government vehicles. When Hammond arrived back on the property, he joined his wife and son, and according to witnesses, without provocation, the nine officers arrested him and put him in handcuffs and leg chains.

Witnesses said Hammond did nothing to provoke the agents.

Hammond was held in a jail at Burns overnight, then transported, again in handcuffs and chains, to Portland where he was held overnight again in what has been described by some sources as "a drunk tank."

He was released the day after he arrived in Portland and is charged with a number of offenses including threats to the officers involved.

Federal agency sources would only say that the case is continuing to be processed.

Local, state and national political office holders have decried the arrest action,

and the way it was carried out.

An editorial in *The Oregonian* newspaper, the state's largest daily, published in Portland, called for state and national mediators to enter the case immediately to defuse the situation, which it described as critical.

The Fish and Wildlife Service involvement stresses the fact that it operates the state-owned McNear Wildlife Refuge, 12 miles from Burns.

Neighbors said the water hole has been a badger watering place for eagles grazed off the refuge. They said the government's sorts to fence it and to build a second fence across an access road to the Hammond hour-glass shaped ranch violates an agreement with the Fish and Wildlife officials to continue negotiating with the Hammonds.

Judge Dale White, chairman of Harney County three-person governing board, said the service had agreed to send a high-level official to talk with the Hammonds, but instead began fencing off the water hole.

"Dwight handled him in a very appropriate way," White said. "The Fish and Wildlife Service were handling themselves appropriately."

Hammond faces federal charges that he "impeded, intimidated and interfered with federal officers." Conviction carries a maximum three-year prison sentence and \$250,000 fine.

The Honorable Craig Thomas

and the

**The Senate Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries and Wildlife**

Presentation to the
Senate Committee Hearing on the
Reauthorization of the Endangered Species Act (ESA)

Casper, Wyoming
August 16, 1995

Submitted by: John R. Winter, Outfitter
State of Wyoming

Address: P. O. Box 182
Moran, Wyoming 83013
(307) 543-2309

To: The Honorable Craig Thomas
The Senate Committee on Environment and Public Works'
Subcommittee on Drinking Water, Fisheries and Wildlife

From: John R. Winter, Outfitter
Two Ocean Pass Ranch and Outfitting

Date: August 14, 1995

RE: The Senate Committee Hearing on the Reauthorization of the Endangered Species Act (ESA)

Thank you for the opportunity to comment on these proceedings. Wyoming Outfitters are indeed grateful that you have used your influence to obtain a public hearing on the Endangered Species Act (ESA) here in our great State. You are to be commended.

The ESA has developed a real piece of work-- whether by accident or design, it is time to overhaul this legislation. After a somewhat cursory review of S.768, it appears that a common sense approach to this effort is underway, and I trust that it will continue in that direction.

As a Wyoming outfitter, I, like many of my outfitter counterparts, deal with the affects of the ESA on our businesses daily. We have dealt with the Grizzly Bear regulations for many years now, and we believe our efforts have greatly contributed to this great American Success Story. If the Grizzly bear ever was endangered, it is definitely recovered now.

About the time we felt good about our work for the benefit of the Grizzly, along comes the Gray Wolf. The introduction of wolves into the Yellowstone Ecosystem is a prime example of how Government Agencies can give lip service to public comment and utilize only select studies and data to justify their end goals.

Our greatest fear relative to the introduction of wolves into the Greater Yellowstone Ecosystem is 1) wolf populations devastating State wildlife herds; and 2) land closures. Grizzly Bear management has shown that land closures are easily provided for through ESA, and we look toward these eventual occurrences from the wolf introduction with great consternation. Simple mathematics lends credence to our fear for the wildlife of this State should the ESA not be rewritten. Wolves have to eat and the more wolves there are, the less game there is for our industry, The State of Wyoming, and ultimately the people of America.

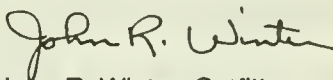
In 1994, a follow-up study of the outfitting industry by the University of Wyoming was conducted wherein it was determined that the hunting portion of outfitting is a \$91 million industry. The original study, conducted in 1988 showed that the industry was operating only at 60% capacity. Based on my experience, that percentage of activity has not changed appreciably. Politics within the State is the primary reason for that low activity but regardless, this industry has major impacts on the State's economy. It is my understanding that recreation of all kinds is now the leader in Wyoming's economic portfolio and hunting is a major part of that industry.

Page Two
August 14, 1995

The ESA does not adequately consider the human element nor the economic impacts of a given action. There have been too many families and communities devastated by the supposed good intentions of several ESA actions over the past few years, i.e., the Timber and Agriculture industries. We do not want the same things to happen to our little corner of the World.

The Outfitting Industry acts as an agent for different Federal and State agencies wherein outfitters are charged with providing a service to the general public for these agencies, doing it safely, and at the same time protecting the resource. We are willing to work for the betterment of our environment -- but we want to be around to enjoy it as responsible and successful citizens.

Respectfully submitted,



John R. Winter, Outfitter
T.O.P. Ranch
P. O. Box 182
Moran, WY 83013

Testimony Presented By:
TERRY SCHRAMM
for WALTON RANCH, Jackson, Wyoming

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON DRINKING WATER, FISHERIES AND WILDLIFE
HEARING ON REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

Wednesday, August 16, 1995
Casper, Wyoming

Mr. Chairman,

My name is Terry Schramm. I've been the cowboy on the Blackrock Spread Creek Allotment for 16 years.

The Walton Ranch and the Moulton Ranch are the permittees.

The Waltons have been running cattle on the allotment for 36 years and the Moultons for 75 years.

For the past two summers our ranching operation has suffered substantial losses due to grizzly predation. Even though we are located in Situation I habitat, removing our allotment would be a bandage approach to solving the problem, as there are other cattle allotments in the same area, as well as cattle on private lands.

We were a responsible, legitimate, pre-existing user of the forest prior to the E.S.A. and prior to the Situation I habitat designation. We feel that if no bear control mechanisms are in place, the E.S.A. habitat designation has unfairly and effectively served us an eviction notice without a hearing. Our allotment is approximately 137 square miles and is located on the extreme southern edge of the recovery zone. If no bears are dealt with in the recovery zone, then does that mean all bears will be dealt with outside the recovery zone?

As in much of the west, Teton County is 97% federally owned, and without this grazing permit, we don't have viable ranching operation, as private land is unavailable and there are no available open allotments.

The Walton Ranch puts \$400,000.00 into the local economy, as well as employing and housing two families and three single men.

The ranch has been put into a conservation easement to protect open space, wildlife habitat, as well as preserving the rapidly declining historical and cultural aspects of Jackson Hole.

In the 16 years that I have been on the allotment there have always been grizzlies present, with acceptable livestock losses and relatively few problems (historical losses between 2 and 3 percent). In the past two years (93 & 94) I lost 141 head of calves (9%) to all causes, including a high percentage to grizzly predation.

In 1994 a study was implemented and eight grizzlies were trapped and evidence of up to five more were observed on the allotment. In 1995 three different grizzly bears were trapped. Total to this date 11 grizzlies, 22 black bears have been trapped on our 88,000-acre cattle allotment.

We have co-existed with the grizzly for a long time, but feel the situation is getting out of control. We are not asking for the annihilation of the grizzly population, but the expedient removal of a couple of habitualized, predatory bears.

The restrictive nature of the E.S.A. and Situation I habitat, along with the threat of litigation from certain well-meaning special interest groups completely stifles the agencies to use common sense and reason.

Case in point - In 1992 a large male grizzly was trapped for killing livestock. The bear was collared and released. This bear has habitually killed cattle in 1993-94 and is still killing cattle on the allotment as of this hearing.

Our fate lies in the hands of bureaucrats, and these problems present a challenge that is inevitable in the near future with an expanding and dispersing grizzly population. How we deal with problem grizzlies and resolve conflicts is the key to human tolerance and, ultimately, the success of grizzly recovery.

Agriculture has had a longstanding, cooperative working relationship with all of the land and wildlife agencies to bring about many of Wyoming's wildlife success stories, but the balance seems to be lost with the restrictive nature of the E.S.A. The people who have lived with wildlife for generations feel that the bureaucrats are now working for the predator instead of the people.

The E.S.A. works on a premise of fear instead of cooperation. Fear of losing private property rights, grazing permits, and protection of livestock. All of which our livelihoods depend upon.

The current system promotes a Shoot, Shovel, and Shut-up mentality and after four years of lost livestock, extreme management headaches, and total frustration, I can truly understand why, but I refuse to let the system make an outlaw out of me and will continue to cooperate with all the agencies involved to ensure the grizzlies' survival as well as our own.

SOCIAL ASPECTS OF E.S.A.

The government has spent millions promoting the grizzly to a revered status. There is little wonder that the small rural population that lives in Wyoming receives little empathy from a larger urbanized population.

This social and cultural gulf has become extremely divisive, pitting one region of the country against the other and one American family against the other. The time has come to move on from full protection to management and promoting a more realistic grizzly with all of the complexities and difficulties of living with the world's largest land predator.

Terry Schramm
Walton Ranch

Enclosures:

Gray Reynolds letter-September 28, 1992 (2 pages)

Brian Stout letter-August 14, 1995 (1 page)

Brian Stout letter-August 14, 1995 (2 pages-same date, another letter)

Ben Worthington-Fs-Tom Toman-G&F, Mike Hedrick-National Elk Refuge
letter-June 29, 1994 (2 pages)

Mr. Francis Petera letter-June 1, 1994 (2 pages)

Thomas B. Rossetter, Jackson Hole Land Trust letter from Wyoming
G&F Department-June 7, 1994 (1 page)

Walton Ranch Calf losses-1984-1993-Chart (1 page)



WALTON RANCH COMPANY

STAR ROUTE, BOX 325

JACKSON, WYOMING 83001

Sept. 28, 1992

Mr. Gray Reynolds
Regional Forester, Intermountain Region
324 25th Street
Ogden, Utah 84401

Dear Mr. Reynolds:

This summer on our Blackrock-Spread Creek range of the Bridger-Teton Forest where we run 710 mother cows we have had a situation arise which has never before occurred in my 33 years on the allotment.

We have been plagued with a rogue grizzly bear which has made it impossible to graze our cattle properly. On the upper elevations of the allotment it has been impossible to keep our cattle from bunching. The bear has chased the cattle out of the high parks causing them to stampede down to the drift fences lower down. Many times we have found freshly killed calves. We suspect there are many more killed which we have not found yet.

On the wire drift fence in the north fork of Spread Creek the cattle were stampeded right through the closed gate and they took out several panels of fence with it. Our prescribed plan of grazing has been so upset we have had to hire an additional herder to try to graze where we are supposed to be and not overgraze against fences or natural barriers. We have been only partially successful and in consequence many of our cows will go unbred and our depredations and losses of calves will be serious--- how serious we will not know for sure until we get them home about Oct. 25th and count the number of cows without calves. So far we have found 10 we are sure are bear kills but our range covers over 100 square miles so the bulk of the carcasses will never be found.

The Blackrock Ranger station personnel asked for help from the Wyoming Game and Fish and they trapped the bear on one of his kills but all they did was put on a radio collar and turn him loose. Since then he has killed two more calves in the same vicinity and a cow moose in the willows of Blackrock Creek where he lost his collar in the scuffle.

We have come all the way up through the channels in the local Forest Service bureaucracy and have been told in effect "Sorry Charlie it's your problem not ours".

Mr. Reynolds, the Forest Service is our landlord. We pay a rent to graze on your land. A third party is preventing us from proper use of the land and causing severe losses. Under common laws of equity we feel you as landlord should be obligated to restore our rights, see to the reimbursement of our losses and remove the bear so we can graze your land properly.

Ben Worthington, Tom Toman & Mike Hedrick
June 29, 1994
Page 2

Our board acknowledges that such a situation presents a real challenge for all involved. The meetings we attended showed respect for the bears as well as the plight of the permittee.

We were dismayed, however, at the abrupt withdrawal of Forest Service and Game and Fish representatives from these information sessions. Although we absolutely recognize and respect agency decisionmaking responsibilities in the matter, we have experienced, and were observing, positive outcomes from collaborative efforts of stakeholders in problem solving and making recommendations. We believe such problem-solving has potential to be constructive and could lend support to your efforts.

We encourage your continued work on this dilemma in a fair, science-based manner that seeks to identify methods of dealing positively with two endangered species in Teton County, the grizzly bear and cattle rancher. We are willing to discuss how our participation could help achieve this outcome.

Sincerely,

Sandy Shuptrine, Commissioner
Teton County Board of Commissioners

SS:ag
enc

cc Honorable Alan K. Simpson
Pete Petera, Director Wyoming Game & Fish Department
Paul Walton
Terry Schramm
JH Alliance
Greater Yellowstone Coalition
Governor Mike Sullivan

August 14, 1995

Brian Stout, Forest Supervisor
Bridger-Teton National Forest
Box 1888
Jackson, WY 83001

Dear Brian,

After working our cattle at the conclusion of the 1993 grazing season the numbers are rather disturbing. We turned out 839 branded calves, of which we lost approximately 84 calves. Of that number 24 were known natural mortality, 26 known bear kills, and 34 unknown. I'm sure that of the 34 unknown there is some natural mortality, but I feel a large portion is unconfirmed bear predations.

In the 14 years that I have been herding cattle on this allotment, the losses have been about two percent. The total loss of the 1993 season exceeds ten percent, with natural loss at about three percent.

If no control measures can be taken against these marauding bears, then I would like to meet with Game & Fish and Forest Service personnel to work out a fair and equitable compensation program. While we hold no animosity toward the grizzly bear, neither do we have much reverence. It is unconscionable to think Paul Walton and Gladys Moulton should bear the costs and losses of these large predators. If this society is wealthy enough to afford the luxury of large predators, then society should accept the responsibility of the costs and losses of such predators.

Terry Schramm
Blackrock Allotment

August 14, 1995

Brian Stout, Forest Supervisor
Bridger-Teton National Forest
Box 1888
Jackson, WY 83001

Dear Brian,

This past summer I have had continuous grizzly bear problems. This created management problems in the distribution of cattle, as well as excessive predation losses.

Having worked on this allotment for 14 years, I can tell you I have had grizzlies present on this allotment all of those years. I found my first grizzly kill 11 years ago, but considering the infrequency of such events, I didn't bother to notify the authorities. This pattern continued until 1989, when I noticed a marked increase in bear activity. Management problems began to arise, but losses were insignificant. By 1992 bear activity increased markedly and bear predations also increased. After finding numerous kills, I contacted the Game & Fish Department.

In 1993, between July 11 and September 11, I had 20 definite grizzly kills and four severe maulings, of which all have been killed or died of their injuries. That is more than one kill every three days.

In the time period before July 11, I feel I had numerous kills, but not being aware of the situation, was a couple of weeks behind the deed and had no way of confirming the numerous hides and bones that were found. On September 11, a bear or bears got into the main herd and scattered cattle the full length of the allotment. Two calves were found dead, but no confirmation was made, but the scene was highly suspect. After September 11, I was so busy with my regular duties and the cattle were scattered over such a vast area, that no more kills were found, although I have no illusions that the killing stopped. High concentrations of bear activity still existed.

I observed five different grizzlies on this allotment, but feel at least two more were present from time to time. I assure you that is a conservative estimate.

Two different grizzlies were killing cattle - one they trapped on Baldy Mountain and relocated to Yellowstone; the other plagued me the rest of the summer and was probably responsible for at least 14 kills. The bear that was relocated

returned to the Ditch Creek Allotment, where it lost its collar. Whether the bear ever returned to my allotment, I can't confirm, but feel he did because of his technique of killing.

While I didn't mean to be confrontational, I wanted to make the authorities aware of an increase in grizzly bears and associated problems. I also wanted to ask questions as to our long-term future and the future of grizzly bear management. I feel without management of grizzly bears there is no future for ranching in Jackson Hole; as the management of cattle is almost non-existent and that the compensation program is hopelessly inadequate. While we were put in a Situation I habitat through the shortsightedness of the Forest Service, we are now at the mercy of bureaucrats in any decision concerning our fate. Removing this allotment is not going to solve long-term bear conflict. If you don't deal with conflicts here you'll do it somewhere else and we'll be a casualty of an unjust system.

I have cooperated with everyone involved and will continue to do so even though I feel our future looks grim.

Yours truly,

Terry Schramin
Blackrock Cowboy

P.S. If we can't solve present problems with the omnivorous bear, what's our future with the carnivorous wolf.

June 29, 1994

Mr. Ben Worthington
Acting Forest Supervisor
Bridger-Teton National Forest
P.O. Box 1888
Jackson, WY 83001

Mr. Tom Toman
District Supervisor
Wyoming Game & Fish
P.O. Box 67
Jackson, WY 83001

Mr. Mike Hedrick
Refuge Manager
P.O. Box C
Jackson, WY 83001

Dear Ben, Tom & Mike:

This letter is a follow-up to conversations we have had regarding the Teton County Board of Commissioners' view of agency response to apparent grizzly bear predation of cattle on the Blackrock/Spread Creek allotment.

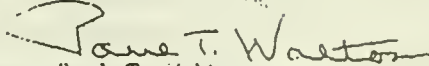
We are pleased with recent decisions to gather information specific to this situation. In addition, we support the decisions to reimburse the Walton Ranch for apparent predation losses. We feel such payment is a real and acceptable cost of threatened and endangered species management which also considers human safety in the protocol of documenting kills. Thank you for taking these steps.

In addition, we wish to express our support for the Walton Ranch and their conscientious efforts to obtain interagency cooperation for alleviating loss of calves. We appreciate the Ranch's willingness to engage in information sharing and problem solving with federal agencies, conservation groups and local government.

Since we graze on land designated for multiple use we feel our position is well taken.

I would appreciate your early review of the situation so this problem can be resolved to all our satisfaction.

Yours sincerely,

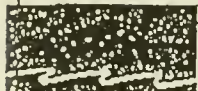

Paul T. Walton
Walton Ranch Co.

Copies to:

Sen. Malcolm Wallop
Sen. Alan Simpson
Rep. Craig Thomas

June 1, 1994

JACKSON HOLE



LAND TRUST

P.O. Box 2897
 JACKSON, WY 83001
 307-733-4707
 Fax 307-733-4144

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Mr. Francis Petera
 Director of Game and Fish
 Wyoming Game and Fish Department
 5400 Bishop Boulevard
 Cheyenne, WY 82006

Dear Mr. Petera:

I would like to thank you again for meeting with our staff on Poison Creek and for your efforts to raise support for its protection. As you know, the Jackson Hole Land Trust is a nonprofit organization that works to protect open space and the ranching, scenic, and wildlife values of Jackson Hole. We do this by assisting landowners who wish to protect their land in perpetuity. We have protected over 7,000 acres in and around Jackson Hole.

Our most significant gift of a conservation easement is from Paul and Betty Walton. The 1800-acre Walton Ranch on Highway 22 is the cornerstone of our protection work in Teton County. The Walton Ranch easement preserves outstanding ranching, scenic, and wildlife values. As holder of that conservation easement, we have a perpetual obligation to see that these values are maintained. It is our opinion that the best and most economical way to ensure protection of this ranch and most other private lands currently in ranching is to encourage the continuation of their ranching operations.

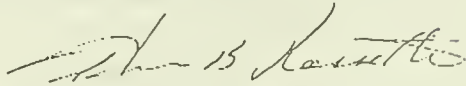
Anything that threatens ranching in Jackson Hole will likely result in an alternative use of the open ranchlands in Teton County. The most obvious is the development of these open lands. In Paul Walton's case, this will not happen because of his generous donation of a conservation easement on his ranch. This irreversible commitment protects open space for the community and wildlife habitat. It is therefore even more important that the Waltons are able to maintain a working ranch.

As you know, Paul Walton has lost a large number of his livestock to grizzly bear depredation on the Blackrock allotment in the Teton National Forest. We realize that this is a difficult management problem, both biologically and legally. However, we believe that this problem must be solved as soon as possible as such grizzly bear/livestock conflicts could likely resume again in the next few weeks when his cattle are moved up on the permit.

You know as well as anyone that grazing allotments are an integral part of most local ranching operations. If the Walton's grazing allotment becomes impracticable due to grizzly bear conflicts, it will endanger not only one of the best remaining cattle ranches in Jackson Hole, but also our land protection work on this ranch and with other ranchers who will become fearful of the consequences of irrevocably protecting their ranches. We all know that by protecting open ranchlands we protect important wildlife values. The consequences of losing a ranch are obvious. If we are all to continue to benefit from the wildlife habitat and beautiful vistas provided by open ranchlands in Jackson Hole, we must work as a team to keep these ranches viable.

We urge you continue your efforts towards finding a fair and innovative way for ranching and wildlife to coexist on the public lands in question. We understand that the responsibility is not all yours, but as a central player, you are in a good position to ensure that a timely solution is found. Thank you for your attention and cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom B Rosseter".

Thomas B Rosseter
President

cc: Paul Walton

GAME AND FISH DEPARTMENT

Mike Sullivan, Governor



Francis Petera, Director

June 7, 1994

Thomas B. Rossetter, President
 Jackson Hole Land Trust
 P.O. Box 2897
 Jackson, WY 83001

Dear Mr. Rossetter:

Thank you for your letter of June 1, 1994 and your comments concerning the conservation easement on the Walton Ranch.

I am aware of the importance of the ranching industry and the associated benefits of open space in the Jackson Hole area. I also strongly support the livestock industry in Wyoming, as I well realize the significant contribution private lands make to the wildlife resource.

This agency is, in my opinion, doing everything allowed under the law to help resolve the problem that both Mr. Walton and the Department face regarding grizzly bear conflicts. As you may have heard, we are cooperatively funding an intensive effort to trap, radio collar, and monitor bears that are using the allotment. As you are also aware, all activities concerning management of the bear fall under the parameters mandated by the Endangered Species Act. I personally feel we are fast approaching the time when the bear should be delisted. The habitat will only hold so many animals, just as a gallon jar will only hold so many jelly beans. When both are full, they spill over into the surrounding area. I believe this is the case with grizzly bears in northwest Wyoming and as a result, conflicts will continue to increase not only in Jackson Hole, but also in other areas.

I assure you that we will continue to work on a timely solution, and I would appreciate your support in this effort. I do believe ranching and wildlife can coexist, provided the state can take appropriate future actions in a common sense manner. To do otherwise can only result in unacceptable losses to the resources at issue.

Thanks again for your letter, and I do intend to make further use of it in future discussions.

Sincerely,

Francis Petera
 Director

FP:lj
 cc: File

WALTON RANCH
CALF LOSSES
1984-1993

<u>Year</u>	<u>Calves Out</u>	<u>Calves Back</u>	<u>Number Lost</u>	<u>Percentage</u>
1985	458	452	6	1.3%
1986	519	506	13	2.5%
1987	472	462	10	2.1%
1988	532	504	28	5.1%
1989	528	520	8	1.5%
1990	526	511	15	2.8%
1991	454	446	8	1.7%
1992	660	642	18	2.7%
1993	686	630	56	8.1%

BAD FOOD
YEAR
GRIZELING
FRESH



**Abundant Wildlife Society
of North America**



•12665 Hwy. 59 N.

•Gillette, WY 82716

•307-682-2826

August 15, 1995

Senator Craig Thomas
302 Hart Senate Office Building
Washington, DC 20010

REF: ESA Reform

Dear Senator Thomas:

I respectfully request all enclosed written articles and information be included in the Testimony for Endangered Species Act (ESA) Reform.

It is my opinion, after more than 4 years of research, that this is a bad law. Period. It needs to be removed from the books.

Why? Because it hasn't worked. That's the short and long of it.

Dr. Alston Chase, Ph.D., recently asked, "What is it intended to accomplish, and why is this goal so important?" (see attached article) Dr. Chase said no one had asked these questions because there were no rational answers.

The examples of problems with the ESA abound. For example:

1. There are more than 60,000 wolves on the North American continent, yet they are listed as endangered.
2. The bald eagle was listed as "endangered" in the 1970s. In the early 1970s, former Director of U.S. Fish and Wildlife Service (FWS) John Turner, was then considered an eagle expert and he said that there were "considerably less than two hundred mated pairs of bald eagles left in the country" (AP 5/10/71). Media shouted this figure from the rooftops. Yet, in the same year, the National Park Service reported counting 267 bald eagles in Glacier National Park and in the previous year, the Department of Interior had estimated there were 7000 bald eagles in Alaska. Recently, the eagle has be downlisted from "endangered" to "threatened." Yet the data used in listing the eagle was questionable at best.

Accompanying this letter are many articles showing problems with the ESA. Also enclosed are: our brochure, "Endangered Species Act: Flawed Law," Alston Chase's article, "Is the Endangered Species Act Necessary," and an article from Reader's Digest, "A Law Gone Haywire." Please include all enclosed in the congressional records for ESA reform.

Thank You,

Troy R. Mader
Troy R. Mader
Research Division

Preserving Great North American Traditions

Karen Anders
(307)765-2244
Fax: 765-4411
Page 1

August 15, 1995

Dear Senator Thomas,

In July I gave you a my comments on the ESA at your town meeting in Greybull. I hope that you had time to read and consider those. In either case I am enclosing a copy of the same for the purpose of replying to the Senate field hearing on the ESA held in Casper tomorrow.

I believe my comments given to you that day are clear enough, but don't go quite far enough. I am therefore going to add to those at this time.

First, I do not believe that the ESA is doing the job it was intended and is being purposely misused to manipulate particular agendas.

Second, those responsible are looking for species to place on this list to protect at the expense of the private land owner.

Third, the system is broken, what was intended to save a species like Elk, (a useful species) from extinction and increase their numbers, has become perverted. Perverted to the extent that a snail, no one knew existed, and that served no purpose, is protected to the point of endangering the lives and livelihoods of the citizens of this country.

Fourth, are we to give the land back to the animals . . . ? No, they merely want our land and we the people are an insignificant obstacle to them.

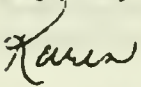
Fifth, whatever decisions or conclusions you come to, please ensure that the environmentalist/preservationist is not exempt from the effects of the same, or we will have perpetuated the same subversive scheming. They are against land owners here in the West as well as other areas of the country, where they "desire to acquire" to the point of "discovering" a reason to do so.

Sixth, the scope of this should reach everyone so that the unfairness of it is evident and touches each citizen.

Seventh, **THERE HAS GOT TO BE SOME REASON TO THIS.** Possibly even having a panel made up of individuals representing all interests to decide if the protection of a particular species is truly warranted.

Whatever you can do to bring reason and justice to this will be an improvement and I thank you for your efforts in this area and others.

Respectfully,



Karen Anders
Box 263
Greybull, WY 82426

Karen Anders
 (307)765-2244
 Fax: 765-4411
 Page 2

August 15, 1995

Dear Senator Thomas,

I have discussed this ESA issue with Rep. Sylvia Gams and a member of the multiple use group in Worland. This should be discussed as thoroughly as possible in more than one location during your tour of the Basin. I am deeply concerned about several aspects of this issue which I am asking you to please address:

ESA RULING

✓ The recent Supreme Court decision on the ESA affords the government authority over the landowner's rights. This is another of our individual rights eroded, and all part of the Clinton/Babbitt philosophy.

How wrong this is . . . As our lawmaker you need to do all that you can to curtail their devastating agenda until this ESA can be dismantled. This bad law can be changed, adding reason to it.

ESA CONSENSUS

✓ A recent article on the conference with the Western State's Governors and the Department of the Interior, states that *they* have reached a consensus on the ESA. The agreement, exempting the largest segment of the population ensures it's popular acceptance *by* them.

By depicting the most fundamental of the industries, (agriculture) in the worst possible light, the "original environmentalist" now has become a second-rate citizen in the eyes of the public and the law. The power of influence now comes from those who are *least* qualified and have *never* been "in-touch" with the land or land issues.

Senator Thomas you can change this bad law, bringing JUSTICE *and* REASON to it.

ESA EXEMPTIONS

✓ Not one urban-dweller would *want* to be included in this ESA "consensus" — AND THEY WERE NOT, because of the special exemption made to afford *them* protection *from* the ESA. Interesting . . .

Owners of homes and property under 5 acres, will not be subject to those rules they "in effect" will have forced upon the rest of us by the sheer volume of numbers! As a minority, how can the ag community protect itself from the whims of those placed "above" the law to advance their purpose?

It is my intent to impress upon you the seriousness of this "for me but not thee" thinking. No controversy *need* exist when a "Six Toed Mouse" is discovered in an urban dweller's home; however, that same creature on a 10 acre lot now becomes exceedingly important. That is injustice! Do you see what they are saying here? Four things:

1. The owner of the urban dwelling is placed "above" the law.
2. The owner of the acreage, "under the law" is expendable, allowing control of his acreage.
3. The actual intent, is the *control* of land from 5 acre parcels on up.
4. Concealing their purpose, this is just a guise to influence the masses and PROVES species protection is NOT *really* their goal, but a means to carry out this farce.

We need to STOP this DECEPTION and INJUSTICE!!! I propose that if SPECIES PROTECTION were TRULY the reason, then it wouldn't have mattered *where* the species is found, habitat is habitat. YOU CAN bring REASON *and* JUSTICE to this Senator Thomas. "One nation, under God, with liberty and justice for all . . ." (This pledge bears repeating).

19 August 1995

Senator Craig Thomas
302 Hart Senate Office Building
Washington, DC 20510-5003

Re: The Endangered Species Act

Dear Senator Thomas:

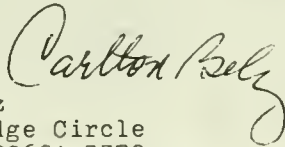
Thank you for the Casper hearing on the Endangered Species Act. I found the testimony and comments to be very enlightening and informative.

Please add the following comments into the testimony of that hearing. As a "lottery-speaker", my name was not selected.

- 1) Yes, by all means, please keep the original Endangered Species Act of 1973, as it is originally written. I realize some modifications are needed, but the Act's main purpose should continue in force.
- 2) In my opinion, land owners, or contract business should deal with only one Federal Agency for the permitting process, and not have to negotiate with a multitude of agencies.
- 3) More protection of habitat appears to be needed, if and/or when efforts and funds are being expended to protect or preserve any species. (For example, neotropical birds). Shouldn't any species be on an equal basis with the human race, ie, "man"?
- 4) Better coordination and negotiation between the Federal Agencies and "individuals", and with more "common-sense" employed during the decision process, is needed.
- 5) One "lottery-speaker", (the Reverend), remarked that, "Congress should be the "Noah" of the current time period". I thought this very appropriate, and wish to submit the attached photocopy of a "Letter to the Editor", from the 6-06-95 issue of the Casper Star-Tribune, which I believe adds to that person's comments, and is relevant to the ESA.

Thank you for including my comments into the hearing testimony.

Sincerely,



Carlton Belz
1742 Westridge Circle
Casper, WY 82604-3379

copy: Senator John Chafee, R-RI
Senator Dirk Kempthorne, R-ID

Attachment:

RECEIVED
JUG 29
1995

7/10/95

From letters to The Editor

19 August 1995

Senator Craig Thomas
302 Hart Senate Office Building
Washington, DC 20510-5003

Re: The End

Dear Senator Thomas:

Thank you for the Casper hearing Act. I found the testimony and enlightening and informative.

Please add the following comment hearing. As a "lottery-speaker"

1) Yes, by all means, please keep Species Act of 1973, as it is. Some modifications are needed, should continue in force.

2) In my opinion, land owners, deal with only one Federal Agency, not have to negotiate with

3) More protection of habitat when efforts and funds are being serve any species. (For example any species be on an equal basis

4) Better coordination and negotiation Agencies and "individuals", employed during the decision process

5) One "lottery-speaker", (the "Congress should be the "Noah" thought this very appropriate, photocopy of a "Letter to the of the Casper Star-Tribune, which person's comments, and is relevant

Thank you for including my comment

Sincerely,

Carlton Belz

Carlton Belz
1742 Westridge Circle
Casper, WY 82604-3379

copy: Senator John Chafee, R-
Senator Dirk Kempthorne

Attachment:

Our kids and theirs, our seed and theirs

Editor:

There are people in Wyoming and across the U.S. who routinely shoot, poison, trap, or harass, coyotes, eagles, prairie dogs, wolves, grizzly bears, bison and other wildlife.

This impulse in humans to systematically kill other life forms has been called "biophobia." It describes a condition of the human mind which is based in fear and hatred, and which fosters violence, domination and exploitative behavior toward nonhuman beings. The fear and hatred which underlie the killing or injuring can remain largely unconscious.

The opposite trait in humans - "biophilia" - was first used in 1979 by the Pulitzer Prize winning naturalist, Edward O. Wilson, to describe an "inborn affinity of human beings for other forms of life." Biophilia, also experienced unconsciously, is a knowing that nature is part of us, and we are part of nature. On some level, it recognizes that it is impossible to unravel natural diversity without also destroying ourselves. Beyond this, it feels it is fundamentally wrong to extinguish other life forms.

Recent examples of unexamined human violence toward nonhuman life overflow the pages of our newspapers - the wolf shooting in Idaho, eagle poisonings in Wyoming, the prairie dog "shoot" in Colorado, aerial gunning of coyotes in all the Western states, and the proposed, sanctioned killing of any bison stepping beyond the boundary of Yellowstone Park.

To be alive at this time of ecological crisis is a personal and political challenge. It calls on humans to discover whether we can awaken together to our profound mutual belonging.

Can we become conscious of our own love or hatred for the life around us? Can we free ourselves of the constricting impulses of self-interest, and birth ourselves into the larger identity with all other life on the planet?

Now is the time to get clear about what it means to live decently on the Earth.

LEILA STANFIELD
Laramie

CASPER STAR TRIBUNE 6-26-95

SUBMITTED BY
CARLTON BELZ
1742 WESTRIDGE CIR
CASPER WY 82604

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Biodiversity Associates

and Friends of the Bow

P.O. Box 6032, Laramie, WY 82070

(307)742-7978 (v) 742-7989 (f)

Date: August 18, 1995

To: Senate Subcommittee on Endangered Species Act

From: *Biodiversity Associates/Friends of the Bow*, Laramie, Wyoming

Re: Reauthorization of the ESA

Dear Senators Chafee, Kempthorne, and Thomas:

Since we did not have an opportunity to present oral testimony during the Casper, Wyoming hearing -- and since we have a number of years of experience dealing with the Endangered Species Act -- we have decided to submit a brief written statement for the record. If possible, please include this letter in the public record.

Friends of the Bow is an unincorporated, informal association focused since 1988 on preserving the natural character of the Medicine Bow National Forest in southeast Wyoming. *Biodiversity Associates*, based in Laramie, Wyoming, is a non-profit environmental group working since 1994 to protect and restore native species on western public lands. We, and the people who support our work, are clear about the importance of protecting the diversity on earth, and we think the place to start is in preserving **our nations's** biological diversity.

We are aware that human population growth, increasing pollution, and upward spiralling resource consumption have led to the accelerated loss of species, subspecies, and populations. Specifically since 1990, we have worked on protecting species such as the grey wolf, grizzly bear, Wyoming toad, Colorado cutthroat trout, razorback sucker, Colorado squawfish, humpback chub, bonytail chub, *Aribis pusilla*, bald eagle, peregrin falcon, green sea turtle, leatherback sea turtle, loggerhead sea turtle, black-footed ferret, and numerous Candidate species such as the northern goshawk, swift fox, and red-bellied snake.

Our experiences with Wyoming, Colorado, South Dakota and Florida species has shown us that these animals and plants would now be in more danger of extinction if it were not for the Endangered Species Act. We believe the Act should not only be reauthorized, but that **it should be strengthened**. Making the ESA more effective means increasing budget support so that the many species waiting in line for listing—those dubbed “warranted but precluded” such as the western boreal

toad—can in fact begin to get the protections they so sorely need. The ESA needs to be expanded to include more comprehensive protections for threatened ecosystems, communities, and habitats without sacrificing any of the protections currently provided by the Act.

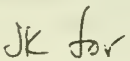
Habitat protection is the key to protecting species. In expanding the ESA to protect ecosystems, we are asking the Congress to include changes in the Act which would: expedite listing, restore natural habitats, amplify protections for "keystone" species, and -- this is very important -- amend the Act to unburden the critical habitat designation from the requirement of economic impact assessment.

Furthermore, since the importance of a species to ecosystem functioning is not necessarily related to its size or appeal to human beings, all species should be equally protected. Thus, the language in the ESA should be amended to make sure invertebrates and plants receive equal protection in the future.

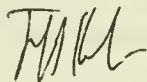
Our research also shows that the "horror stories" often told by opponents of species protection do not hold up to close scrutiny. In some instances, the tales are absolute lies. Should you be compelled by these stories, we implore you to fully investigate them before deciding on their accuracy.

Conservation of endangered species brings economic benefits. It brings health benefits, many of which we are as yet unaware. We urge this Congress to strengthen and expand the ESA for the good of our species as well as others.

Thank you for this opportunity to comment on this important issue.



Leila Stanfield



Jeff Kessler



Donald Duerr

BUDD-FALEN LAW OFFICES, P.C.

623 West 20th Street
 Post Office Box 346
 Cheyenne, Wyoming 82003-0346
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Karen Budd-Falen
 Franklin J. Falen

pl
 Daniel B. Frank
 Vance E. Haug
 admitted in Nebraska

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August 28, 1995

Senator Craig Thomas
 34 Dirkson Building
 Washington, D.C. 20515

Re: Revision of the Endangered Species Act

Dear Senator Thomas:

We are pleased that Congress is considering changes to the Endangered Species Act (ESA). Although no one from this law office was able to attend the field hearing held recently in Casper, Wyoming, Budd-Falen Law Offices, P.C. would like to submit this letter as our comments on the ESA.

Most people agree that the problem with the ESA is that its application has been greatly expanded from what was originally intended by Congress. The ESA joins a long list of Acts that have undergone a similar transformation. Thus any revisions to the ESA must limit the authority the Act confers to the U.S. Fish and Wildlife (FWS) service personnel and prevent the agencies from expanding the application of the Act. For example, under the current agency and court interpretation of the ESA, the FWS does not have to prove its decision to list a species, declare critical habitat or implement a recovery plan is scientifically correct. Rather, the burden is on the person fighting the FWS decision to show that a rational mind could not have reached the same decision based on the information available. In other words, the Plaintiff can be correct that the species does not warrant listing but still lose in court if he fails to prove that a rational mind could not have reached the same decision as the FWS. This enormous deference given to the FWS clearly gives the agency an unfair advantage in the legal arena. Similarly, if a court cannot understand the vast quantity of scientific and technical data that are presented in this type of case, the agency will likely win because "it is the expert." Again this places those fighting the FWS decision at an unfair position.

In order to prevent the continual expansion, any revision of the ESA must eliminate the unfair legal playing field. Specifically, the FWS should be required to prove by a preponderance of the evidence that it is correct in a decision to

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Senator Craig Thomas
August 28, 1995
Page Two

list a species, designate critical habitat or implement a recovery plan. The agency should be required to support its decision using proven, reliable scientific data rather than the "best scientific data available." Often, the "best scientific data available" is no more reliable than the flip of a coin. If the FWS was required to be correct, as opposed to "rational," its legal advantage, and thus its ability to expand the Act in a court, would be largely curtailed.

Another difficulty often encountered regarding the ESA is the concern of agency employees that they may face personal liability if they make decisions that ultimately result in harm to a threatened or endangered species. Thus, Forest Service, BLM and other agency officials are often "bullied" into making decisions that are over-reaching and cause harm to individuals because they are threatened by the FWS with criminal prosecution if an individual endangered species or its habitat is harmed. Although this threat has often been exaggerated, it is a real concern in the minds of individual decision makers. Our law firm has been involved in cases in which officials made decisions on this basis. In fact, in one case, the judge reviewing the case was threatened with possible criminal liability if he ruled in favor of our clients. Thus, any revision to the Act must address this issue. The potential personal liability for a decision that results in wrongful harm to a species should be eliminated. In the alternative, agency officials should be personally liable to individual people who are wrongfully harmed by their decisions. In either case, the clear bias against the welfare of the people would be eliminated.

Finally, the revised Act should place a greater emphasis on local economics, mandate consultation with local governments and should allow greater authority for local areas to protect the populations of listed species. Further, Congress should limit the FWS's ability to divide a species into countless sub-species and then list each sub-species.

In summary, the revised Act should take away the agency's legal advantage by requiring it to show "by a preponderance of the evidence" that its decision is correct. The preponderance of the evidence must include valid, reliable scientific data. The Act should allow for greater input from local governments and individuals who are directly affected. The Act should give greater consideration to local economics. Finally, the Act should eliminate any potential liability of federal employees for making decisions that favor people over plants and animals. If these objectives are accomplished, species which are legitimately threatened can be protected and the agencies will not be able to "run away" with the Act as they have done in the past.

Senator Craig Thomas
August 28, 1995
Page Three

Thank you for considering our comments. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Frank Falen

Franklin J. Falen
BUDD-FALEN LAW OFFICES, P.C.

FJF:tyl

COLORADO RIVER WATER
CONSERVATION DISTRICT

STATEMENT OF
THE COLORADO RIVER WATER
CONSERVATION DISTRICT

BEFORE THE
COMMITTEE ON
ENVIRONMENT AND
PUBLIC WORKS

UNITED STATES SENATE
SUB-COMMITTEE ON DRINKING
WATER, FISHERIES AND WILDLIFE

HOLDING HEARINGS ON THE ENDANGERED SPECIES ACT
CASPER, WYOMING
AUGUST 16, 1995

SUITE #204 • 201 CENTENNIAL STREET
P.O. BOX 1120/GLENWOOD SPRINGS, COLORADO 81602
(970) 945-8522 • FAX (970) 945-8799

**THE ENDANGERED SPECIES ACT
AND THE APPLICATION OF
WATER TO BENEFICIAL USE
UNDER STATE LAW AND
INTERSTATE COMPACTS**

**A STATEMENT BY THE
COLORADO RIVER WATER
CONSERVATION DISTRICT**

The Colorado River Water Conservation District (River District or District) is the primary water policy body for the Colorado River Basin in Colorado. Created by the state legislature in 1937 (C.R.S. 37-46-101, et seq.) the River District is governed by a 15 member board of directors appointed by the boards of county commissioners of the 15 (all of 12 and part of 3) counties comprising the District and includes 29,000 square miles of the northwest corner of the State of Colorado, all of which drain waters of the Colorado River System. The rivers in that system arising within the District are the Colorado and its principal tributaries: the Yampa, White and Gunnison Rivers. Together these rivers contribute approximately 67% of the undepleted flow of the Colorado River at Lee Ferry, Arizona, the compacted (Colorado River compact of 1922) division point between the states of the Upper Colorado River Basin (Colorado, Wyoming, Utah and New Mexico) and the Lower Basin States (Arizona, Nevada and California). The location and area of the River District are shown on the attached map.

The River District has actual "hands-on" working experience with the Endangered Species Act ("ESA" or "The Act") and the companion Recovery Implementation Program and Recovery Action Plan (together: the "RIPRAP"); the latter addresses four fishes native to the Colorado River listed as endangered:

- Colorado River Squawfish (listed 3-67)
- Humpback chub (listed 1-74)
- Bonytail chub (listed 4-80)
- Razorback sucker (listed 10-91).

We also have experience with "listed" plants. This statement, however, places emphasis on our experience with the above fishes.

RIPRAP grew out of an agreement in 1988 among the Secretary of Interior, the Governors of Colorado, Utah and Wyoming and the Western Area Power Administration for a 15 year

Recovery Plan for the first 3 of the above fish. The fourth has since been added.

This statement addresses in some detail our actual experience with the Act and the RIPRAP and suggests seven specific amendments to the Act (attached)¹ based upon the experience cited. Although submitted as amendments to the existing Act, we request that their substance be considered if an entirely new Act is drafted by the committee.

The River District's proposed amendments 1 and 2 contain language to assure that any water which may be required for use under ESA shall be acquired under State law and will not impair existing project yields or any allocations of water pursuant to interstate compacts, Supreme Court decrees and contracts. Indeed, amendment 2 would make this principle a matter of declared Congressional policy. Section 2(c) of the present Act exhorts Federal agencies to cooperate with States to resolve water resource issues involving endangered species but this section 2(c) does not assure the protection that the water resources of the States require in facing increasing and changing demands under the Act. Amendment 2 seeks to provide that protection.

The uneven contest faced by local entities in developing and conserving water is apparent from much of the River District's statement relating to CRWCD's involvement in recovery plans which relate not only to fish but to plants. Proposed Amendment 2 would also address this by language seeking to restore equality of other agency responsibilities with those submerged by ESA responsibilities. In short Amendment 2 would deny that ESA has priority over every other function of government which the Supreme Court held in *TVA v. Hill* (the 1978 opinion in the snail darter case at Tellico dam) that Congress intended in enacting the 1973 Act. In that case the Court found it very significant that in the 1973 Act Congress removed the previous criteria that all agencies participate in furthering ESA "to the extent practicable" and "consistent with the primary purposes of the agency." But very significantly for this Committee and the present Congress, the Court has just reaffirmed its view of the intent of Congress in the 1973 Act to provide comprehensive protection for endangered and threatened species as the Court found in *TVA v. Hill*, in its *Babbitt v. Sweet Home* opinion of June 29, 1995. There the Court said that the very same Congressional intent to provide priority for endangered species preservation supported the permissibility of Secretary Babbitt's definition of harm as including habitat modification.

Thus, Supreme Court decrees first in 1978 and now in 1995 have found the policy declared by Congress in ESA in 1973 remains unchanged and ESA thus has priority over the primary mission of every agency of government. Justice O'Connor in concurring in the Court's opinion observed that Congress may of course revisit the issue. The River District urges that it do just that in now addressing the existing ESA and offers Amendment 2 toward that end.

¹The amendments have been numbered for ease of reference. Several are identical (including our Nos. 1 through 4) with amendments being proposed by NWRA, a national water users association the River District supports.

Proposed Amendment No. 3 seeking statutory certainty that local commitments to recovery will not be unilaterally increased is plainly born of River District hands-on experience with recovery plans as in RIPRAP. Not only has one fish been added since the plan was started in 1988, but water flows sought, particularly for the squawfish, have continued to escalate. The underlying authority of FWS to find the water users in jeopardy of harming the fish if they object to the increasing water demands shows that some statutory certainty is needed to protect a commitment of resources once made from increases which the existing statute is said by FWS to permit and require. The River District's certainty (a deal is a deal) amendment would give this protection.

The need for Amendment No. 4 is like that for No. 3. Amendment 4 would permit existing water projects and their facilities to continue their operations through routine and indeed essential OM&R as well as modifications required under Federal or State law for safety of dams or other water facilities without whatever consultation presently required under ESA being in effect expanded to engulf previous operations which had already been approved. In short, we seek to hold future consultation to consideration of whatever new action may be proposed for existing projects or facilities with some assurance by this amendment that the project will not in effect be reopened for review and challenge as though it had never existed.

Amendments No. 5 & 6 would both incorporate the principle of peer review which River District experience with ESA has shown to be a very desirable step for not only the listing (of species as endangered) and designation (of critical habitat) processes (Amendment No. 6), but also for FWS findings that certain flows of water are required under a recovery plan for any species, aquatic or otherwise (Amendment No. 5). Under River District Amendments 5 and 6 if peer review were requested it would be accomplished by a panel of qualified persons selected by the Governor or Governors of the state or states to be affected. The River District believes that peer review should be embraced as importantly bringing credibility and vindication to the listing and designation process which is presently lacking and assurance to water users everywhere that any flow FWS may seek is a justifiable use of this precious resource.

Finally, through Amendment No. 7 the River District suggests that the listing and designation process engaged in by the Secretary continue to use the rulemaking procedure established by the Administrative Procedure Act (5 USC §553) and that ESA as changed assure that the Secretary has the burden of proof, through clear and convincing evidence, that the listing or designation is justified. Since satisfaction of such criteria is properly a function for court determination, judicial review, if sought by a party, should be available, as Amendment No. 7 provides.

Keywords and phrases which relate to the amendments are shown in bold print in the body of this statement.

BACKGROUND

Under the provisions of the ESA, the U.S. Fish and Wildlife Service (FWS) has placed the four Colorado River fish species referenced above on the "endangered list." The River District and

the State of Colorado as well as other states in the Basin are intensely interested in these fishes because of demands made by FWS for instream flows for the benefit of the listed fish. Flows demanded for the listed fishes can have a significant detrimental impact on the River District's and the State of Colorado's ability to apply to beneficial consumptive use Colorado's equitably apportioned share of the waters of the Colorado River as provided by **Congressionally-ratified compacts** (the Colorado River Compact of 1922 and the Upper Colorado River Basin Compact of 1948).

HABITAT

FWS claims that historically the four listed fish ranged throughout the Colorado River Basin and that remaining wild populations of these species are found in the Yampa, White, Gunnison and Colorado Rivers in Colorado. A map showing the Secretary's designated "**critical habitat**" for these four fishes is attached. The designated habitat is a very large percentage of the river miles in Colorado, and claims for streamflows to benefit the fishes will affect every stream mile in the drainage, not just the habitat shown on the map.

Neither the **listing** of species as endangered, claimed flow requirements, nor the designation of **habitat** have been subjected to rigorous **peer review**. A significant problem is the lack of objective **peer-reviewed** confirmation of the FWS claim that water resources development is primarily responsible for the decline in the populations of the four fishes. The past-introduction of non-native, sport fish species, use of chemical pesticides (when Flaming Gorge dam was closed, FWS supervised the poisoning of the Green River to eradicate these now-listed fishes as "trash"), and other activities also have had significant effects, but FWS does not take them into account.

Recently, construction of the River District's Wolford Mountain Reservoir on Muddy Creek, a tributary of the Colorado River at Kremmling, Colorado, required mitigation of "impacts" to the Osterhout's milkvetch (listed in 1988), a milkweed plant. The presence of this plant on the project site resulted in the setting aside of **habitat** land and incurring significant mitigation costs even though the FWS's own recovery plan found it to be non-recoverable. This is in addition to flows and other mitigation required for listed fishes in the Colorado River near the Utah border.

REQUIRED CONSULTATION

Section 7 of the ESA requires that all federal agencies "consult" with the FWS before taking any actions which may affect endangered species, and ensure that a requested federal permit or funding is not even likely to "jeopardize the continued existence" of the endangered species or result in "destruction or adverse modification" of **critical habitat**. In addition to permit requirements and funding for new water development projects, many existing water projects will encounter these regulatory requirements as a result of the required consultation when it is necessary to rehabilitate diversion or storage structures on federal land or to renew federal land use permits or licenses. In Colorado, the Bureau of Land Management (BLM) and the Forest Service, in consultation with the

FWS, have been demanding "by-pass flows" of as high as 40% of state-decreed historical diversions as the price for repairing a headgate on federal land or renewing a permit.

As a result of the March 1994 designation by FWS of "**critical habitat**" for the referenced four listed fishes (discussed below), all water resources development and all other activities in the areas of the **designated habitat** are impacted by the burden of the FWS regulatory requirements or in a downstream "habitat."

In enforcing the ESA requirements, the FWS mandates federal actions to evaluate project specific impacts which may adversely affect endangered species. If a significant adverse effect is anticipated, a "reasonable and prudent alternative" to the proposed action must be identified which will avoid jeopardy or adverse modification of critical habitat. If no such required "alternative" is available, the federal permit or funding or other federal "action" is withheld. The "reasonable and prudent alternative" process was one of the compelling reasons why the River District did not build a reservoir at the originally preferred site, but moved to the alternate Wolford Mountain site referenced above even though that developed the problem with the endangered plant and attendant costs as already discussed.

OBJECTIVE SCIENTIFIC PROOF

Listing of species as endangered are to be based on the best available scientific data. But, there are no real standards in the Act for the level of science necessary to initiate the listing process, nor are there any **peer review** requirements of the "science" which might support listing of a species as endangered.

Habitat "needs" for species which are seen as being potentially endangered appear often based on the designator's personal opinion of conditions prior to human impacts. Again, there is no objective peer review. To review or challenge any proposed listing, significantly more scientific data is demanded as being necessary than that required to initiate listing in the first instance. While proposals for listings/designations are published in the Federal Register and there is opportunity to comment, those who seek to show by objective science that a listing/designation is not appropriate have the burden of proving a negative to FWS which proposed the listing initially, and this is truly an uphill proposition.

Rather, the **burden of proof** should be placed upon the Secretary in proposing the listing/designation in the first place.

INDEPENDENT SCIENCE

The level of scientific inquiry required to pursue recovery efforts of any species has proven to be much higher and more detailed than that required for listing. In the case of the four listed Colorado River fishes, approximately \$20 million has been spent on intensive research since 1988. Still, little is agreed upon as to the actual effects of habitat changes (if any) on the particular life

stages of these listed fishes and their ability to succeed in the wild. But FWS insists this "research" be continued, no matter the cost.

While the states of Colorado, Utah and Wyoming continue to participate in the effort known as RIPRAP so they may continue to apply to beneficial consumptive use their respective congressionally-ratified compact-apportioned shares of the waters of the Colorado River it more and more appears that a continuing simplistic position of the FWS is the basic premise that flow equals habitat, almost that more equals better. Flows sought by the FWS biologists are often based on estimated pre-development records without consideration of the mechanical and biological cause and effect of the flows acting on the river channel "habitat" and the results on the fish population. Clearly **peer review** would be valuable.

Despite the significant amount of work having been performed by the River District and other recovery program participants on the relationship of flow and habitat conditions to the endangered fishes, and after nearly twenty years of study of these fishes, a scientific debate still rages as to the appropriate recovery actions that will provide the optimum conditions for these "endangered" fishes. The RIPRAP proceeds with an annual research budget in excess of \$3 million per year. However, this research effort still consists of work performed by scientists within the "inner circle" of the Recovery Program. Many of these scientists are employees of the FWS and state wildlife agencies while competent "outsiders" are excluded. At some point a decision as to the best/optimum recovery process must be made and put into effect, preferably based upon solid, objective science. To obtain more objective scientific data, the River District has been funding independent investigations.

Peer review work which has been performed within the framework of the Endangered Fish Recovery Program in limited instances has shown that proposals generated within the Recovery Program framework fail to adequately define the work underway and then are not reviewed vigorously enough to assure that the research efforts will actually be completed. Often, report results from Recovery Program funded activities are not published so they can be critiqued and data are withheld.

While RIPRAP demonstrates "cooperation" under the existing ESA, experience has also demonstrated areas in which the Act should be changed and improved to support **listing of species and habitat** designation among other things. In this connection, utilization of competent objective "outside" science and **peer review** are long overdue.

CURRENT STATUS OF THE FOUR ENDANGERED FISHES

The status of the four fishes listed as endangered continues to be viewed as delicate. The Secretary's most recent published status report to Congress on recovery programs, required every 2 years by amendments made to ESA in 1988 (USFWS 1992 *Report to Congress: Endangered and Threatened Species Recovery Program* USDI 280 pp), lists the Colorado squawfish and humpback chub populations as stable, but the bonytail chub and the razorback sucker as declining. The

percentage of species recovery objectives achieved is shown for all four fishes as only "0-25 percent achieved."

From the data developed, The River District considers the razorback sucker may be nearing extinction in the wild. Most razorbacks captured in recent years are thought to be more than 20 years old, suggesting that there is no "recruitment" of the young-of-the-year fish into the adult population. Accordingly, the razorback sucker should be removed from the list and no more efforts or resources invested in its "recovery." The Secretary should bear the burden of proving otherwise.

Similarly, it appears that at least in the Upper Basin, the bonytail chub may already be extinct in the wild. The last confirmed sighting was in 1981 in the Colorado River near the Colorado-Utah state line. There appears to be no justification for the listing or for further efforts to "recover" it.

While there is a population of the bonytail chub in the Lower Basin in Lake Mojave, again, the Secretary should have the burden of proving that the bonytail can be recovered and that further effort toward that end in the Upper Basin is justified.

ENDANGERED FISH RECOVERY PROGRAM AS "REASONABLE AND PRUDENT ALTERNATIVE"

In the early 1980s the Colorado Water Congress and others unsuccessfully proposed amendments to the ESA which were intended to remove the regulatory hurdles from the path of water resource development and management. Court rulings following the opinion of the U.S. Supreme Court in *TVA v. Hill* (the snail darter case) indicated that litigation challenging ESA held dim prospects for relief. Colorado water users took the initiative themselves to explore ways to satisfy perceived regulatory requirements and still develop their rights in discussions with the states of Wyoming and Utah and federal agencies. This ultimately led to the recovery program known as RIPRAP.

The Recovery Program was designed to function as the "reasonable and prudent alternative" needed to allow existing water projects and new development to continue in compliance with the ESA and in accordance with interstate compacts and court decrees. Since 1988, this has involved consultations under Section 7 of ESA with FWS on approximately 155 projects in order to apply water from the Colorado River system to beneficial use. Although negotiations have often been tedious and difficult, the water users have continued efforts at cooperation.

Backed by the uncompromising nature of ESA, FWS nevertheless continues to raise the question of "sufficient progress." In short: Is the Recovery Program implementing recovery actions (i.e., "sufficient progress") in FWS's sole discretion to consider it the reasonable and prudent alternative to more draconian action under ESA? In this light the Recovery Program, while the water users continue participation, becomes increasingly burdensome with no end in sight.

FLOWS IN CRITICAL HABITAT

According to the FWS regulations, **critical habitat** includes the physical and biological features essential to the conservation of a listed species, including space for growth and normal behavior, sites for breeding and rearing offspring, water, air, light, minerals and any other nutritional or physiological requirements. A conservationist lawsuit against FWS resulted in a court order under which FWS designated hundreds of miles of the Colorado River and its major tributaries (including the Yampa River below Craig, the White River below Rangely, the Gunnison River below Delta and the Colorado River mainstem below Rifle) as "critical habitat" for the four listed fish species. In addition to the river itself, these designations include "constituent elements" within the associated 100 year floodplain, impacting or "taking" private property.

The FWS has declared its insistence that the Recovery Program shall provide the basis for "reasonable and prudent alternatives" to meet the critical habitat requirements as well as meeting the "jeopardy" (Section 7 of the Act) requirements. The Recovery Program participants thus revised the Recovery Action Plan in September 1994 in a specific effort to assure that critical habitat concerns were adequately addressed. If the Recovery Program is successful perhaps the designation of critical habitat will not significantly affect the future consideration of water projects. However, if the Recovery Program efforts are claimed to fall short, critical habitat considerations could pose yet another significant regulatory constraint on both existing water supply management and new water development, as well as on land use, within the designated critical habitat. This is seen, in effect, as creating a federal regulatory water right - a **federal reserved right** inimical to **compacts and state water law**. Although the RIPRAP holds a potential for an appropriate balance among FWS, the State of Colorado, the River District and water users to provide for the "recovery" of fishes, we find FWS continuing to resist the Colorado Water Conservation Board's decisions as to the amount(s) of instream flows to be **adjudicated in Colorado courts** as being less water than FWS asserts is needed.

Flow protection is one of five principal Recovery Program elements (the others are physical habitat restoration and protection, reintroduction and augmentation of endangered fish populations, non-native sport fish management, and research, monitoring and data management). The Colorado Water Conservation Board ("CWCB") is addressing flow protection and management in a sequence of preferred measures, beginning with the appropriation of new (junior) instream flow water rights under State law pursuant to Colorado's instream flow law (§37-92-102(3), C.R.S.). Coordinated operation of both federal and non-federal reservoirs will probably constitute the second element in this sequence. At the request of the states and water users, the FWS has agreed to delay "exploring the flexibility" of individual water projects (i.e., requiring "bypass flows") when they are reviewed in ESA regulatory proceedings. In exchange, the states and water users agreed to undertake a coordinated reservoir operation study to evaluate reservoir operation strategies and possibly to redistribute flows.

However, FWS biologists now advise that we should "mimic" the natural hydrograph (i.e., peak flows in the spring) which could very well be incompatible with continued human uses of Colorado River water supplies and holds the potential for violating state water law as well as state entitlement under interstate compacts.

Another component of the recovery efforts is the management of non-native sport fish. There are continuing disagreements over the potential for non-native fishes to interfere with the recovery of the endangered natives. The RIPRAP is also investigating the restoration of flooded bottomlands and the alleviation of migratory barriers, all of which are consuming vast quantities of time, money and water user's staff participation. While we have entertained great hopes for the self-imposed RIPRAP to assure that Section 7 consultations for water projects will not impede the continued management and utilization of Colorado's full compact allocation of Colorado River water resources, it cannot be said to be assured under the existing ESA.

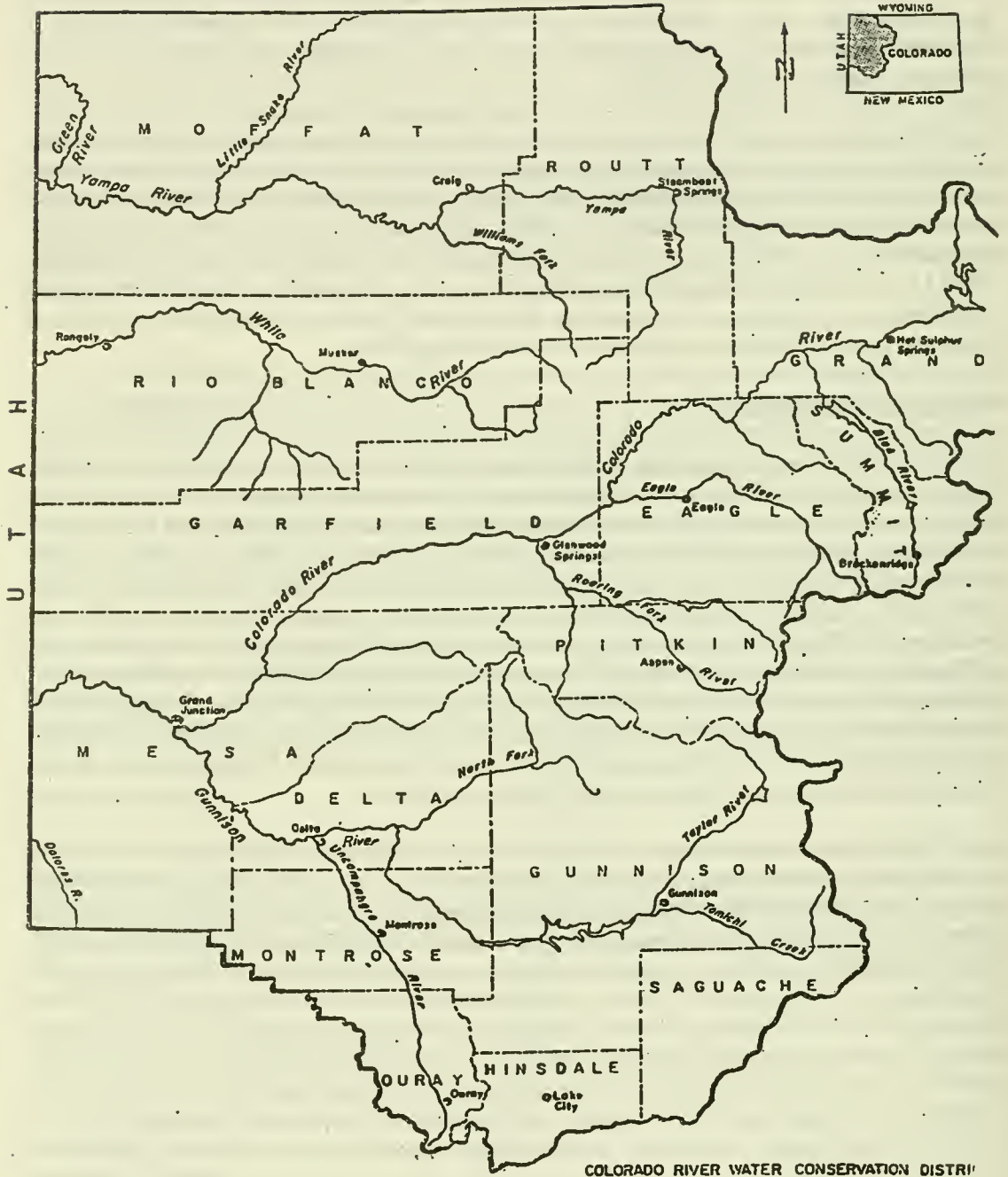
COSTS AND BENEFITS

The Recovery Program has been on-going since 1988 and is currently scheduled for completion in the year 2003. Since 1988 the financial costs associated with the recovery effort has totaled some \$30 million (see attached chart). This does not include associated research and coordination activities by the River District itself costing at least \$750,000 over the last ten years. The River District continues to invest money in the program and as recently as last month determined to invest an additional \$27,000 for further collection and analysis of scientific data related to the effects of flow on habitat and spawning sites. But now the current estimates of progress and the status of the endangered fishes indicate that the life of the Recovery Program may well require extension to achieve the ultimate objective of de-listing of the four fishes. The River District believes there should be an **absolute limit of time and expense** imposed through the Recovery Program - either the fishes are recovered within time and financial limits set or the species declared either recovered or extinct and the Program terminated.

Quite apart from the efforts put in and the costs sustained over time by the non-federal participants in RIPRAP, some estimates for completing the activities associated with the RIPRAP program range as high as \$70 million. It is believed there is real justification for the view that since the fishes are federally listed as "endangered," the United States should pay the cost of recovery, not the states and not the water users.

WYOMING

INDEX MAP

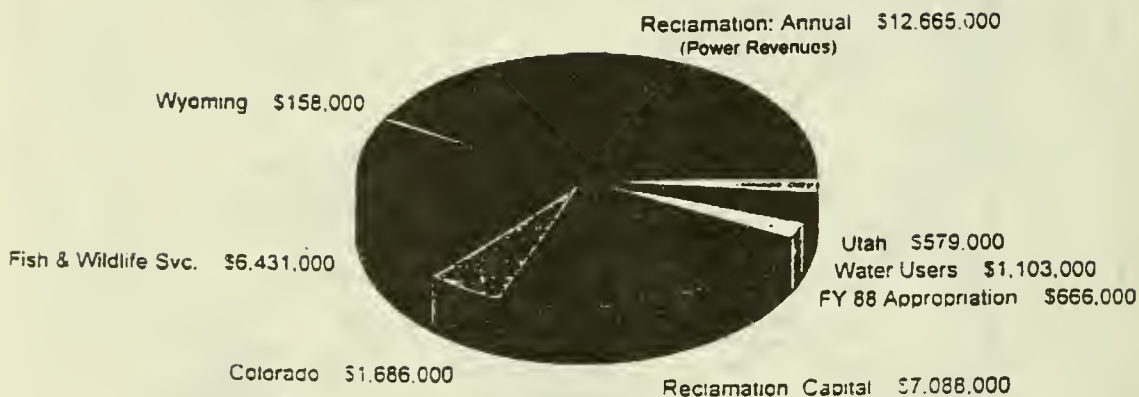


COLORADO RIVER WATER CONSERVATION DISTRICT

Recovery Program expenditures to date

FY 1989-1995

TOTAL = \$30,376,000



PROPOSED AMENDMENTS FOR ESA REAUTHORIZATION**1. PROTECTION OF EXISTING YIELD OF WATER PROJECTS, STATE WATER LAW, INTERSTATE COMPACTS AND EQUITABLE APPORTIONMENT DECREES**

(a) Subject to the requirements of subsection (b) below, if the Secretary determines that water is required for a goal, purpose, or objective of this Act:

- (1) It shall be acquired pursuant to the substantive and procedural requirements of the state in which the species is located; and
- (2) Where specified flow conditions or lake levels are found by the Secretary to be the minimum quantity of water necessary to avoid jeopardizing the continued existence of a listed species after implementation by the Secretary of all reasonable and prudent non-water alternatives, the Secretary may request that an applicant for a federal permit or approval implement such measures that would avoid jeopardy to such listed species or its critical habitat without causing (A) a reduction in the quantity of water which would otherwise be legally available for use by the applicant, or (B) a material increase in the cost of the water legally available to the applicant.

(b) The exercise of authority pursuant to or in furtherance of this Act shall not be construed to (1) create, either expressly or by implication, a federal reserved water right, (2) supersede, abrogate, injure, or otherwise impair rights to the use of quantities of water which have been established in adjudications which are in conformance with 43 USC 666, (3) supersede, modify, or amend water allocations established pursuant to interstate compacts of Supreme Court decrees, (4) require the transfer of water or rights thereto, or create a limitation on the exercise of rights to water or rights thereto, or create a limitation on the exercise of rights to water, or (5) constitute a cause for non-delivery of water pursuant to contract.

(c) **FEDERAL RECLAMATION PROJECTS** - The Secretary, in carrying out any provisions of this act, shall continue the use of water and power projects constructed or to be constructed in accordance with the Reclamation Act of 1902, as amended, in accordance with their project authorizations. No provision of this Act shall be interpreted so as to adversely impact rights under water storage and use contracts or allocations of available supplies to fulfilling those contracts.

2. TO CLARIFY THAT THE ESA DOES NOT DISPLACE ALL OTHER AGENCY RESPONSIBILITIES NOR PROVIDE THAT ACT WITH A PRIORITY

Amend Section 2(b) 16 USC § 1531 (b) to read:

The purposes of this chapter are to provide a means whereby the habitat upon which endangered species and threatened species depend may be conserved to the extent practicable, to provide a program for the conservation of such endangered species and threatened species insofar as is practicable, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

Amend Section 2(c) 16 USC § 1531 (c) so as to read:

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species insofar as is practicable and consistent with the primary purposes of that agency.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species to the extent practicable, in accordance with the procedural and substantive requirements of State law and so as not to impair allocations of water pursuant to interstate compacts, U.S. Supreme Court decrees, and contracts of any agency of the United States.

3. TO PROVIDE FOR CERTAINTY WITH REGARD TO RECOVERY PLAN OR CONSERVATION AGREEMENTS WHICH ESTABLISH OBLIGATIONS FOR NON-FEDERAL ENTITIES – (A deal is a deal concept)

If the exercise of authority for the purposes of this Act requires the use, non-use, or transfer of assets owned or controlled by, non-federal persons or entities as a condition of approval for an activity or project, no further requirements may be imposed for the purposes of this Act on such non-federal persons or entities relating to the continuation of the activity or projects so long as such person or entity substantially complies with the requirements of the original federal approval.

4. **CLARIFIES THAT THE SCOPE OF SECTION 7 CONSULTATION FOR FEDERAL ACTIONS WHICH MAY BE REQUIRED FOR THE CONTINUED USE OF EXISTING WATER PROJECTS IS LIMITED TO NEW OR EXPANDED IMPACTS OF THE PROJECTS.**

Consultation under Section 7 regarding agency actions for existing water projects or facilities, including, without limitation, (1) actions relating to routine operation, maintenance, rehabilitation, and repair of such projects or facilities, and (2) the construction or modification of facilities as required by federal or state laws for regulating the safety of dams or other water facilities, shall be limited to the additional impacts which are the direct result of the proposed new actions, and shall not extend to the impacts which may result from the continuation of the previously approved activities.

5. **TO PROVIDE FOR PEER REVIEW OF ANY SECRETARIAL DETERMINATION THAT CERTAIN FLOWS OF WATER ARE REQUIRED UNDER A RECOVERY PLAN, AND CERTAINTY WITH RESPECT TO FLOWS FINALLY AGREED TO.**

Amend Section 4(f) 16 USC § 1533(f) by adding a new paragraph (6) as follows:

(6) If the Secretary proposes under a recovery plan with respect to any species, aquatic or otherwise, that certain flows of water are to be required that determination shall, upon the request of any participant in the plan filed within 30 days after the date of publication of general notice, detailing a basis for questioning the sufficiency or accuracy of the available data relevant to the determination and of the need for the flow or flows in the quantity or volume said to be required, be subject to peer review whereunder the governor of the state in which the flow or flows are to occur shall request the views of at least three independent persons who through publication of peer-reviewed scientific literature or other recognized means have demonstrated relevant scientific expertise, which views shall be considered by the Secretary in reviewing the flow or flows as proposed. Upon final agreement among all plan participants to any such flow or flows and their incorporation in the agreed upon recovery plan no enlargement or augmentation thereof shall be required.

6. **TO PROVIDE FOR PEER REVIEW OF DETERMINATIONS AS ENDANGERED OR THREATENED AND OF DESIGNATIONS OF CRITICAL HABITAT, UPON REQUEST:**

Amend Section 4 (16 USC § 1533) by adding a new subsection (1) as follows:

(1) The determination that a species is an endangered species or a threatened species under subsection (a)(1) of section 4 or the designation of critical habitat or revision thereof under subsection (a)(3) shall be subject to peer review upon submission of a request therefor to the Secretary not later than 90 days after the date of publication of the notice of proposed rulemaking for the action. The Secretary shall thereupon transmit the request to the

Governor or Governors of the state or states affected by the proposed action who shall appoint three qualified individuals which appropriate knowledge, training and experience, not employed by or under contract to him or them, who shall review all scientific and commercial data and analyses thereof performed for the purposes of the action. Upon completion of that review the Secretary shall consider and weigh carefully its results, provide a copy thereof to the requestor, and publish with any final rule implementing the action a summary of the results of the peer review and the response of the Secretary thereto.

7. TO PROVIDE FOR REVIEW OF DETERMINATIONS FOR LISTING (OF SPECIES) AND OF DESIGNATIONS (OF CRITICAL HABITAT) UNDER ESA SECTION 4, 16 USC §1533.

Add a new paragraph (4) to subsection §1533(a) as follows:

- (4) The provisions of Section 1553 of Title 5 (relating to rulemaking procedures) shall apply in the making of determinations and designations under this section by the Secretary, who as the proponent of the rule shall have the burden of proof that the action proposed results from data considered clear and convincing.

Delete subparagraph (3)(c)(ii) of Section 4(b) which provides "(ii) any negative findings described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review" and add a new paragraph (5) to subsection 1533 (a) as follows:

- (5) Final determinations and designations made by the Secretary pursuant to this section shall be subject to judicial review.

RECEIVED AUG 22 1995

August 17, 1995

Senator Craig Thomas
302 Hart Senate Office Building
Washington, D.C. 20510-5003

Dear Senator Thomas,

As I was unable to attend the ESA hearing in Casper on August 16, 1995, I am herein providing a few personal thoughts on the same for your consideration.

The opportunity for reauthorization of the Endangered Species Act could not come at a better time. As with much legislation, it often takes a certain amount of time to see what sorts of gyrations the interpreters of legislative language can do with the terminology and buzzwords found in the original Act.

In this case, of course, the most broad interpretations of the language of the ESA have created mechanisms to allow property rights invasions, unfettered listings, closed recovery plan development processes, and Fish and Wildlife Service arrogance and heavy-handedness to name a few. These are the undesirable by-products of a theory that originally had some merit and that now have to be corrected in order to get back to a concept that is acceptable to all the people instead of a truncheon for a zealous segment who disdain private property and a diverse economy.

As I am sure you have just about heard it all, I would only urge your consideration of three main points:

- 1) The Act begs reform in the definition of the critical term "taking," found in Section 9. It is the broadness of that terminology that allows all the invasions of Constitutional private property rights and creates a fear and loathing of government among people trying to make a living. If that language cannot be made more reasonable, then compensation to property owners for diminution in property value caused by the "takings" language should be made a part of the definition.

Senator Craig Thomas
Page 2
August 17, 1995

- 2) The power and authority vested in the US Fish and Wildlife Service through the Act needs to be diminished and diluted. Here is an agency of the federal government which believes it finds within the language of the "consultation" and "listing" sections of the ESA, permission to rule the future of private land ownership in all parts of the U. S.

It promulgates regulations which make up even more new definitions, such as the word "harm" (in 50 CFR, section 17.3) which expand the original hammers in the Act even more by administrative rulemaking. Unfortunately, the public image of the USFWS, generated by itself, is that it is an agency of experts in the biological field who have all the answers and are looked to for the running of all matters concerning plants and animals of the United States. They aren't. Like all agencies, they are a conglomeration of single-minded, single-interest graduates of college classes, in this case schooled in fish and wildlife assessment techniques, but no more able than you and I to anticipate what a toad or ferret or wolf is going to think or do under certain circumstances (see enclosed news copies). Unlike us, though, that doesn't stop them from exerting their power and authority on private landowners, giving their private environmental support groups a banner to rally behind. Although unrelated to endangered species but as a prime example, this agency arrogance and manipulation has been one of, if not the biggest source of failure of the parties to the Wind River water rights lawsuit to reach settlement.

In reforming the Endangered Species Act, then, public peer review or judicial review of FWS decisions to list a candidate species should be mandated in order to replace FWS's ability to manipulate the list. Additionally, public input should be mandated on recovery plans, and public influence in the consultation process should be accomplished by having informed public sitting with FWS as consultants. As the impacts of the ESA are not all biological, it is prejudicial to allow a biological agency to make all the decisions and drive all facets of the process.

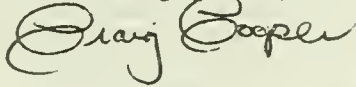
- 3) My third point is just to observe that the environmental group and liberal media tactic to ESA reform is their usual over-representation of the situation to alarm the uninformed public. They refuse to portray that there is middle ground, and instead insist to the public that if the Act is modified, it is gutted; that any reform is a complete dismantling of the nation's environmental laws; and that any diminution in USFWS or EPA power is an open door for polluters to trash the nation. That erroneous alarmism needs to be exposed and

Senator Craig Thomas
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August 17, 1995

demphasized as extremist obstruction to a good faith effort to create law that serves the nation's needs while protecting Constitutional rights.

I appreciate your consideration of my thoughts.

Sincerely yours,

A handwritten signature in cursive script that reads "Craig Cooper".

Craig Cooper
Route 1 Box 20
Riverton, Wyoming 82501

Enclosures

ervation groups are launching a television campaign alerting viewers how millions of salmon and steelhead are destroyed in the hydroelectric dam complex on their journey to the ocean.

In the ad, young migrating salmon are shown inside a giant blender likened to the turbines of a dam. A finger moves toward the blender switch, the sound of the machine is heard and the narrator says, "Imagine the rest."

"People should know that their salmon and steelhead are being killed by the millions without their permission," said Charles Ray, spokesman for Idaho Rivers United. "When people understand what is happening, we don't be-

The ad campaign will cost about \$15,000, paid with contributions, Ray said. It started on Monday and will run for about two weeks by nine stations from Spokane to Idaho Falls, Rivers United said.

Later this month, the National Marine Fisheries Service is expected to decide how the eight publicly-owned dams on the Snake and Columbia rivers will be operated during this year's migration.

Idaho's Snake River sockeye and chinook species are on the endangered species list. Rivers United considers 1995 as the best chance of restoring the runs because of a larger supply of eggs.

As many as eight million young

Last year, up to 84 percent were killed by the dams, Rivers United said.

Ray said he hopes the Fisheries Service will follow the lead of the Northwest Power Planning Council, which recently voted for a more aggressive campaign to save the fish.

The Save Our Wild Salmon Coalition representing conservation, sportsmen and fishing interests will release a blueprint for salmon restoration on Jan. 11.

"No fish were hurt in the production of this message, but millions will die this year at the dams if the federal government doesn't act now," Ray said.

WYOMING

Toad concerns delay road project

LARAMIE (AP) — Work on a road in Albany County has been delayed by a U.S. Fish and Wildlife Service review of the project to gauge its impact on the endangered Wyoming toad.

Brad Clingman, supervisor of the Albany County Road and Bridge Department, said a review of the project plans by the Fish and Wildlife Service could halt the \$1.7 million project entirely.

The county plans to resurface and widen a 10-mile stretch of Pahlow Lane and Harmony Lane southwest of Laramie.

However, the road runs past the habitat of the Wyoming toad, known to exist only near Pahlow Lane and at one other location in Albany County.

As a result, the Fish and Wildlife Service is reviewing the project plans, Clingman said.

He added the agency has had the plans for 18 months and has not yet approved them.

Clingman said the agency may eventually require the county to build small "toad tunnels" beneath the roads to allow the toads to cross from one side to the other without being threatened by traffic.

But the tunnels could increase the cost of the project by \$1 million, Clingman said, and the extra cost could bring the project to a halt.

The Fish and Wildlife Service could also require the county to do work on the road in the fall and winter, when the toads are hibernating, Clingman said. But he added some of the work cannot be done at that time.

The project is being financed entirely with federal money, so it must comply with all federal rules. Clingman said.

COLORADO

7,000 acres between Lafayette, Erie declared preservation zone

LAFAYETTE, Colo. (AP) — After their bickering led to lawsuits and counter lawsuits, Boulder Coun-

ty, Lafayette and Erie officials have signed an agreement to preserve about 7,000 acres of land between Lafayette and Erie.

Erie, a dusty town of 1,500 people, had annexed 2,000 acres of land it wanted to use for future residential and commercial development. Part of the annexation included property that touches Lafayette's northern border and contains lakes that provide Erie's main water supply.

Boulder County and Lafayette sued over several annexations, and Erie also sued Lafayette over its annexation of a U.S. 287 right-of-way.

The disputing parties agreed to drop their suits after signing the pact.

The "rural preservation zone," which has several small lakes and wetlands, includes about 200 acres on the west side of U.S. 287 and a series of agricultural parcels on the highway's east side.

Avian cholera claims thousands of ducks, grebes

SALT LAKE CITY (AP) — Some 10,000 ducks and grebes have died recently in an outbreak of avian cholera at Great Salt Lake.

"We've got dead birds everywhere," said Clint Baty, harbor master at Great Salt Lake State Park. Bodies of hundreds of shoveler ducks and eared grebes wash up daily along the lake's south shore near the marina and Saltair Resort.

It is common to have large numbers of birds die at the lake during the winter, but the cause usually is botulism. This is the first time that avian cholera has been confirmed on the lake, said Linda Glaser, a wildlife-disease specialist at the National Wildlife Health Center, Madison, Wis.

Avian cholera is not related to the cholera that affects humans and there are no documented cases of avian cholera being spread to people.

The deaths this winter alone would have no significant impact on populations of these species, "but if this means we're in for cholera for the next 10 years, then it could be a big deal," said Tom Aldrich, waterfowl-program coordinator for the Utah Division of Wildlife Resources.

CST 1/5/95

ikes and on.



MIKE MCCLURE/STAR-TRIBUNE CORRESPONDENT
be used in flood-fighting efforts on the

Ranchers block Crow boundary expansion

SHERIDAN (AP) — Eight landowners in southern Montana are refusing to allow a federal agency access survey land affected by a new federal law expanding the boundary of the Crow Indian Reservation, agency officials said.

The Crow Boundary Settlement Act of 1994 extends the eastern boundary of the reservation by about 1 mile, according to John Kwiatkowski, a Bureau of Land Management spokesman in Billings, Mont.

Eight of 15 ranchers affected by the new law have refused BLM agents access to their land.

"They are concerned about future taxation, the ability to borrow money, and are concerned about a possible decrease in land value, Kwiatkowski said. "We haven't completed an appraisal, and there wasn't any substantial differences of land value within the reser-

The two boys left the Wyoming Honor Conservation Camp during an exercise program at 3:10 p.m. Sunday, officials reported.

Casper Star Tribune June 15, 1975

14 black-footed ferrets killed in release debacle

DENVER — The U.S. Fish and Wildlife Service's decision to release 14 tame black-footed ferrets in Badlands National Park in South Dakota against the advice of two researchers has ended in disaster for the animals.

The agency says all 14 of the endangered predators that were released last week were killed within days by other predators.

Carolyn Kinsey, a veterinary technician, and Andy Abate, a biological technician with the National Biological Service, had fought to keep the ferrets from being released in the wild.

The ferrets were older animals who had been raised in captivity from birth and Kinsey and Abate argued they were too tame to survive in the wild.

"They did reasonably well killing prairie dogs," Pete Gober of the U.S. Fish and Wildlife Service said. "But it was raining for the first few days and when the sun came out last weekend, so did the coyotes. We recovered 12 ferret carcasses, found one collar without its ferret, and are getting a mortality signal from another that's way down a prairie dog hole."

When too old for the breeding program, the ferrets were trained so they could be released in the wild. Kinsey and Abate said they were too tame and wouldn't survive.

Eventually Kinsey was fired and Abate resigned in protest.

Ferguson named permanent state penitentiary warden

RAWLINS — Jim Ferguson, who has served as interim warden of the Wyoming State Penitentiary since the June 10 retirement of Duane Shillinger, has been named permanent warden.

State Corrections Department Director Judy Uphoff made the announcement Monday.

Shillinger had served as warden for 12 years. Uphoff said she believed Ferguson would continue Shillinger's strong record of leadership at the prison.

"I think Jim will do an outstanding job," she said. "He has a strong background from the military and has worked with Duane for the past 12 years, so he understands Wyoming. He has a good correctional background and will continue to move the pen in the direction we need to go."

Ferguson has been with the department for 16 years, and has served as deputy warden since 1980.

Pony Express reride headed towards Wyo

JULESBURG, Colo. — Lon Hollingsworth and his teen-age sons, Zane and Cody, took part in a little bit of history Tuesday night as they rode the stretch of the Pony Express route that dipped into the northeast corner of Colorado.

The Hollingsworths, old hands at Pony Express re-enactments, met a rider at the Nebraska border and then journeyed from Julesburg to the Nebraska-Colorado border for the 135th anniversary Pony Express Reride.

The express relayed mail between St. Joseph, Mo., and Sacramento, Calif., beginning in 1860. Riders took mail about 2,000 miles in eight days, with stations about every 10 miles to 15 miles apart.

The business venture failed within a few years because of the invention of the telegraph.

Riders were expected to arrive in Wyoming Wednesday.

The Pony Express route crossed Wyoming and ran through Utah and Nevada, ending at Sacramento.

As many as 550 horses and riders will participate in this year's reride, said Wendell Overfield of Gillette, president of

Casey with ribbon
January 10, 1995

RIVERTON BRANCH LIBRARY

'Attack of the snowmobilers'

Bighorn mountain area sees surge of snow machine use.....B4

Wyomi

Wolf capture moves slow

Dart kills one

By DAVID FOSTER
Associated Press writer

HINTON, Alberta — Wildlife biologists had by Monday caught nine of the 30 Canadian wolves bound for Wyoming and Idaho.

The day's catch was an improvement over Sunday, when one of two wolves darted was killed accidentally. The 3-inch dart pierced its flesh and punctured its lung instead of merely sticking into the skin.

Two wolves — an adult female and a young male — were darted Monday by marksmen in helicopters, bringing the total caught since last week to nine.

"They're eating, and they look in good condition," said Sharon Rose, spokeswoman for the U.S. Fish and Wildlife Service, which is running the \$6.7 million program to restore gray wolves to Yellowstone National Park and central Idaho.

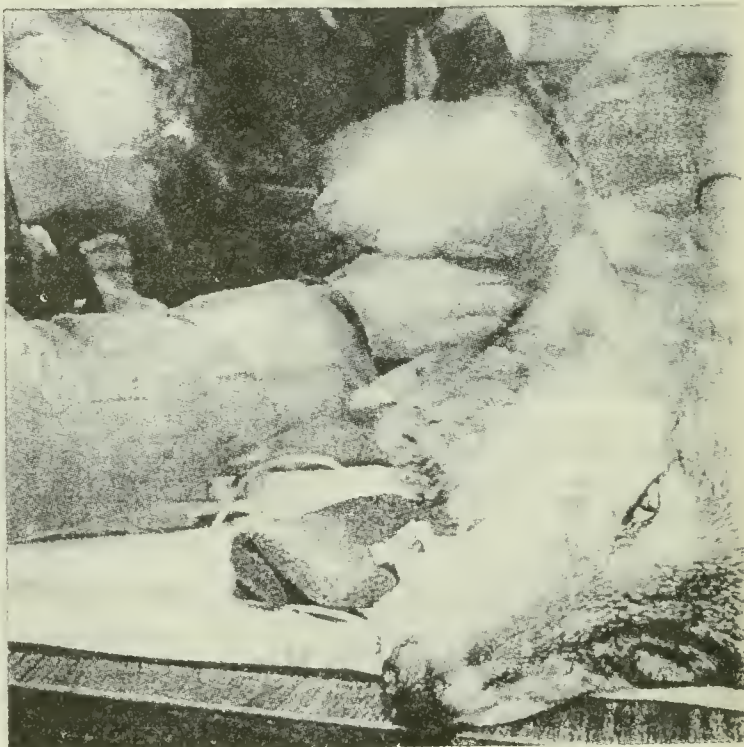
Biologists want to snare or dart 30 wolves in Alberta this winter, 15 each for release in Yellowstone and Idaho. They won't wait until all 30 are caught to start shipping wolves south, but they haven't yet decided when the first shipment will occur, or whether it will go to Yellowstone or Idaho.

The earliest release date possible is Wednesday, officials said.

The wolves can remain comfortably in confinement for more than two weeks, Rose said. They're being held in 6-by-12 foot metal cages at a provincial park near this town in western Alberta.

Most of the wolves' appetites, weak at first, had improved enough by Monday that biologists were preparing a second road-killed elk for their dining pleasure.

Rangers in Yellowstone meanwhile have been stockpiling roadkill for the four to six weeks the Canadian wolves will spend in one-acre pens when they are returned to the park.



A young grey wolf lies anesthetized on an examining table in Hinton as veterinarians from Canada and the U.S. look him over.

Farm Bureau challenge 'e Flitner: Other rancher groups shy away'

From staff and wire reports

gained measured support from a variety of entities on both sides and Flitner wolf re

CASPER

U. S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
FIELD HEARING - CASPER, WY - AUGUST 16, 1995

Dear Senator Thomas,

Regarding the re-authorization of the Endangered Species Act, I agree that there are some species that need Federal protection, but I believe the present law is greatly overdone and should be "downsized" considerably. Rather than go into a discussion of the merits (or the lack thereof) of the present law, I will present the economic effect on one small sheep operator (myself).

I started in the sheep business in 1989 in a partnership arrangement. I am responsible for the pasturing and care of between 500 and 850 old ewes for one year. At the end of the year, the ewes and lambs are sold and I start over with another flock of old ewes. A summary of my records follows:

	<u>% lambs sold</u>	<u># lambs lost</u>	<u>avg. price/hd</u>	<u>dollars lost</u>	<u>% of revenue</u>
1989	88	55	\$70	\$3,850	13
1993	74	183	\$46	\$8,418	35
1994	75	201	\$48	\$9,648	34

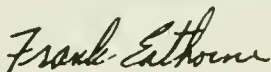
Note: % lambs sold assumes 100% equals one lamb per ewe.

Dollars lost are from all causes - I believe, from observation, a fair number for disease, weather, birth loss and accidents is 20 %, leaving 80 % of the above losses attributable to predators, which in my area include bobcats, coyotes, foxes and eagles.

I intend for these figures from my flock records to show the tremendous loss inflicted on this business from predators. As you see the trend, the predators have the upper hand and are making gains, despite our efforts to control them. No business can long sustain this scale of losses and remain in business. Some say we don't need this or that industry - let them go out of business. While it's true that low grade wool can be imported cheaply now, what happens when we lose the infrastructure and imports have no competition? I believe it is crucial that this country retain its vital basic industries, such as wool, sugar, oil and gas, and others.

Imperative to the survival of the wool business is effective predator control. The Endangered Species Act has already taken some of our most effective tools such as certain chemicals and by the wholesale protection of habitat. The re-authorization of the ESA is the appropriate time to restore some of these tools to allow more effective control of predators. Thank you for your time.

Frank Eathorne



2661 Highway 59

Douglas, WY 82633

TO: Senate Subcommittee on ESA

August 16, 1995
Casper, WY

Senator Craig Thomas, R-WYOMING.

Senator John Chafee, R-R.I.

Senator Dirk Kempthorne, R-IDAHO

Thanks for the opportunity to comment on the ESA. It is my opinion that the implementation of the ESA is totally out of control. Little or no consideration is given to the costs for recovery programs or the impacts that they will have on the citizens of the United States. Humans (like timber workers, farmers, ranchers, hunters, anglers, miners, etc) are rapidly becoming endangered. The danger to many Americans is not in becoming extinct but in losing jobs, losing recreational opportunities, loss of property value, loss of livelihood, having to pay more for essential items such as lumber and power and many more things that are too numerous to mention.

Almost all recovery plans for species of plants, birds, fish and animals are detrimental to other species including humans. One example of this is the use or misuse of water to attempt to try to recover an endangered species. Water is directed from use for irrigation and power generation in order to try to improve the habitat for the species. When water is not available for irrigation, many species of birds, fish and animals suffer because food and habitat are reduced. When land is designated as wilderness, most humans are excluded from using the land because only a few can hike into or use horses to access the area. When areas of timber are left unharvested for many years, the land becomes almost worthless to animals as no food can grow under the dense canopy of trees.

2

Costs of the recovery programs, both direct and indirect, are not considered. Often the money spent by the government is only a fraction of the total costs that fall on the citizens of America.

My recommendation is that total costs and impacts on people should become part of any future ESA recovery plan and that the ESA should be reauthorized to require this. America can not afford the ESA as it presently stands.

Howard L. Ewart
 HOWARD L. EWART
 980 STAFFORD
 CASPER, WY 82609

1642 Gray Blvd.
Newcastle, WY 82701
August, 16, 1995

The Honorable Senator Craig Thomas
and Distinguished Members of EPW Subcommittee
302 Hart Building
Washington, DC 20510

RECEIVED AUG 27 1995

RE: Testimony concerning the Endangered Species Act

Dear Senator Thomas:

I recently moved to Wyoming to begin a career as a forester. In May I graduated from the University of Idaho. My colleagues, professors, and I often discussed the shortcomings of the Endangered Species Act. Across all the disciplines of the College of Forestry, Wildlife, and Range Sciences it was virtually unanimous that the ESA in its present form has outgrown its usefulness.

The Act must be reformed. Recovery plans must have a clear, attainable, quantitative goal. Historic levels are often impractical, inappropriate, or impossible to achieve. Where humans and a species occupy the same space, humans must be taken into account. We cannot destroy human lives now so that future generations may have a species that may be of no value to us in the future either. We need to make decisions regarding which species can be saved, should be saved, and at what point we will consider them saved. Species which are in decline for reasons other than human intervention should receive no treatment. Species have always gone extinct, it is part of nature for a species to go extinct. However, I do not believe that this is our license to eliminate species. I believe we should try to save species if we are responsible for their pending demise, provided we can recover the species without adversely affecting the lives of the people in the area.

We here in the West make our living off the land. This is a hard way to make a living, but it is the life we have chosen. Please don't allow our government to make our lives any harder than they already are.

I am familiar with your record and I wish to thank you for your fair and honest representation and leadership. You work for the Wyoming working class, let's make sure the ESA does, too.

Sincerely,


Archie Gray
Forester

Robert and Arlene Hanson
 P. O. Box 144
 Wapiti, Wyoming 82450

To: The Honorable Craig Thomas

Re: Senate Field Hearing on Endangered Species - Casper, Wyoming
 August 16, 1995

Dear Senator Thomas:

We are grateful to you for holding the ESA hearing in Casper. Please enter my comments for the public record.

As inholders, with eagles, grizzlies and now wolves encroaching on our property, we are extremely concerned over further government meddling with private property rights. We are excellent stewards of the land and this year, with the grasses more plentiful than ever before, we have seen the abundance of wildlife on our land flourish alongside cattle that are using the same habitat.

ESA restrictions in the future may prevent us from logging dead timber, which we view as a fire hazard to not only our land but the Shoshone National Forest. Will we be able to change land use, burn if necessary, divert water for beneficial projects, continue to graze our property and as sportsmen, continue to have access to our favorite hunting places on public and private land? If not, we will sell all we have for building lots and move on.

The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. The ESA is not and has not conformed to the Constitution. In fact, your earlier remarks about nullifying the entire law are valid. Starting over, and implementing legislation bound by Constitutional law, would be the greatest gift Americans could ask for.

Problems, as we know, are many. We'll try to address our concerns as succinctly as possible:-

1) The Fifth Amendment to the Constitution states that "No person ---shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

Private property takings without due process and compensation under the ESA (cases are too numerous to document here) is unconstitutional and void. No one is bound to obey an unconstitutional law, and no courts are bound to enforce it. Syndicated columnist, Alston Chase, has written that the ESA was never intended to restrict use of private property. He further states that "Property is the sole institution that stands between us and a bottomless political abyss."

2) The ESA doesn't allow Federal agencies to measure the value of the species against economic and social impacts to the people affected. (B) It doesn't measure any costs that society is willing to pay to recover a specie. ENVIRONMENTALISTS USE THESE LOOPHOLES TO SHUT DOWN A PARTICULAR RESOURCE ACTIVITY. We need people in the equation. No other law so completely ignores any comparison of costs with benefits.

Economists say the ESA works against people's incentives, not with them. We should compensate those who bear the brunt of saving a species.

more —

Hanson Comments to Senator Craig Thomas
ESA Hearing, Casper, Wyoming
 Page 2 - Cont'd.

3) According to the President's Council on Environmental Quality, there are up to 9,000 plants and animals deserving protection under the ESA. THE GOVERNMENT EVEN WANTS TO SAVE HYBRID ANIMALS. The dusky seaside sparrow is an example (a failed program costing millions), and the red wolf (a cross between a gray wolf and a coyote) is another.

Solution: Use only the biological and numerical definition of endangered species. Only pure species. No federal money should be spent on hybrids. Why is half of all money earmarked for endangered or threatened species being spent on only twelve of them? In 1990, \$55 million went to twelve. In descending order of expenditures: the northern spotted owl, least Bell's vireo, the grizzly, red-cockaded woodpecker, the Florida panther, the desert tortoise, the bald eagle, the ocelot, the jaguarundi, the peregrine falcon, the California least tern and the chinook salmon. The apportionment does not become more equal after the first dozen species - which includes the gray wolf, the southern sea otter, and the Puerto Rican parrot which received the next \$19 million. The remaining quarter of funding - \$28 million, was shared among 570 organisms.

Only species actually threatened with extinction should be listed. The gray wolf is not threatened with extinction, neither the bald eagle or the grizzly. At least 15 of the 16 species that have been delisted, were originally listed in error. "Glamor species" are supported over "creepy-crawlies."

4) Time and expenditure limits must be placed on studies and recovery limits. (After fifty years of intensive management, Whooping Cranes number about 140 birds).

Solution: Independent peer review and field verification of data is required when listing a species. Listings must be based on sound science, not voodoo biology and emotionalism.

The government must recognize that extinction is a natural evolutionary process. To pretend that we are acting to save everything is intellectually dishonest. Nature itself has destroyed 90 percent of life forms that ever populated the planet.

5) The people MUST have a right to protect their livelihoods and control endangered species threatening their livelihoods (grizzly/wolf predation).

6) Inspector General's Audit Report titled "The Endangered Species Program"- U. S. Fish and Wildlife Service (Report No. 90-98 - 1990) states that the U.S.F&WS has not effectively implemented a domestic endangered species program, in spite of the \$8.4 million spent per year on recovery plans.

Solution: The entire program needs to be overhauled or scratched. Congress passed the ESA by a large majority in December, 1993 and Nixon quickly signed it. Neither seems to have had a clue about what they were setting in motion. Even the law's ardent supporters are alarmed by its inflexibility.

more ---

Hanson Comments to Senator Craig Thomas
-ESA Hearing, Casper, Wyoming
Page 3 - Cont'd.

7) More Federal monies should be spent for truly endangered species than for threatened ones. As of 1992, average federal and state disbursements were lower for endangered species than for threatened species. The northern spotted owl - \$9.7 million and the grizzly bear - \$5.9 million.

8) State agencies should have primary authority for management and protection of fish and wildlife and their habitats.

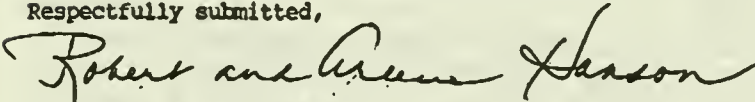
Solution: No unfunded mandates.

9) Regulatory duplication at the federal, state and local level is problematic.

10) Unclear and inconsistent interpretation and implementation of the ESA is a serious complication which needs to be resolved.

Perry Pendley, President and Chief Legal Officer of the Mountain States Legal Foundation, states that the government's implementation of the ESA is little more than a land grab. We completely agree! We can only hope that our rights are not lost in the welter of compromises that are sure to occur.

Respectfully submitted,



Robert and Arlene Hanson

P.O. Box 144
Wapiti, Wyoming 82450

RECEIVED AUG 22 1995

Aug. 18, 1995

U.S. Senator Craig Thomas
302 Hart Senate Office Bldg.
Washington, D.C. 20510-5003

Dear Senator Thomas:

We here in Wyoming certainly appreciate your bringing the ESA hearing to Casper. I'm sure that took a lot of effort and planning. Following are my comments on the ESA.

In the first place, I feel that any thing that needs to be done can be done better by individual states than the Federal Government (no offense to you).

If the ESA is to be kept at the federal level, then it should be scrapped entirely and a new law written which contains some sensible guidelines and protects private property. Personally, I believe that property rights are much more important to our country than any species, but then I'm a "radical". As of now, the law encourages people to quietly get rid of anything which may be listed endangered, or any habitat that might support same. Many of us have been (until ESA) protecting species that need a little help. For instance, we don't allow sage grouse hunting when numbers are down, we caution hunters not to disturb hawks, eagles, chipmunks. We limit the number of deer and antelope taken on our ranch, and when, like now, the rabbits are scarce, there is no hunting of them.

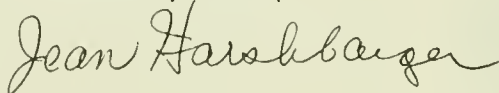
Of the 955 species listed as endangered, the ESA proponents point with pride to the "saving" of five--Peregrine Falcons, Eagles, Ferrets, Wolves and Grizzly Bears. The facts are that the recovery of Falcons was accomplished almost entirely by falconers and the Falcon Foundation. Eagles recovered because of the ban on DDT. Wolves were not and never have been "endangered". Grizzly Bears were perhaps the same as wolves. Only the Black Footed Ferret was truly endangered and the Feds are pulling funding out of that program.

As was pointed out at your hearing, species become extinct all the time--we can't save them all.

The two genuine success stories I can think of are Bison and Pronghorns, which were on the brink of dying out. These were saved by private effort, which is much more effective than federal mandates.

We certainly appreciate your efforts on behalf of the United States and particularly Wyoming. Keep up the good work and don't get discouraged--you have a lot of support here.

Sincerely,
Jean Harshbarger
1162 Lynch Road
Newcastle, WY 82701



STATEMENT OF KAREN HENRY, ROBERTSON, WYOMING

I am Karen Henry, of Robertson, Wyoming, which is in the extreme Southwest corner of Wyoming. I am the President of the Wyoming Farm Bureau Federation and I can assure you our members are concerned about what the future holds for them as relates to their property rights under the current Endangered Species Act. The nation depends on the productivity of American farms and ranches and it is absurd that hard-working farmers and ranchers are placed lower on the legal hierarchy than some rodents. We have seen the impacts of the Bald Eagle on pesticide use, which has led to the loss of many sheep, lambs, calves and cows as a result of increased coyote predation. The Wyoming Toad has created problems for agricultural and nonagricultural members in Albany County. Grizzly bears are creating problems for cattle producers in Northwest Wyoming, and we know the wolves will be causing us additional problems before long. The citizens who own property in areas where endangered species or threatened species exist, or might be transplanted, surely have a concern which is apparently not shared by those citizens who do not own property or do not live in one of the affected areas. Congress owes it to the property owners to ensure that the Constitution of this nation is supreme to laws enacted by the body. The current Endangered Species Act prohibits us from protecting our property, regardless of the damages and losses we might be suffering. The Act needs to be amended to ensure that our rights are protected under the Constitution which each member of Congress has sworn to uphold. We ask that you fulfill your pledge by amending this Act as soon as possible.

Most Americans take a common sense view of efforts to protect wildlife and endangered species. Consumer research shows that approximately 75 percent of Americans are willing to give money to protect birds and mammals, but only 20 percent will contribute to efforts to protect snails and insects. Eighty-two percent said the government should give priority to protecting endangered mammals and birds rather than obscure species like insects and snails. It would be interesting knowing if the citizens would be willing to compensate landowners for the habitat they are providing for endangered or threatened species.

Comments on the Thomas Hearing
on Reauthorization of the Endangered Species Act
Casper, Wyoming
August 16, 1995

Distinguished Congressmen and women and Senators,

The Endangered Species Act needs strengthening. Despite some success, many species of wildlife are declining at alarming rates. The list includes a number of types of Pacific Salmon, wolverine, the Northern Goshawk, the bull trout, caribou in Idaho, native cutthroat trout, grizzly bears in the Cabinet/Yaak and other forest dependent wildlife. Wildlands, unroaded, unmanaged forest lands are becoming very rare. They only exist in any meaningful way, in the West and are under threat of irreversible development as never before. The Salvage Rider to the Recision Bill places logging of forests containing "dead and dying trees above the law. So called "salvage logging" cannot be subjected to any test of reason through administrative appeal or through the judicial system. It guarantees fiscally irresponsible behavior by providing federal dollars for the most expensive and damaging activity, road construction. Americans will pay for the destruction of the few remaining productive wildlands to ensure quick corporate profit.

The forth coming revision of the National Forest Management Act will eliminate the need to consider the fate of wildlife populations and species survival. It insulate the Forest Service from oversight ("trust us, we're the government experts").

Proposed reforms of grazing regulations removes accountability for contract performance. Over grazing and habitat destruction may become the right of the lessee.

My experience as a Forest Service biologist coordinating timber and wildlife programs and as a biologist for American Wildlands, a regional science based conservation organization has given me special insight into abuses of the Endangered Species Act.

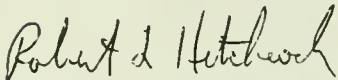
For example: The Murphy Timber Sale on the Kootenai National Forest in Montana proposes to increase the density of roads in

primary core grizzly habitat. It is said that logging will improve the food for the bears. All credible current research emphasizes that roads equal dead bears, but this finding is strategically ignored.

On the Clearwater National Forest in Idaho approval of a NO AFFECT finding on grizzly bears could not be obtained from the Boise office of the U.S. Fish and Wildlife Service until certain personnel were replaced. Under the Endangered Species Act and the Bitterroot Recovery Plan the Service attempted to stop the Goats Roost Road and several timber sales in order to protect the last Salmon and steelhead runs and a Federal Salmon hatchery in the Lochsa river drainage.

From these experiences and knowledge of many others I am convinced that the Endangered Species Act should be strengthened and enforced effectively. The push is on to cut the remaining old growth forests of the Northern Rockies, at great expense and permanent loss of the few remaining unroaded wildlands. It is now basically illegal to oppose timber sales where dead and dying trees stand. This is virtually every where in the Western forests. All trees die sooner or later.

Please retain the Endangered Species Act, remove the moratorium on listing and increase the effectiveness of enforcement before we, as Americans, loose a most important part of our heritage to the quest for unlimited profit.



Robert L. Hitchcock
PO Box 1595
Dubois, Wyoming 82513

RECEIVED AUG 21 1995

315 East Warwick
Newcastle, Wyoming 82701
August 12, 1995

The Honorable Senator Craig Thomas
Member of EPW Subcommittee
302 Hart Building
Washington, DC 20510

RE: Testimony Concerning the Endangered Species Act

Dear Senator Thomas.

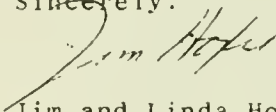
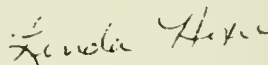
I read with considerable interest the Casper Star Tribunes article entitled, "Thomas Touts Fairness of ESA Hearing List," dated August 11, 1995. It is obvious from the article that the subcommittee meeting, to be held August 16th in Casper, is to be quite heated. I feel that it should be a very heated discussion as this is a very emotional issue: many lives have been hurt.

My wife and I have witnessed the havoc and destruction, first hand, that the ESA has brought to families in the west. We have attended conferences on the west coast sponsored by the Pacific Logging Conference and the Society of American Foresters. At these conferences we have seen the negative effects that the ESA can have on families and communities.

I believe it is appropriate to protect endangered species. Hand in hand with protecting species should be considerations for human beings, families, and communities. It is an unbelievably humbling experience to talk to a fourth generation sawmiller/logger who has been forced to shut down his family operation. It is unbelievably humbling to see real tears stream down a strong loggers face as he tells you about his family and the families in his community who are out of work and moving because of the effects of the ESA. It is not right, nor moral, to leave people out of the ESA equation.

Senator Thomas, I appreciate your work, your leadership, and your efforts in representing Wyoming people, families, and communities. The Endangered Species Act needs to do the same.

Sincerely,

Jim and Linda Hoxie

G. WILLIAM HURLEY

CERTIFIED PETROLEUM GEOLOGIST
307 / 234-45071738 SOUTH POPLAR STREET
CASPER, WYOMING 82601

August 16, 1995

Representative Barbara Cubin
Senator Craig Thomas
Senator John Chafee
Senator Dirk Kempthorne

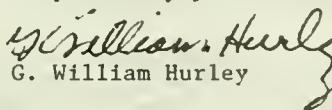
RE: Endangered Species Act

Dear Representative and Senators:

In your review of the Endangered Species Act, if the act does not now so provide, please consider including the following in your revision.

1. That the burden of proof be the responsibility of the "Accuser" as required under English Common Law.
2. That the "Accused" be entitled to damages if the "Accuser" fails to prove the accusations made.
3. That the "Accuser" be subject to treble damages in the cases of frivolous lawsuits designed to stonewall, frustrate and financially devastate the "Accused".
4. That the "Accuser" be liable to the "Accused" for providing false or erroneous information that stops a project and which, at a later date, proves to be unfounded, e.g. the Tennessee dam which was abandoned after an expenditure of \$200,000,000 because of the "endangered" Snail Darter. Subsequently, it was found that the Snail Darter inhabits most streams on the west slope of the Appalachians. The "Accusers" in this case, in my opinion, should be liable to the U.S. Treasury for the \$200,000,000.

Respectfully yours,


G. William Hurley

GWHmkm



PACIFIC LEGAL
FOUNDATION

At Issue

2151 River Plaza Drive, Suite 305 • Sacramento, California • 95833 • (916) 641-8888

Bureaucrats—You Can't Trust Them; You Can't Control Them

"Bureaucracy is a giant mechanism operated by pygmies."

HONORE DE BALZAC

Each day in America, unelected federal bureaucrats will find some way of intruding into your life. Whether you are a homeowner, business owner, or homemaker, *there is no escape from the reaches and ominous power of the ever-growing federal bureaucracy.* The outrages abound:

- In Morrisville, Pennsylvania, a self-employed truck mechanic was fined \$202,000 and sentenced to 3 years in jail for hauling away 7,000 old tires and rusting car parts and placing clean fill on his property without a federal permit.
- In Boise, Idaho, a plumbing company was fined nearly \$8,000 by the federal Occupational Safety and Health Administration because employees failed to follow "proper" safety measures before successfully rescuing a suffocating construction worker from a collapsed trench. The fine was eventually rescinded due to public outcry.
- In Santa Rosa County, Florida, a landowner and his son were thrown in federal prison for 19 months for cleaning out a drainage ditch and putting clean sand on their property.
- In Southern California, a dry cleaner was fined \$250 for failing to post a listing of employee injuries that had occurred during the last 12 months. The problem is, the dry cleaner had no employee injuries to report. In effect, the business was fined for failing to post a blank piece of paper.
- Under recent court decisions, you have no basis for complaining if the federal government approves the placement of a drug rehabilitation center, homeless shelter, or halfway house for felons in your tranquil neighborhood. And if you do, federal bureaucrats can repress your dissent by imposing fines and penalties against you for allegedly "discriminating against the handicapped."

There seems no limit to the power and depth of encroachment by the federal bureaucracy. Take the *Endangered Species Act* for instance. What started out as a good idea in 1973 has evolved into a powerful means by which bureaucrats can regulate private land use to the detriment of law-abiding taxpayers. And on June 29, the highest Court in the country ruled there is nothing it can do to reign in the power of federal bureaucrats who are using the *Endangered Species Act* to restrict reasonable land use (*Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*).

The Justices held that regulators enforcing the Act have the power to curtail ordinary land use activities, such as digging and plowing, even though the activity does not in itself injure or kill an individual member of a species listed as endangered or threatened. The ruling

(more)

upholds the U.S. Department of Interior's broad interpretation of the word "harm" under the Act as including "habitat modification" alone without proof of injury or death to an individual member of a species. This interpretation, fully supported by Interior Secretary Bruce Babbitt, has forced the complete shut-down of millions of acres of privately owned land as protected habitat even if the property is not occupied, but may in the future be occupied by a listed species. The ruling flies in the face of PLF's exhaustive research and commonsense analysis presented to the Court on behalf of landowners throughout the country.

Species Habitat Rule Harms People

People like Marj and Roger Krueger, who have been kept from building their house on their one-and-a-half acre lot in Austin, Texas, are typical victims of Mr. Babbitt's folly. Although there are no endangered species on their property, golden-cheeked warblers have been sighted in nearby wooded canyons. In an interview with the WALL STREET JOURNAL, Ms. Krueger said, "the irony is that the lot itself has only one tree on it, and it's a scrub. We were going to cut that one down and put 20 trees up."

The government's expansive interpretation of "harm" has devastated other landowners and crippled businesses, especially the timber industry—the people who provide the raw materials for homes, books, newspapers, school supplies, etc. For instance, in Washington state, a landowner has been enjoined from harvesting timber on his 72-acre tract because two spotted owls were seen nesting on government land 1.6 miles away! In Utah, federal bureaucrats promptly ordered a landowner to halt his development of a campground and golf course on his property. Why? Because the regulators said that a pond on the land was prime habitat for the endangered Kanab ambersnail. Given the lowered value of the property and the legal fees paid, the landowner estimates that he has lost about \$2.5 million.

In the *Sweet Home* case, the government closed off some five million acres of forest land in the Pacific Northwest as habitat for the spotted owl. Specifically, government bureaucrats closed off as protected habitat a staggering 5,600-acre radius around each spotted owl nest!

So how did the Supreme Court address the problem? They didn't. Mr. Babbitt's Department of Interior and its inflexible rules and regulations won over common sense. Ordinary uses of property like clearing brush, plowing, harvesting, or erecting a home can subject some landowners to fines, civil penalties, and even criminal prosecution!

The Court's ruling dramatically demonstrates the urgent need for PLF's Endangered Species Act Project to limit the authority of federal bureaucrats under the Endangered Species Act. The Supreme Court has handed virtually limitless power to Secretary Babbitt, a man who has publicly stated that he does not understand how the Act would take private property. No person's property is safe while Mr. Babbitt roams the land armed with the power to lock up any property he chooses. He is the embodiment of everything dangerous about bureaucratic regulations. *You can't trust him, and you can't control him.* And now, the Supreme Court has said that our liberty and our property rest in *his* hands.

With support for our Endangered Species Act Project, there will be no resting at Pacific Legal Foundation until this intolerable condition changes!

###

Slap environmentalists ^{8/10/95} with lawsuits

Editor:

I am writing to express my concern to the activities of groups like the Sierra Club, Earth First, Friends of the Bow, etc.

In Oregon, a man is unemployed due to the fallacy of the spotted owl. He attempts to provide for his family by offering a timber sale on his property and the Sierra Club files a lawsuit against him. Meanwhile, a high-ranking member of the Sierra Club clear-cuts his own property to finance improvements to his home and calls it a good harvest. Special interest groups use appeals and lawsuits to delay timber sales and prevent land development not in the hopes of winning, but to make it unprofitable or unaffordable for an industry or an individual to realize their goals.

In Montana, a man speaks out against the reintroduction of the grizzly bear near his home, fearing for the safety of his children. In retaliation, his logging equipment is burned. These practices are no different from bombing a building or drive-by shootings.

People are supposed to be held accountable for actions that are harmful to society. One must pay restitution for damages or infringements to others. We all need to write to our government officials and encourage them to promote laws that make these groups stand liable for their actions.

They should reimburse the costs incurred from frivolous appeals and ill-founded lawsuits. They should be held responsible for damages from industrial sabotage and their officials should be held accountable for the endangerment of their fellow man.

MATT BRENNAN
Newcastle
(This letter was edited.)

Kennecott Energy Company
 505 South Gillette Avenue
 Caller Box 3009
 Gillette, Wyoming 82717
 (307) 687-6000 Fax: (307) 687-6010

Kennecott Energy

August 22, 1995

U.S. Senator Craig Thomas
 302 Hart Senate Office Building
 Washington, D.C. 20510-5003

Re: August 16, 1995 Hearing on Reauthorization of the Endangered Species Act - Casper, WY

Dear Senator Thomas:

I attended the referenced hearing on behalf of Kennecott Energy Company, and appreciated your efforts in bringing this hearing to Wyoming. Kennecott Energy Company provides management services to Antelope Coal Co. and Cordero Mining Co. in Wyoming, Spring Creek Coal Co. in Montana, and Colowyo Coal Co., LP, in Colorado. The interests of these operations are reflected in the comments below.

The testimony included a broad array of issues, including reference to the recent *Sweet Home v Babbitt* case, but the subject of altered behavior of a threatened or endangered species as constituting harm to that species never arose. The ruling on the *Sweet Home v Babbitt* case focused upon aspects of habitat, but was silent on this potential interpretation of the term "harm."

The definition of "take" in the Act specifically refers to "harm," but the Act does not provide a definition for "harm." The term "harm" is ultimately defined in the current federal regulations (50CFR17.3) as "... an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." Given the continuing debate over such definitions as species or critical habitat, Kennecott Energy Company believes that the U.S. Fish & Wildlife Service actions in interpreting significant alteration of behavior in an individual organism proves even more difficult, and the concept provides a basis for highly subjective interpretations. These interpretations vary as widely as the opinions on what constitutes good science.

It is understood that S.768 proposes to incorporate definition of the term "harm" in the Act as "... a direct action against any member of an endangered species of fish or wildlife that actually injures or kills a member of the species." However, Kennecott Energy Company remains concerned that this definition might still be construed to provide a basis for perceived behavioral changes to be subjectively interpreted as "injury."

U.S. Senator Craig Thomas
August 22, 1995
Page 2

Kennecott Energy Company does not believe that the concept of behavioral alterations is quantifiable, nor is it consistent with the basic objectives of the Endangered Species Act (ESA). To avoid enforcement of the ESA beyond its authority, specific language is needed in the Act to specifically prohibit application of the term "harm" to behavioral changes.

Thank you for the opportunity to participate in this hearing process. If I can provide any further details or information on this comment, please contact me at the letterhead address or at (307) 687-6061.

Sincerely,



Robert K. Green
Manager, Governmental & Regulatory Affairs

cc: G. Boyce

Aug. 16, 1995

To: Drinking Water, Fisheries, and Wildlife Subcommittee of the Senate Environment and Public Works Committee.

From: Meeteetse Multiple Use Association, Meeteetse, Wyoming.

Re: Comments to the Committee concerning the Endangered Species Act.

In submission we offer for your consideration a column by Alston Chase which expresses our views about the Endangered Species Act.

We appreciate the opportunity to state our concerns in this matter.

Thank you!

Alston Chase for the
Meeteetse Multiple Use Association

CHASE ON THE ENVIRONMENT

Is The Endangered Species Act Necessary?



"There are a thousand hacking at the branches of evil to one who is striking at the root," wrote America's first great conservation-

ist, Henry David Thoreau, in 1854. So it is with the Endangered Species Act of 1973. Today, both Democrats and Republicans are busy seeking to "improve" this law, which while not evil, is certainly mischievous, misguided and unnecessary. Yet they are merely hacking at branches. For none ask: What is it intended to accomplish, and why is this goal so important?

As an Interior Department old-timer who co-authored this law told me recently: "In my 30 years in Washington, no one has raised those questions." Indeed, ever since this law was enacted, Democrats and environmentalists have kept mum because they secretly feared such queries may have no rational answers. Republicans didn't ask because they are total ignoramuses when it comes to ecological science and because they fear being branded "anti-environmentalists."

Thus, even the law's critics seek to make it "better" without asking, "better at what?" They agree the law must respect property rights, list and de-list creatures more efficiently, increase the role of local governments, create market incentives and minimize economic dislocations. But they do not ask: What is the overriding social purpose of these steps? Thus they fail to realize that no number of amendments can make it work.

The act seeks either to halt all extinctions, which is to stop evolution, or some extinctions, when there is no scientific way to decide which ones. Why undertake such a Mission Impossible? In order, says the law, to save species for their "aesthetic, ecological, educational, historical, recreational and scientific value." But while some creatures have aesthetic and recreational uses, others do not (cockroaches, for example). Virtually everything -- even small pox vi-

uses and old Coke bottles -- have some historical and educational significance, but that alone is not sufficient reason for saving them. And to speak of "ecological" and "scientific" values is both redundant and oxymoronic, since ecology is a science, and science is value-free.

Thus, many supporters of the act disingenuously cite its mission as preserving "biodiversity", even though the term does not appear in it. They claim that saving all "genetic combinations" increases the chances for finding cures for diseases, just as taxol found in the yew trees helps combat cancer. But if curing ailments were a justification, the law would promote genetic engineering, which increases biodiversity.

These "purposes" are therefore mere rhetorical froth. The real goal, as described in the act, is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." According to this reasoning, species form stable, interlocking networks called ecosystems, but when a sufficient number of creatures goes extinct, these systems become unbalanced and thus "unhealthy".

Such is the supposed transcendent goal: to preserve the stability of ecosystems on which everything depends. But this rests on a colossal mistake. Nature, scientists now realize, is not organized into self-regulating ecosystems.

As the prominent ecologist S.T. A. Pickett explained in 1990, "The balance-of-nature concept makes nice poetry, but it's not great science," and environmental historian Donald Worster conceded last year, "The ecosystem has receded in usefulness." Consequently, as The New York Times has observed, "textbooks will have to be rewritten and strategies of conservation and resource management will have to be rethought."

Unfortunately, someone forgot to tell the polls in Washington. For among those strategies that deserve rethinking is the Endangered Species Act, which is intended to maintain a balance of nature that never existed, never will exist and never should exist.

Once the myth of "self-regulating" ecosystems is exposed, it becomes obvious that the act rests on subjective preferences, not objective science. As administered, it gives prominence to those things some deem beautiful or useful. But while aesthetics and utility are important, they do not take precedence over other values, including human rights and happiness. And there are other ways to sustain creatures and landscapes people like to see. That is what national parks and other preserves are for.

Efforts to "improve" the act, therefore, are like attempts to "fix" cold fusion. A law that defies nature cannot be made to work. So the charade of "reform" continues. Democrats lay claim to the scholarly high ground by enlisting the support of social engineers who call themselves "conservation biologists", while Republicans, fixated on "free-market" strategies and unaware of the legion of ecologists who might support them, parade ranchers and loggers before their committees, to tell of unfortunate confrontations with kangaroo rats, wolves, fairy shrimp and other scary "collectivists".

Perhaps they should read Thoreau instead.

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*Moose Head Ranch**Moose, WY 83012**Tel (307) 733-3141**Fax (307) 739-9097*RECEIVED
SEP 0 1 1995

August 28, 1995

Senator Craig Thomas
302 Hart
Senate Office Blvd.
Washington, DC 20510-5003

Dear Senator Thomas,

We are writing this letter to be included in the sub-committee hearing record that you recently held in Casper, Wyoming on the drinking water, fisheries and wildlife.

Louise Mettler Davenport is an owner of the Moose Head Ranch, and David W. Edmiston is the manager. This guest ranch has been operating since the 1920's, and it is the last privately owned ranch completely surrounded by Grand Teton National Park. The ranch lies between highway 89/287 and the Snake River, approximately 4 miles south of Moran Junction, and 13 miles north of Moose. We take 40 guests a week, and employ a crew of 27.

Our concern is over the continued presence of grizzly bears on our ranch. We believe them to be a liability to the ranch and a threat to our guests. One year ago, on August 27, 1994, a grizzly sow with 3 cubs came through the ranch, and cavorted in the stream that runs through our employee area for about 15 minutes. This bear was later trapped south of Jackson, after it had charged a person on horseback. We were extremely fortunate that the evening that it came through Moose Head was a Saturday night and all but 3 people had gone to town for the rodeo. While this was the only known incidence on our private premises during 1994, we were also told, after the fact that radio collared bears had been present less than a quarter mile from areas where we have led rides for countless years. We would at all times respect the grizzly, and would prefer to lead our rides elsewhere if the Wyoming Fish and Game had had the courtesy to inform us of the bears presence.

On July 24th of this year we had another very large grizzly come on the ranch and attack and kill a penned steer approximately 100 yards from our cabins. Once again we were extremely concerned and alarmed by the fact that this bear thought nothing of coming so close to a populated area. A trap was set with the remains of the kill that evening, but failed to catch the bear. The trap was then removed 2 days later, with no results. The day after that on Thursday, July 27th one of our rides came across another fresh kill, just off Spread Creek, approximately 150 yards from the highway, and approximately 1 mile from the ranch. Again this was reported,

*Winter Address**7360 Miccosukee Road**Tallahassee, FL 32308**Tel (904) 877-1431*

Moose Head Ranch

Moose, WY 83012

Tel (307) 733-3141

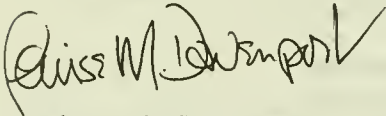
Fax (307) 739-9097

but the bear was not caught at that time. We again asked Fish and Game to alert us if they knew of any known bears in our area, but they have been consistently uncooperative.

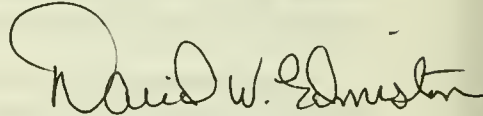
I know of 9 other calves and a cow that have been killed in the last 2 weeks across the highway from the Moose Head, but I would leave those specific instances to be addressed by others.

The point of this letter, Senator Thomas, is that we believe the grizzly bear has come to have more rights than we the citizens. Our guests can no longer enjoy the freedom to roam the ranch without due concern. Their children can no longer play hide and seek, or walk to the river and fish without fear for their lives. Are we being held hostage on our own land? We pay a great deal in land taxes, and I always thought that some of that money was for protection. Please consider the declassification of the grizzly bear. I would like to believe the lives of people and their ability to continue their enjoyment of our ranch and the Park is of some importance.

Sincerely yours,



Louise Mettler Davenport
Owner



David W. Edmiston
Manager

Winter Address

7360 Miccosukee Road

Tallahassee, FL 32308

Tel (904) 877-1431

CASPER AUG 10 1995

P.O. Box 44
Bondurant, Wyo
82922Senator Craig Thomas
ESA Hearing
Casper, Wyo.

Please place my statement in the record, as I am unable to get to Casper.

The Endangered Species Act has had significant successes in saving some species (ie bald eagle, peregrine falcon, brown pelican) and protecting the habitat of many others to reverse the decline of their numbers. There are admittedly extreme cases of undue hardship on individuals, but certainly some adjustments can be made without abandoning the entire act.

As the only species on earth capable of destroying everything, we surely have a moral obligation to prevent as much destruction as possible. We have a tool with

People for the West!

P.O. Box 4345, 301 N. Main Street, Pueblo, Colorado 81003
Telephone (719) 543-8421 FAX (719) 543-0473



*Fighting for America's
Communities*

STATEMENT FOR THE RECORD

ENVIRONMENT AND PUBLIC WORKS COMMITTEE
DRINKING WATER, FISHERIES AND WILDLIFE SUBCOMMITTEE
U.S. SENATE

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

August 16, 1995

Submitted by: National Coalition for Public Lands
and Natural Resources
PO Box 4345
Pueblo, CO 81003

Sponsors of the
PEOPLE FOR THE WEST!
Campaign

Mr. Chairman:

Consideration for reauthorization of the Endangered Species Act is one of the most crucial issues faced by this Congress, as far as resource users and private property owners are concerned. Protection of truly endangered species should be one of our goals. However, reauthorization should also consider ways in which protection of such species will not destroy our way of life, nor provide for methods to misuse the statute for secondary goals unrelated to the primary purposes of the Act.

Our Coalition represents an organized attempt to support environmental protection in concert with economic growth.

One of the principal goals of our coalition is to support continued management of federal public lands for multiple use including agriculture, livestock grazing, mining, oil and gas production, recreation, timber harvesting, and water development. A second principal goal is to support the use of private lands for natural resource production, strongly advocating the right of private property ownership.

National Coalition for Public Lands and Natural Resources

which to attempt reversal of our
depredations - let's not abandon
it after only 25 successful years.
This is an ongoing process of
protecting the ecosystems of
many valuable species, some
as yet undiscovered.

Please respect the Endangered
Species act, with whatever
adjustments may be necessary.

Sincerely -

William R & Jane E.
Olsen

Our membership is represented all 50 states, organized into more than 125 local chapters located in the western states and Missouri. In some way, each of these members is impacted by the Endangered Species Act.


Enclosed is a copy of a resolution passed by our Board of Directors, urging significant changes as reauthorization is considered. Principal points raised in the resolution are:

1. "Recommendation to List" shall incorporate:
 - a. An economic impact assessment.
 - b. A detailed recovery plan, including projected costs.
 - c. A complete file of scientific data.
 - d. Critical habitat designation shall occur at time of listing.
2. Cost of preservation is a responsibility of the federal government and should be borne by society as a whole.
3. Compensation at fair market value should be provided for any land taken out of economic activity.
4. Conservation measures may be used to protect a species in lieu of its listing.
5. An administrative appeals process shall be included.
6. Include a public involvement process, to include local public hearings, published public notice of such hearings, and full disclosure of all relevant information.
7. Scientific data submitted shall undergo a peer review from the National Academy of Sciences.
8. Prior to listing, there shall be Congressional hearings in both houses of Congress.
9. Listing of subspecies shall be deleted from the Act.

The record is replete with examples of misuse of power and misuse of the intent of the ESA. Congress should take steps in any reauthorization to assure that the principal intent of the act is adhered to and that the Act is not used as a surrogate for other goals. By adhering to a process such as that suggested in our resolution, some degree of rationality can be added to the process.

This Congress is engaging in a difficult procedure to consider the reauthorization of a highly controversial statute. Its deliberations should be done very carefully to assure that any reauthorization provides for protection of truly endangered species, but also provides for protection of private property rights and for continued environmentally sound use of our natural resources for economic development.

Respectfully submitted,


Guy E. Baier
Operations Director

People for the West!

NATIONAL COALITION FOR PUBLIC LANDS AND NATURAL RESOURCES

**Resolution calling for
Public Involvement Changes to the Endangered Species Act
May 19, 1992**

National Coalition for Public Lands and Natural Resources recognizes the value of the Endangered Species Act as a mechanism to preserve certain endangered plants and animals. But, critical that the law prohibits consideration of human impacts caused by providing protection for these endangered and threatened species, strongly recommends to Congress in reauthorizing the Endangered Species Act this session, that it include in the law specific sections providing the following:

1. A "Recommendation to List" shall incorporate: A. an economic impact on the public for the area affected and on the nation; B. a detailed recovery plan with its projected costs to all levels of government and a proposed budget; C. a complete file of scientific data and collection methodology including that for the critical habitat designation; D. critical habitat designation shall occur at the same time as the listing, with the requirement that a listing cannot be made until there is sufficient data to designate critical habitat and, that a full economic impact analysis shall be required as a part of the required data.
2. The Act shall declare that the cost of a species preservation is a responsibility of the federal government and should be borne by society as a whole.
3. Compensation, at fair market value including attorney's fees, if any, should be provided for any land taken out of economic activity.
4. The Act shall permit use of conservation measures to protect a species in lieu of its listing.
5. An administrative appeals process, similar to the Administrative Procedures Act, shall be added to the Act with the requirement that before a listing can be appealed to a federal court, all administrative remedies shall be exhausted.
6. Include in the Act a public involvement process. The process shall include: A. mandated public hearings in the locale affected by the listing; B. published notice of these public hearings and, C. full disclosure of all relevant information, data, economic impacts and governmental costs. Amendments to the Act establishing procedures for exempting a species from listing shall also include a public involvement process.
7. Scientific data submitted to support a listing or recovery plan shall be reviewed by a scientific peer panel from the National Academy of Science. Plan data shall include the budget and economic impact data. The review committee shall report their findings to the Secretary of Interior which shall be published in the Federal Register in order to permit public review and response.
8. Prior to the listing, there shall be Congressional hearings in substantive committees in both the House and Senate.
9. The listing of subspecies shall be deleted from the Act.



North America Needs Predators for Intact Ecosystems
 POB 6788 • BOZEMAN, MI 59771 • (PHONE/FAX) 406-587-9989

August 14, 1995

TO: United States Senators and Congressional Delegates

FROM: Tom Skeele, Director

Renee Brandt for Tom Skeele

RE: Endangered Species Act Reauthorization

Please accept the following comments on behalf of Predator Project, concerning the reauthorization of the Endangered Species Act. Predator Project is a membership - based organization dedicated to protecting imperiled and other predatory species and their habitats across North America. We have over eight hundred members, and a newsletter readership of several thousand, throughout the entire United States. We thank you for providing this forum, where we can voice the concerns of our members.

Predator Project is in strong support of reauthorizing the Endangered Species Act (ESA) as it stands, or with stronger protection for imperiled species and their habitat. We can not support any new legislation that will weaken the existing act or its interpretations under the law. We are continually concerned with the dramatic increases in imperiled animals and plants found in the United States today. We know that a weakened ESA will only add species that are currently in a downward population trend to the list of those already extinct.

Predator Project works daily with public land managers to increase their awareness of imperiled predators and to insure the agencies' compliance with current legislation and policies designed to protect predators and their habitats. We also work within the law to improve those policies which are detrimental to predators. Through our work we have come to realize that Acts like the Endangered Species Act are the last stronghold many species have to insure their continued existence.

The ESA is both beneficial to the many species that depend on the protection it provides, and to us humans. These benefits are based on the ecological principle that our survival is also dependent on the intact ecosystems that endangered or threatened species require. We hope that you can see past the shortsightedness of "take now and worry about the consequences tomorrow" type approach to Endangered Species and Ecosystem Protection. We here at Predator Project know that without a strong Endangered Species Act, species like our National Bird would not be with us today. Predator Project shudders to think what will be left of our National heritage without a strong Endangered Species Act.

Dedicated to Protecting Imperiled and Other Predatory Species as an Ecological Rallying Point for Ecosystem Protection

STATEMENT
FOR RECORD OF FIELD HEARING ON THE
ENDANGERED SPECIES ACT
BY DRINKING WATER, FISHERIES AND WILDLIFE SUBCOMMITTEE
OF THE U. S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
CASPER, WYOMING, AUGUST 15, 1995

Submitted by:

Bayard D. Rea
5200 Yesness Lane
Casper, Wyoming 82604

The Endangered Species Act (ESA) might be said to have been conceived in Wyoming. In 1971 the discovery of widespread poisoning, electrocution, and intentional shooting of bald eagles led to then President Nixon's banning of predator-control poisons and gave impetus to the passage of the ESA in 1973.

The Act has been a real success in Wyoming insofar as the recovery of individual species is concerned. Bald eagles are being down-listed, peregrine falcons have made a remarkable recovery, black-footed ferrets have been saved at the very brink of extinction and are now being reintroduced to the wild, a captive-breeding program for the Wyoming toad shows signs of promise, grizzly bears have been successfully weaned from Yellowstone Park garbage dumps and are apparently increasing to the point of being nuisances in some local areas. And wolves have now been reintroduced to Yellowstone, causing an economic boon to tourist-related businesses in that region. It seems very doubtful that any of these successes would have been achieved without the ESA and its implementation by the U.S. Fish and Wildlife Service. State government is neither inclined nor able to provide the management necessary for the protection of so many endangered species. This is especially true for those species that cross state boundaries. Uniformity of management is essential for recovery, and that can come only from a comprehensive federal program.

Nevertheless, the ESA suffers from two major shortcomings. It is not comprehensive enough to deal directly with critical ecosystems. Consequently, in order to protect important habitats that are of special significance to many potentially threatened or endangered species, certain "mascot" or "scapegoat" species have had to serve as tools to protect entire ecosystems. Prime examples are the spotted owl used to save the last remaining old-growth forests of the Northwest and the whooping crane for preventing the complete dewatering of the Platte River. The Act should be expanded to include protection of entire

ecosystems. Again, such protection can only be achieved through uniform administration by the federal government.

A second and perhaps even more significant shortcoming of the ESA is that it has failed to develop support among many landowners and livestock, timber and mineral-extraction operators who depend upon the resources of the public lands. Enforcement of the Act has resulted in a perception of threats to grazing privileges on public lands and of restrictions on use of private lands. This has led to opposition, sometimes violent, to the Act and resentment to federal management of public lands. This perception has fueled a politics of paranoia and caused a strident polarization of agricultural and conservation interests.

The Endangered Species Act is not broken, but it does need improvement in order to solve these problems. An improvement which has been promoted by most interests is an incentive and compensation plan for landowners impacted by enforcement of the Act. But funding for such a program has been a stumbling block. Appropriations for the ESA are being reduced. States and counties are reluctant to reduce their revenues by granting property-tax credits or exemptions for lands placed under voluntary conservation easements or otherwise impacted by compliance with the Act.

I believe an acceptable solution may be found by combining the models of the federal "Payment in Lieu of Taxes" (PILT) program for counties whose tax bases are impacted by federal operations and the funding mechanisms of the Pitman-Robertson Wildlife Restoration Act and the Dingell-Johnson Fish Restoration Act.

The Pitman-Robertson Act is funded through a 10% excise tax on the sale of sporting firearms and ammunition and an 11% tax on bows and arrows. Dingell-Johnson funds come from a 10% excise on sport-fishing equipment, a 3% tax on fishing-boat outboard motors and 3% (not to exceed \$30) on fish-finding sonars.

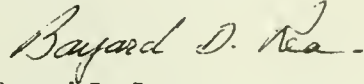
A similar tax on products related to the nonconsumptive recreational enjoyment of wildlife has frequently been proposed as a means of funding conservation programs. Such an excise could easily support a PILT program for states and counties which offer incentives through tax credits as well as providing direct compensation for specific livestock or other property losses attributable to endangered or threatened species. A great majority of nonconsumptive wildlife "users" would, I believe, enthusiastically support such a program. They would accept an excise as a legitimate "users' fee" and thereby become partners with those private landowners that help to maintain and restore the listed species. If the figures in the attached articles are reasonable, the value of nonconsumptive-wildlife products is great enough that an excise tax of only 1% or 2% would not only fund a PILT and damage-compensation program but could probably fund

-3-

the entire administration of the ESA.

I urge the Committee to support and strengthen the Endangered Species Act by exploring and developing such a plan.

Respectfully submitted,



Bayard D. Rea

- Attachments: 1. News article, Omaha World-Herald, June 11, 1995, "Birds High on List".
2. News article, Philadelphia Inquirer, June 18, 1995, "Birding Soars in Popularity".

Birds High On List

Atlanta (AP) — American birders have put their hobby into the financial major leagues.

Americans spend \$18.1 billion a year to watch wildlife with at least \$5.2 billion of that going to watch birds, according to a study by the U.S. Fish and Wildlife Service.

The study, "The Economic Contribution of Bird and Waterfowl Recreation in the United States During 1991," says that estimate is conservative and birders could spend as much as \$9 billion on their hobby each year.

By comparison, Americans spend \$5.8 billion on movie tickets and \$5.9 billion on tickets to sports events.

Using conservative assumptions, birders' spending creates 200,000 jobs, said Rob Southwick of Southwick Associates, author of the study.

Americans spend \$2 billion on birdseed alone.

But it isn't backyard birds that draw all the interest.

Eagles draw thousands of tourists and perhaps \$750,000 to Wisconsin's Sauk County during the more than two months they winter along the Wisconsin River.

"We're doing everything we can to keep them in the area," said Roland Wagner, executive director of the Sauk Prairie Area Chamber of Commerce. "We're one of the few areas in the region to have any money coming into the community that time of year. That's largely due to the American bald eagle."

Flocks of people are out with binoculars. It's becoming big business.

Birding soars in popularity

By Lacy McCrory
INQUIRER STAFF WRITER

Until this spring, Joyce Felberg barely knew a cardinal from a catbird. Then, tired of arguing with her husband over the identity of the latest bird to alight in their yard, the Levittown native took a 12-week course on the avian realm.

She was snared.
Now her yard includes a bird feeder and birdhouses, and binoculars and guidebooks are ever ready should a rare flier show up.

And, oh, yes, Felberg now can tell a common yellow throat from a black-capped chickadee.

"It's opened up a whole world of

nature for me," said Felberg, a nurse in the Bensalem Township School District.

It also has made her part of a large crowd. Bird-watching, experts say, is among the fastest-growing hobbies in America.

A 1991 survey by the U.S. Fish and Wildlife Service found 63 million Americans participating in birding, from building a backyard feeder to flying down the Amazon hoping to sight exotic species. Only gardening, the survey found, involved more people.

Bird lovers spend \$2 billion annually on seed alone, according to the Wildlife Service. Almost another \$1

billion is spent on feeders, baths, houses, nesting boxes, binoculars and field guides.

All in all, the Wildlife Service estimates, \$5.2 billion is spent each year on birding. By comparison, it added, Americans spend \$5.8 billion on movies and \$5.9 billion on football, baseball and basketball games and other sporting events.

"The hobby is increasing hand over fist," said Pete Dunne, director of the Cape May Observatory, a wcrd-ramous birding site. "I've been doing it for 37 years. I used to have to defend my manhood when I took out by binoculars. Bird-watching is

See BIRD-WATCHING on B5



For The Inquirer / PAOLA TAGLIAMONTE

Armed with her binoculars and trusty guide, Joyce Felberg sets out to identify a feathered guest in her Levittown backyard.

Birding ^{INQ} soaring in popularity ⁶⁻¹⁸⁹

BIRD-WATCHING from B1 something that is accepted behavior now."

Dunne and others say one explanation for the recent surge can be found in the nation's demographics. "Baby boomers are getting older," Dunne said. "They can't rock climb anymore, and they ruined their knees jogging. They still like the outdoors and are looking for ways to get outdoors. Birding is a perfect venue."

And few leisure activities are as readily accessible.

"You can do it alone, with friends, in your backyard or travel all over the world, on your way to work, at work," Dunne said. "I know people who keep lists of birds they have seen from their Wall Street office windows. I know people who keep lists of birds they hear on television. And some will watch golf matches just to see birds."

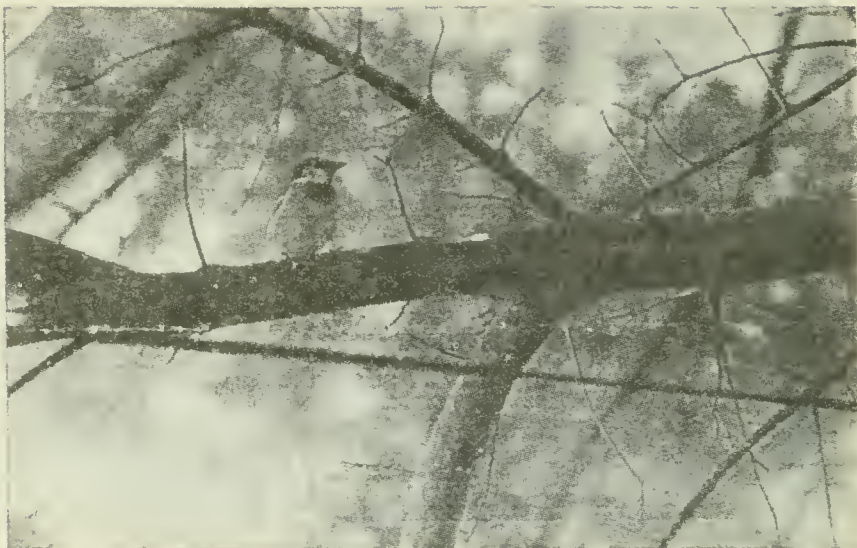
James Carpenter is one who has managed to catch an updraft from the soaring hobby. In 1981, the avid bird-watcher turned his avocation into an occupation by opening a store in Indianapolis devoted to birding. Two years later, he began franchising Wild Birds Unlimited.

By 1989, there were 30 franchises. Now there are 199 in 43 states and Canada. Locally, they can be found in Broomall, Buckingham, Dresher and Wexford. And Carpenter has seen his bird seed sales double every five years.

Another to see his business take wing is George Petrides. He opened a birding outlet in 1986 in Cabin John, Md., and began offering Wild Birds Centers of America Inc. franchises two years later. Today, there are 97 outlets, including some in Huntington Valley, Aston, Valley Forge, Exton, Marlton, and Cape May.

"I always feel like I'm sitting on a volcano," Petrides said. "The market's explosive."

"I just think birds represent something more than themselves. . . . They symbolize a natural world that's disappearing. People use birds to kind of step out of their world into another world. The reason is somewhat elusive. I don't quite get it yet — and I think about it every day."



For The Inquirer / PAOLA TAGLIAMONTE

A sparrow perches on a branch in Joyce Felberg's yard. Felberg, a nurse, is among some 63 million bird-watchers in the United States. It's the perfect pursuit for baby boomers, participants say.

There have been other signs of the surge in birding. *Birders' World* magazine of Holland, Mich., began in 1987 with a circulation of about 11,000; each issue now sells more than 80,000 copies. And an editor of *Wild Bird* magazine, June Kikuchi, of Los Angeles, said it grew in circulation from 70,000 in 1987 to more than 175,000 today.

Meanwhile, the American Birding Association, formed in 1968, has more than tripled its membership, from 5,000 to 16,000, said Lang Stevenson, director of development. Headquartered in Colorado Springs, Colo., the association is for serious birders, those who spend considerable time studying different species and traveling the world to spot them.

"The average age in our association is 53," Stevenson said. "About two-thirds are male. They are highly educated and affluent."

For the less ambitious, fulfillment is often found in a simple backyard feeder.

"The most charming thing in the world is to watch a male cardinal take a sunflower seed from a feeder and fly to a branch of a nearby tree and feed it to his mate," said Sue Wells, executive director of the National Wild Bird Feeding Society. "I get goose bumps from it all."

It was a backyard feeder, given to her as a gift, that drew Susan Slear, 49, to bird-watching five years ago.

"I was aware of sparrows and robins and blue jays, but I didn't know other kinds of birds existed in this area," said Slear, of Langhorne Manor, Bucks County. "Once I put the feeder up, I got all kinds of birds I had never seen before. I was amazed at the variety of things that came."

That joy in avian variety is a chief reason for new members' flocking to the New Jersey Audubon Society. Dunne, a society staffer, said it grew from 3,000 members in 1983 to its current 15,000.

In 1984, New Jersey Audubon

started the World Series of Birding. It has since become one of the hobby's most prestigious events. Teams from around the world get 24 hours to see who can spot the most species. In the first year, there were 13 teams; last year, there were 54.

"Birds are colorful and omnipresent," Dunne said. "It's like going to a gallery to see beautiful art. But the challenge is you never know what's going to be on the wall."

For Felberg, there is that and more. "I get a lot of enjoyment from watching the birds," she said. "They are nature's tranquilizers. For me, it reduces stress. The birds don't care if you've had a bad day; they come anyway."

RECEIVED AUG 25 1995

3730 Valley Road
Casper, WY 82604
August 18, 1995

U.S. Senator Craig Thomas
302 Hart Senate Office Building
Washington, D.C. 20510-5003

RE: Endangered Species Act

Dear Senator Thomas:

Thank you for making it possible to conduct your subcommittee's field hearing in Wyoming. Please include this letter in the official hearing record.

As you know, the people of this State are directly affected by the provisions and enforcement of the Endangered Species Act (ESA). One example of the impact of the ESA on Wyoming citizens also demonstrates why the ESA does not work. In its "protection" of eagles, the federal government has expended all of its manpower and budget on the "enforcement" of the ESA. That enforcement effort, orchestrated by the U.S. Fish and Wildlife, has consisted of repeated unwarranted trespasses across private property, unwarranted and illegal searches, and criminal prosecutions based on circumstantial evidence provided by paid informants. These federal officers have threatened, coerced and intimidated private citizens and local law enforcement officers alike. The federal agents and prosecuting attorneys have created a myth that the entire populations of several counties, as well as state law enforcement, are involved in a conspiracy to kill eagles. They present this mythical

conspiracy as evidence at criminal trials, supported by the mere fact that the accused's friends and neighbors are present in the courtroom. I understand that the U.S. Fish and Wildlife has a "list of eagle killers" which includes the names of every man, woman and child who has at any time owned sheep. These "suspects" are under constant surveillance, and are the target of trespass and unwarranted searches. The federal investigation is based on the premise that sheep owners have sufficient motivation to kill eagles, and therefore that all sheep owners are killing eagles. It follows that, if a dead eagle is found, it must have been killed, and that the killer could not be other than a sheep owner. From there, all it takes to satisfy the federal agents and prosecutors that they have a viable case is the testimony of a paid informant.

This type of enforcement siege by federal officers is particularly chilling when it is waged against agricultural producers and other small businessmen. They do not have the resources to pay the cost of their defense in these cases, while the federal government appears to have unlimited resources. The result is that thousands of law abiding Wyoming citizens now live in terror that they will be charged with killing an eagle because they know that, no matter how frivolous the case is, they can't afford to defend themselves.

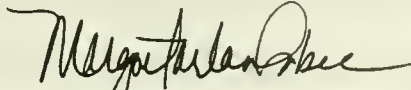
The same type of federal law enforcement seems to be at work in the case of the wolf killed in Idaho. I don't know how much money has been spent in the investigation and prosecution of the eagle and wolf cases, but I am willing to bet it vastly exceeds the amount spent on the investigation and prosecution of a typical juvenile gang killing in one of our cities.

A far less costly and more effective program should have been developed for the recovery of the eagle in Wyoming. The federal government should have formed a partnership with the State and allowed the State to set priorities and define the recovery program, which would have included payments to private business owners and landowners to compensate for their losses, and control of the populations of other predators that compete with eagles for their natural prey.

I urge the subcommittee to adopt the draft legislation of the Western Governors. This legislation was created by a bipartisan group, and it reflects the compromises that must be made between the various competing interests involved. The draft legislation will increase States'

rights, place emphasis on viable recovery programs, and provide financial and other incentives for partnerships between private property owners and government agencies. It is essential to the success of any program aimed at the recovery of an endangered species that the government must fully compensate the people and property who bear the burden and cost of the recovery program. Citizens who are adequately and fairly compensated for the cost and burden of participating in a recovery program will be motivated to do so.

Yours truly,



Margo Harlan Sabec

LARRY & BONNIE SMITH
1639 MAYOWORTTH RD.
KAYCEE, WY 82639
August 21, 1995

RECEIVED AUG 29 1995

Senator Craig Thomas
302 Hart Senate Office Building
Washington, D.C. 20510-5003

Senator Thomas: Here are our thoughts about the Endangered Species Act

We think the Act should be thrown out and a fresh start began with an incentives-based, nonregulatory approach to saving species.

Bald Eagles are adversely affecting landowners on the west coast. Wildlife authorities required them to put up a row of trees between their house and an eagle nest. They consider this a takings of private property and think if it is such valuable eagle habitat the government should buy it from them. Compare this to the east coast where a Bald Eagle nest is 1/2 mile from the launch pad at the Kennedy Space Center; their nest has been beside a four lane highway for 13 years. They now have a video camera in the nest videoing the nest activities without any adverse affect.

What could be the difference in the way the eagles are handled on opposite coasts? The eagles on the west coast are on private property compared to the eagles on the east coast which are on the Merritt Island National Wildlife Refuge. This proves eagles are extremely adaptable

We can not have abundant predators and abundant wildlife. There must be an enormous amount of common sense and balance when dealing with wildlife issues.

In the future visitors to Yellowstone Park will have to be limited to protect its geological resources. Wolves are not the major attraction for the majority of the visitors. Please read newspaper article attached.

In many many cases the Endangered Species Act has lost sight of its purpose. An EMERGENCY last ditch protection of a wildlife species on the brink of extinction.

Sincerely,

Larry & Bonnie Smith
Larry & Bonnie Smith

Yellowstone superintendent thinks visitor limits coming

CODY (AP) — The numbers of visitors allowed in Yellowstone National Park at any one time will be limited within a few years, Superintendent Mike Finley says.

Finley said he plans to develop a summer-use plan similar to a winter-use plan expected to be completed in fall 1996. Both plans, he said, will establish park "carrying capacities."

The capacities will establish the maximum number of visitors the park can handle in a day during each season while protecting its natural resources and the experiences of the tourists.

"What will happen without somebody taking a more expansive view is we'll wake up one day with everything we value in Yellowstone gone," Finley said.

He said since he took office in November, he has received hundreds of letters complaining about heavy snowmobile traffic in the park. During the winter, the park's West Yellowstone, Mont., entrance exceeded Montana air quality standards for carbon monoxide from snowmobile exhaust. He said while snowmobile makers are working to reduce noise and emissions from the machines, the park's resources still would be strained by heavy traffic.

5-28-95
Rather than close entrances after a certain number of visitors pass through, however, Finley said he was considering a reservation system similar to ones used for permitting backcountry trips, reserving motel rooms and some campground sites.

"These strategies aren't new," he said. "They just haven't been applied to day use."

Finley said increasing visitation in the park can largely be attributed to growing regional populations, new residences in the area and promotional activities by towns surrounding the park. He said his job as superintendent means he is required by law to determine and implement a carrying capacity for the park.

"I'm managing Yellowstone on behalf of the people who love it," he said. "To the extent that people want to take shots at me, that's OK."

'What will happen without somebody taking a more expansive view is we'll wake up one day with everything we value in Yellowstone gone.'

MIKE FINLEY
SUPERINTENDENT

SANDY SHUPTRINE Chair
MICHAEL F. GIERAU Vice Chair
ANN STEPHENSON, Commissioner
ROBERT L. SHERVIN, Commissioner
THOMAS L. SCHELL, Commissioner

State of Wyoming
Teton County

P.O. Box 1727 Jackson, Wyoming 83001 (307) 733-4430
Fax No (307) 733-4451

August 21, 1995

Senator Craig Thomas
302 Hart Senate Office Building
Washington, D. C. 20515

VIA FAX 202/224-1724

Dear Senator Thomas:

The Teton County Wyoming Commissioners are privileged to be decision makers for a county which is exceptional in the richness of wildlife and wildlands within its borders. Our citizens repeatedly acknowledge the importance of these resources, in a variety of surveys from the Chamber of Commerce to the University of Wyoming to county planning. We recognize the value of wildlands and wildlife to our economy and quality of life. We believe the Endangered Species Act has contributed positively to the lives of Teton County's citizens and millions of visitors by offering a chance for survival to trumpeter swans, bald eagles, peregrine falcons, grizzly bears and their natural habitats. As a result, much information regarding biological relationships is obtained, not to mention the inspiration and enjoyment gained from the presence of these species.

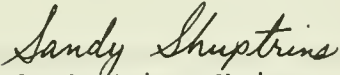
While recovery of threatened and endangered species includes big challenges and some short term inconvenience to man, it is also a measure of our ability to understand that the health and welfare of mankind is influenced by the overall health of the biochemical world. If habitat quality, air quality, and water quality are such that there is a richness and variety of flora and fauna, human life also improves.



We acknowledge that some inconvenience and abuse has occurred to individuals because of the Endangered Species Act, but we strongly urge you to fine tune it rather than departing from its current intent and parameters. Our own experience has shown a great deal of effort on the part of federal agencies to carefully consider and resolve situations involving private interests. Some bills currently being considered appear to add to the paperwork, judicial and financial burden while diminishing opportunity for public input. This appears to be negative in terms of regulatory efficiency and results desired. Instead, we encourage revisions which speed up review and analysis, enabling landowners and the general public reassurance about fair process and positive results.

Finally, we note with dismay, the procedure followed for the Congressional hearing held in Casper. We believe the health of our biological systems is everyone's interest. Certainly, there seemed to be a lack of opportunity for those who were not representing a singular interest to testify. We do, however, thank you for the opportunity to submit our thoughts to you in writing.

Respectfully submitted on behalf of the Board,



Sandy Shuptrine, Chair
Teton County Board of Commissioners

SS:jw



TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

HEADQUARTERS: P.O. BOX 33695 DENVER, COLORADO 80233 (303) 452-6111

August 16, 1995

Senator Dick Kempthorne, Chairman
Senate Sub-Committee on Drinking Water,
Fisheries and Wildlife
415 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Kempthorne:

The ESA, as currently written, appears to be a good piece of legislation. A reading of the Act would not lead one to understand the consequences as now being experienced by the public. The Act has been inexorably misdirected by Federal agencies implementation and by court interpretations. If the trend continues, human activities will become more and more confrontational and conflicting with the Endangered Species Act.

The Act as implemented and interpreted removes balance and flexibility, in essence, common sense approaches to species recovery and habitat protection. The current standard of measurement of whether or not a major federal action or a takings is within the Act, is based upon the single purpose biological opinions or analysis. Such documents do not give weight to legal, economic, social, environmental, and other public interests.

The fundamental argument that humanity can only survive if all species are conserved is an underlying hypothesis that is refuted by the physical world in which we live. Man can only control a small portion of the natural universe and our twiddling with the natural environment cannot be the final determination whether a species survives or not.

The goal of the Endangered Species Act is a worthy goal, supported by the public. The Act must however, provide for "common sense" and the understanding that the national policy be flexible and balanced by including a broader mix of interested and affected parties.

If I was to use a sound byte to sum up our position, it would be "save the species and not the Act."

MONTROSE OFFICE
P.O. BOX 1149
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Senator Dick Kempthorne
August 16, 1995
Page 2

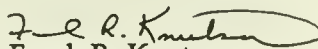
The root cause of much of the current conflicts and concerns arise from the 1978 Supreme Court decision, *TVA vs. Hill*, commonly known as the snail darter case of the Tellico Dam in Tennessee. The Supreme Court said, "The plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost." It goes on to say in the same paragraph: "The pointed emission of the type of qualifying language previously included in endangered species legislation reveals a conscious decision by Congress to give endangered species priority over the "primary missions of federal agencies."

The impact of this decision to the western states is obvious and needs no further explanation as to its impact. The policies set out in this decision can only be corrected by federal legislation. We urge you to change these policies.

The attached material provides some insight into the impact the current policies are having in the real world of human activity. We ask that it be submitted as part of the official record. We believe that amendments to the Act are needed to bring back the balance and flexibility needed to assure all interests are protected.

Thank you for your assistance with this matter.

Sincerely,


Frank R. Knutson
General Manager

FRK/bab

Enclosures

cc: Senator Craig Thomas

Statement of
Tri-State Generation and Transmission Association, Inc.

for

The Senate Sub-Committee Hearing on
Reauthorizing the Endangered Species Act

Casper, Wyoming

August 16, 1995

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Statement of Tri-State Generation and Transmission Association, Inc.
for
The Senate Sub-Committee Hearing on
Reauthorizing the Endangered Species Act
Casper, Wyoming
August 16, 1995

Tri-State Generation and Transmission Association, Inc. (Tri-State) is a non-profit, consumer-owned wholesale electric power supplier to 34 rural electric distribution systems in the states of Colorado, Wyoming and Nebraska. These member distribution systems serve nearly 282,000 electric meters across a 150,000 square mile area with a total population of approximately 650,000.

Tri-State purchases federal power from several federal generation resources, including the Colorado River Storage Project, the North Platte Project, Pick-Sloan Missouri River Basin Project, Frying Pan-Arkansas Project, and several smaller federal projects scattered throughout the Missouri, Platte and Colorado River Basins. Power from these federal generation resources, coupled with Tri-State's own generation and other utility transactions, result in a very complex integrated regional power supply system.

The development of the federal generation and transmission system in the Western U.S. is inextricably linked to water development. Both power and water development are integral parts of the western states infrastructure providing products and services to millions of people. The federal reservoirs also provide a major source of recreation, flood control and other benefits. Many of these benefits are paid for by the sale of power from the federal dams' generating plants.

The Endangered Species Act is having an impact on these resources. Although we may conclude that the ESA is working, we also can conclude that it is working in a very inefficient and confrontational manner, and outside the "rule of law." The "rule of law" is the condition where any affected party can read the law and proceed in a lawful manner without having to have an agency interpret what can or cannot be done every step of the way.

Grayrocks Reservoir

Tri-State's first encounter with the Endangered Species Act (ESA) occurred in the mid-1970s during the construction of the Laramie River Station coal-fired electric generating plant and Grayrocks Reservoir near Wheatland, Wyoming. An inventory of the plant site resulted in a 14-page listing of spiders – none of them were endangered – fortunately.

The construction of the Grayrocks Reservoir on the Laramie River east of Wheatland, Wyoming, and just above the river's confluence with the North Platte River, became our first major encounter with the ESA. At issue was the impact the dam would have on the proposed critical habitat for whooping cranes on the Platte River in central Nebraska since the Laramie River is a tributary to the Platte River system. At that time, the critical habitat was only proposed and not yet finalized. In order to summarize the long story of activities surrounding the permitting process of obtaining permits to build the reservoir, we have attached a chronology of this process which illustrates the impact on the construction of this project (Appendix A).

Ultimately, the Laramie River Station Project participants were required to set up a \$7.5 million trust fund (The Whooping Crane Trust Fund) for the whooping

crane in Nebraska. The trust funds are being used 350 miles downstream from the project.

Glen Canyon Dam

Our next major encounter occurred when the Glen Canyon Environmental Studies, Phase I was completed in 1988, after six years of concentrated research efforts. This study concluded, "nowhere were time and flow limitations more strongly felt than in determining the effects of dam operations on the Humpback Chub. The legal and biological status of this species makes decisions based on inadequate or incomplete information particularly dangerous. In this respect, we have erred on the side of caution and wish to reemphasize the need for further studies with appropriate flow regimes to currently assess the effects of dam operations on this endangered species." (The Humpback Chub was listed March 1967.)

Subsequently, Glen Canyon Environmental Studies Phase II was initiated. Shortly after this study was initiated, the Secretary of the Interior directed the preparation of an Environmental Impact Statement (EIS) on the effects of the operation of Glen Canyon Dam on the environmental and ecological resources on the Colorado River downstream of Glen Canyon Dam in Glen Canyon National Recreation Area and Grand Canyon National Park. While the EIS was being developed, the Secretary of Interior committed to implement interim operating criteria to take effect November 1, 1991 and continue until a decision is made on the final operating criteria. Interim operating criteria are still in effect today. The final EIS has been submitted to the Secretary of Interior and a Record of Decision by the Secretary is still pending.

The interim operating criteria limits the maximum water releases from the Glen Canyon Dam to 20,000 cubic feet per second (CFS). Installed generation capacity at Glen Canyon Dam is 1,356 megawatts (MW).

The maximum power plant releases are 33,200 CFS or approximately 1,000 CFS per 40 megawatt generation. Therefore, limiting water releases to 20,000 CFS effectively eliminates 528 MW of generation. This loss of power generation is currently absorbed by surplus generation in the region. Eventually, however, lost generation will have to be replaced with equivalent non-hydro resources such as gas turbines, etc. The costs to the consumer for replacement generation will be much higher than the cost of the lost hydro generation. In fact, the costs to the power consumer of Glen Canyon generation will continue at current levels even though the output is greatly reduced.

Other interim operating criteria being imposed at Glen Canyon Dam are also having a deleterious effect on power generation. Compliance with daily flows, ramp rates and minimum flow requirements, result in water releases during off-peak electric usage — a period of time when power customers would prefer to keep the water in the reservoir for more cost effective releases. In addition to the impact of the Endangered Species Act on water releases from federal reservoirs, there is a matter of funding the recovery programs for endangered species. Funding for the Glen Canyon long-term monitoring program is currently included in the U. S. Bureau of Reclamation (USBR) budget at \$6,389,000 for FY '96. Longer term funding is uncertain from the (USBR).

Upper Colorado River Recovery Program

Concurrent with the Glen Canyon Dam activities, a much broader program is underway in the Colorado River above and below Glen Canyon Dam, a recovery program for not only the endangered Humpback Chub fish, but three other endangered fish. These are the Colorado Squawfish, Razorback Sucker and the Bonytail Chub. Since 1978, the U.S. Fish & Wildlife Service has issued numerous biological opinions on water project impacts on the endangered fish in the upper Colorado River basin (essentially above Glen Canyon Dam). These opinions have concluded that the impacts of water projects and their associated flow depletions are jeopardizing the continued existence of the endangered fish. To give you an idea of the number of Section 7 consultations and the magnitude of the potential impacts to water right holders, we have attached a recent list of Section 7 consultations involving water depletions in the upper Colorado River basin (Appendix B). There have been 248 Section 7 consultations on the Colorado and its tributaries since 1988.

In January 1988, a cooperative agreement to recover the four endangered fish in the upper Colorado River basin was signed by the governors of Colorado, Utah and Wyoming, the Secretary of Interior and the Administrator of Western Area Power Administration.

As a result of this cooperative agreement, the U.S. Fish & Wildlife Service can issue non-jeopardy biological opinions on existing and future water depletions as long as the recovery program maintains sufficient progress. Sufficient progress, however, is undefined and at the discretion of the U.S. Fish & Wildlife Service. Yet another problem with the current ESA -- undefined parameters.

A copy of the cooperative agreement is attached (Appendix C).

As part of the recovery plan adopted by this group, research flows from Flaming Gorge Reservoir on the Green River (a tributary of the Colorado River) have caused a reduction in power generation capacity by 50 megawatts. If the flows currently in effect were to continue indefinitely, power generation at Flaming Gorge Reservoir would be permanently reduced by 50 megawatts and would eventually have to be replaced by a non-hydro resource at much higher costs to the consumer. (Replacement costs at current prices for this 50 megawatts could be as high as \$12 million per year based on \$20 per kilowatt-month for firm capacity replacement.)

Funding for the Upper Colorado River Recovery Program (UCRRP) for FY '96 is still uncertain — a budget has not yet been adopted. Attached is a FY '96 funding estimate — not yet approved by the Implementation Committee (Appendix D). Sources, however, for this funding are still undetermined. Both funding and sources of funding for FY '97 and beyond are uncertain at this time. Total long-term estimates for program funding through FY 2003 vary from \$51.4 million to \$111.7 million. Whether or not the recovery program can continue to be a reasonable and prudent alternative to water development in the basin without certainty in funding depends to a large extent on the reasonableness of federal agencies and other parties that may challenge the recovery effort based upon inadequate funding. The success of the recovery program depends on a flexible and balanced accommodation by all participants and non-participants to the recovery effort.

Platte River Basin

Tri-State is also very concerned about recent action relating to the Endangered Species Act in the Platte River basin. Although at this point no action has been taken to curtail generation at federal facilities in the basin, the U.S. Fish & Wildlife Service is moving in the direction of a recovery program for the Platte River and its tributaries.

On October 19, 1993, the U. S. Fish & Wildlife Service issued seven draft biological opinions on the reissuance of special use permits for water related facilities and structures within the Arapaho/Roosevelt National Forest lands in Colorado. All of the facilities are in the Rocky Mountain headwaters of the South Platte River. The affected facilities are critical components of the drinking water supply system on Colorado's front range and include the City of Greeley's Barnes Meadow Reservoir and Peterson Lake Reservoir, the City of Boulder's Lakewood Pipeline, the City of Loveland's Idylwilde Hydroelectric Project, Water Supply and Storage Company's Long Draw Reservoir, and Public Service Company of Colorado's Boulder Hydroelectric Gravity Line.

As part of the reissuance of the special use permits, the Forest Service was required to consult with the U.S. Fish & Wildlife Service on the likely impact of the federal action (i.e., renewal of a permit for already constructed facilities) on any endangered and threatened species. During this consultation, the presence of endangered and threatened species, both locally and hundreds of miles downstream from the project in and below the Big Bend reach of the Platte River, required the Fish & Wildlife Service to prepare biological opinions under the Endangered Species Act.

Fish & Wildlife's draft biological opinions focused almost exclusively on the impact of continuing the historic depletions of water, including the direct consumption for municipal water supply and the indirect depletions from evaporation and transmission losses. The opinions attempt to measure the consequences and impacts of the depletions ". . . on the Ute orchid, pallid sturgeon, whooping crane, interior least tern, piping plover, American burying beetle, bald eagle, peregrine falcon, fringed orchid, and on designated whooping crane critical habitat in the Platte River Valley in Nebraska."

Interestingly, no localized adverse impacts were found for any endangered or threatened species known to exist near any of the facilities. However, the Fish & Wildlife Service determined that the direct and indirect effects of the reissuance of each of the special use permits — for activities that have been ongoing for decades — are likely to jeopardize the continued existence of the whooping crane, interior least tern, piping plover and pallid sturgeon, due to impacts hundreds of miles downstream in Nebraska, and likely will adversely modify designated critical habitat of the whooping crane, also in Nebraska. This means that any and every streamflow depletion from any and every project in the Platte River drainage, regardless of the exact quantifiable impact to habitat conditions several hundred miles downstream, results in "jeopardy" to the listed species, including the pallid sturgeon which is only found in the lower Platte near the Missouri confluence and only during periods of high flows. The draft opinions find "jeopardy" for depletions quantified to be as small as one cfs. This could further result in lost generation capacity at hydro projects on the Platte River and any of its tributaries.

In order for projects in the Platte River drainage to avoid jeopardy opinions against them U.S. Fish & Wildlife Service has defined two "reasonable and prudent

alternatives" to continuing the historic depletions under the current permits. "The first reasonable and prudent alternative is replacement in amount and in timing of the water depleted by the permitted action." In other words, the Forest Service can renew the permits for these existing water storage and supply facilities so long as they neither store nor supply water. Fish & Wildlife Service does allow that if the permittee cannot completely eliminate its own depletion, it can always pay to eliminate someone else's, so long as it can replace the full amount of its water depletion in both timing and quantity in Nebraska.

The second "reasonable and prudent" alternative would require cooperation among all the applicants:

- to fund or otherwise accomplish a habitat restoration and maintenance program;
- to support and participate in the formulation and implementation of an interstate Platte River habitat recovery implementation program (Program);
- to fund or otherwise support research designed to enhance survival of the pallid sturgeon in the lower Platte near the confluence of the Missouri River; and
- after the fifth permit year, operate to replace the depletions in the entire amount and timing or achieve other equally high priority items identified in the Program (prior to substituting for water depletion replacement, a new ESA consultation must take place).

The Fish & Wildlife Service position set forth in the draft opinions will necessarily result in a jeopardy opinion for every depletion in the Platte River

watershed that is subject to consultation under the Endangered Species Act because the Fish & Wildlife Service opinion identifies a streamflow shortfall in Nebraska of over 400,000 acre feet per year.

These reasonable and prudent alternatives suggested by the Service are neither reasonable nor prudent.

1. The reasonable and prudent alternatives suggested by the Service are beyond the legal capability of individual permittees.

2. The proposed reasonable and prudent alternatives could be extremely costly to water users, have potential adverse social, economic, and environmental consequences, will severely impair Colorado's ability to meet existing and new water demands, and are not consistent with the interstate compact on the South Platte River.

3. The proposed alternatives may not be technically feasible, i.e., water delivered to the state line may not be deliverable to endangered species habitat in Nebraska, given the significant surface water diversions and the vast amount of unregulated ground water pumping within Nebraska.

4. Serious technical and scientific questions exist regarding the actual impacts of these depletions on endangered species habitat in Nebraska.

In addition, if these policies are implemented throughout the Platte River basin, it will be similar to the Upper Colorado River Recovery Program, where power users are hit twice for endangered species recovery. First, power users are required to

supply \$6 million to the program. This funding comes off the top of funds being sent to the U.S. Treasury for reduction of debt on these projects, therefore extending the repayment of these projects. Second, power users lose generation because of the curtailment of water releases that would travel through the turbines. Again, while we agree that action should be taken to recover endangered or threatened species, we don't think making power users pay twice is a fair approach.

FERC Relicensing Applications on the Platte River

Another concern to Tri-State in this region for their implications are the results of two relicensing applications at non-federal hydro projects in south central Nebraska. One was an application filed by Central Nebraska Public Power and Irrigation District (Central) for a new license for the Kingsley Dam Project (FERC No. 1417). The second application filed by Nebraska Public Power District (NPPD), was for a new license for the North Platte/Keystone Diversion Dam Project (FERC No. 1835). The two projects are located near the confluence of the North and South Platte rivers. The conclusions drawn regarding the ESA at the completion of this relicensing could have future impacts on Tri-State and its member distribution systems.

On June 21, 1984, Central and NPPD (the Districts) filed applications for new licenses for their respective projects. On December 7, 1984, the Director of the Office of Hydropower Licensing (Director) notified the licensees that their new license applications were deficient and gave them 90 days to correct the deficiencies. The licensees responded to the Director's letter on March 7, 1985, correcting some of the deficiencies and requesting an extension of time to submit the remaining information. The latter was granted, and the deadline for filing was subsequently defined as May 5, 1990. The additional information originally requested in

December 1984 was jointly filed by the Districts on May 4, 1990. On August 14, 1990, the Commission staff announced that the license applications had been accepted for processing.

Pursuant to Section 15(a) of the Federal Power Act (FPA) 16 U.S.C. Section 808(a), the Commission is required to issue, from year to year, an annual license under the terms and conditions of the existing license, until a new license is issued or the project is otherwise disposed of in one of the ways set forth in Section 15. The licenses for Project Nos. 1417 and 1835 expired on June 16 and June 30, 1987, respectively. On June 23, 1987, the Commission issued annual licenses for Project Nos. 1417 and 1835, subject to the terms and conditions of the original licenses, as required by Section 15(a) of the FPA. On February 14, 1990, the Commission imposed interim resource protection and enhancement measures on NPPD's Project No. 1835. The Commission also found that it lacked reserved authority to amend Central's license unilaterally, but strongly encouraged Central's cooperation with NPPD in implementing those measures. The Commission later stayed the minimum flow requirements of NPPD's license because Central was not cooperating with NPPD, and compliance was impossible absent Central's cooperation. Central then filed a license amendment request, and on July 16, 1991, the Commission amended Central's annual license to incorporate target instream flows and other resource protection measures.

Upon review of the applications and submittals by intervenors, the Commission staff determined that the issuance of licenses for the Kingsley Dam and North Platte/Keystone projects would constitute a major federal action that could significantly affect the quality of the human environment. Accordingly, the Commission issued a notice on August 17, 1990 indicating its intent to prepare an

Environmental Impact Statement evaluating the probable impacts of the Districts' proposal for the two projects and of alternative courses of action.

When FERC released its preferred alternative for review and comments several entities responded, including an instructive Platte River Trust response. In that response, Platte River Trust outlined a legal argument as to the shortcomings of the preferred alternative to the legal standards of the ESA and other laws (Appendix E). This legal analysis outlines current federal policy in regard to balance and flexibility in ESA actions by federal agencies. For example, this analysis shows that the ESA has superiority over reclamation law. Such a policy severely impacts western states water use where almost every waterway has a federal reclamation project or federal property requiring ESA consultation. In addition, the analysis shows that a federal agency that attempts to balance the interests of the endangered species or the critical habitat with other interests, such as irrigations, municipal and industry water use, the deference will be given to the endangered species or critical habitat. Such a policy does and will create major conflicts.

Summary

By the foregoing statements and attachments, we believe we have shown that the Endangered Species Act, as laudatory as its original purpose is, as implemented, gets bogged down in bureaucratic entanglements and special interests. These include:

- In the Grayrocks case the Act was used to stop a major multi-state energy project hundreds of miles upstream in another state by special interests that the endangered species involved was a secondary interest to the securing of water.
- With the Endangered Species Act as the major leverage the federal government

is changing the operations of a major power plant a Glen Canyon Dam, for the benefit of new interests and purposes at the cost of power consumers. In this case, an EIS was initiated without a major federal action driving it.

- Open-ended recovery programs, such as the Upper Colorado River Recovery Program for Endangered Fish Species, have unclear goals as to what extent constitutes recovery and undefined terms such as "sufficient progress."
- Reasonable and prudent alternatives are not always reasonable and prudent.
- And in the case of the FERC Relicensing Applications on the Platte River, existing federal policy and laws are subjugated to the Endangered Species Act, causing untold costs and extensive delays in the process.

If, as in the case of the Endangered Species Act, Congress intended to make one law all-powerful over all others, isn't it time to look at the circumstances of its application and correct its failings?

Appendix A:

**Chronology for Construction of
Grayrocks Dam and Laramie River Station**

Chronology for Missouri Basin Power Project – Grayrocks Dam and Reservoir

- April/May 1973 Project files for direct flow rights on lower Laramie River and for storage in Grayrocks Dam.
- December 1973 Environmental analysis of sites in southeast Wyoming completed.
- June 1974 Land acquisition complete for plant site and reservoir.
- July 1974 Project reaches agreement with Corn Creek Irrigation Association on water rights.
- Formal announcement of the site of the generating station and Grayrocks Dam and Reservoir.
- March 1975 Wyoming legislature passes new industrial Siting Law.
- Platte County approves zoning for plant site and reservoir.
- June 1975 MBPP announces a new schedule for site development, moving start of project construction ahead by one year. The delay is made necessary because of new and more stringent environmental and regulatory legislation.
- April 1976 U.S. Army Corps of Engineers holds hearing on MBPP request for Section 404 "dredge and fill" permit to construct Grayrocks Dam and Reservoir.
- May 1976 PSC approves MBPP Certificate of Public Convenience and Necessity.
- Basin Electric submits loan application to finance its share of MBPP to Rural Electrification Administration.
- REA completes final Environmental Impact Statement (EIS).
- June 1976 Final EIS is published in Federal Register.
- August 1976 REA publishes intent to issue load guarantee for Basin Electric's share of MBPP.
- November 1976 State of Nebraska files suit against Rural Electrification Administration (REA) contending MBPP Environmental Impact Statement is inadequate and that impoundment of water by MBPP's proposed

Grayrocks Dam and Reservoir will cause potential reduction of surface and groundwater for agricultural irrigation.

- December 1976 REA approves load guarantee for Basin Electric's \$676 million share of Laramie River Station.
- March 1977 The National Wildlife Federation, the Nebraska Wildlife Federation and the National Audubon Society intervene in the State of Nebraska v. Rural Electrification Administration suit, contending that the proposed Grayrocks Dam and Reservoir in Wyoming will endanger the natural habitat of the Whooping Crane on the Platte River in Nebraska - located 285 miles downstream from the proposed dam and reservoir.
- April 1977 Wyoming industrial Siting Council rules design changes of Grayrocks Reservoir by MBPP meet original criteria and conditions of Siting permit. Council also rules MBPP is following permit conditions.
- June 1977 Wyoming State Engineer's office approves Grayrocks Dam and Reservoir plans and specifications.
- July 1977 U.S. Fish and Wildlife Service (FWS) withdraws objections to Corps of Engineers over a pending "404" permit to dredge and fill to construct Grayrocks Reservoir, after objections are withdrawn, a memorandum of agreement over mitigation plans and waterflows on the Laramie River below the proposed dam is signed by MBPP, FWS and the Wyoming Game and Fish Commission.
- October 1977 Preliminary construction begins on Grayrocks Dam and Reservoir in areas outside the scope of the Corps of Engineers 404 Permit.
- November 1977 MBPP withdraws offer of settlement to State of Nebraska over waterflows from Grayrocks Dam.
- January 1978 Pretrial hearing held on lawsuit filed in November of 1976 by State of Nebraska v. Rural Electrification Administration.
- March 1978 Omaha District of Corps of Engineers issues "404" dredge and fill permit for Grayrocks Dam and Reservoir to MBPP; work on reservoir begins immediately.
- April 1978 State of Nebraska and environmental groups file lawsuit in Federal District Court in Nebraska seeking injunction to suspend the Corps of Engineers 404 permit.

May 1978 Injunction to halt construction of Grayrocks Reservoir denied to State of Nebraska by Federal District Court in Omaha. Other parties in injunction motion are National Wildlife Federation, National Audubon Society and Nebraska Wildlife Federation.

A final rule published by the U.S. Fish and Wildlife Services designated area on the Platte River in Nebraska which is 285 miles downstream from Grayrocks Dam and Reservoir as a critical habitat for the Whooping Crane.

June 1978 Lawsuits against REA and the Corps of Engineers over Grayrocks Dam are combined; trial set for August 24 in Federal District Court in Omaha.

August 1978 Combined lawsuit against REA and the Corps of Engineers by State of Nebraska, *et. al.*, is heard by Judge Warren K. Urbom in Federal district Court in Lincoln, NE.

Developments Since October 2 Federal District Court Decision

- October 2, 1978 Judge Urbom rules that the environmental impact prepared by REA is inadequate and that REA and the Corps of Engineers, in the issuance of the 404 Permit, failed to take into account provisions of the Endangered Species Act. The court orders that the loan guarantee commitments made by REA be set aside and that the 404 Permit be set aside. REA is enjoined from approving any loan guarantee commitment until the impact statement is supplemented and inadequacies are corrected – as determined by the court. Construction of Grayrocks Dam and Reservoir is enjoined until a new 404 Permit is perfected and issued. Construction of the generating units if MBPP Laramie River Station is allowed to proceed.
- October 4, 1978 MBPP begins orderly shutdown of Grayrocks Dam and Reservoir, work continues at plant construction site and on transmission facilities.
- October 6, 1978 Judge Urbom grants request of defendants for a stay of the order enjoining REA loan commitments to allow defendants to prepare post-trial motions seeking clarification of the order. The stay is to be in effect until October 16.
- October 9, 1978 US Representative Teno Roncalio (D-WY) announces he will lead a Congressional drive to amend the Endangered Species Act to exempt MBPP and nullify the court order.

- October 12, 1978 Judge Urbom extends stay to October 24 to allow plaintiffs to file post-trial motions. Hearing on motions of plaintiffs and defendants is set for October 19.
- October 14, 1978 House of Representative passes Roncalio amendment establishing a procedure for exempting Grayrocks Dam and Reservoir from the Endangered Species Act.
- October 15, 1978 In Senate Conference Committee, the House amendment is modified to provide for a 60-day review period by the Department of Interior and its Fish and Wildlife Service and Bureau of Reclamation, the Army Corps of Engineers and REA. These agencies will make joint recommendations to the Endangered Species Committee, a group created under legislation passed earlier in 1978 (Culver Amendment). The Endangered Species Committee is made up of the Secretaries of the Army, Interior and Agriculture, the Administrators of the Environmental Protection Agency and National Oceanic and Atmospheric Administration, the Chairman of the Council on Economic Advisers and the governor or governors of the affected state or states. This body would have 90 days after signing of the bill by the President to determine if an exemption is warranted.
- October 19, 1978 Judge Urbom upholds his initial injunction to halt construction on the dam and reservoir. Further, he: (1) enjoins the Rural Electrification Administration (REA) from releasing any further fund under Federal guarantees for construction on either Grayrocks Dam and Reservoir or the Laramie River Station; (2) validates the loan guarantees issued to date by REA; (3) approves REA releases of loan funds to meet expenses to date and provides for an "orderly" shutdown of construction on Grayrocks and the Laramie River Station; (4) sets another hearing for Monday, October 23 to define "orderly"; and (5) sets aside a plaintiff's motion seeking to extend the injunction to halt construction of the Laramie River Station.
- October 21-22, 1978 A series of conference telephone calls and discussions over the possibility of a settlement meeting are held over the weekend between Nebraska rural electric and MBPP officials and with officials of Nebraska and Wyoming. At the invitation of the governors of these states, a meeting is scheduled for October 25 in Lincoln, NE, to discuss the possibility of an out-of-court settlement.
- October 23, 1978 Judge Urbom issues his final order and sets the effective date of the order for October 26, 1978 at 5:00 p.m.

- October 24, 1978 Defendants file appeal of decision to the US Court of Appeals for the Eighth Circuit.
- October 25, 1978 The six participants of MBPP, the Governors, Attorneys General and water resources representatives of Nebraska and Wyoming, representatives of environmental groups concerned (plaintiffs in the suit), representatives of the Federal defendants (REA and the Corps of Engineers) as well as representatives of the Nebraska rural electric and water use associations meet for six hours at the Nebraska Governor's Mansion in Lincoln to discuss areas of possible settlement. During the discussion, the Whooping Crane was mentioned very little; the primary issue was the Project's guarantee of certain levels of water flows below Grayrocks Dam the consumption of water out of the Laramie River by Corn Creek Irrigation District if and when it gets into operation. No agreements are reached. A smaller group is designated to meet again November 2 and 3 in Cheyenne, Wyoming.
- October 26, 1978 Justice Roy L. Stephenson of Des Moines, Iowa, senior judge of the US Court of Appeals for the Eighth Circuit, grants a request made by Basin Electric on behalf of the MBPP to stay the injunction ordered by Judge Urbom in the lower court. In granting the stay, Justice Stephenson allows construction of Grayrocks Dam and Reservoir to resume and allows REA to continue Federal loan guarantees for construction of the entire project, including the generating units of the Laramie River Station and associated transmission facilities. Stephenson, in issuing the stay of injunction, states: "There are very, very serious issues here that ought to be considered by a three-judge panel. I will issue an order to stay the injunction until further order of the court. I make no comments on the merit of the case." The request for the stay of the lower court was issued at 2:00 p.m., three hours before the lower court order would have gone into effect.
- November 2-3, 1978 Preliminary agreement is reached on terms for a settlement in Cheyenne. Terms of the agreement allow construction to continue as scheduled on the Laramie River Station, the Grayrocks Dam and Reservoir, and all other work associated with MBPP. All parties involved hearing in the appellate court.
- November 8, 1978 The Eighth Circuit Court of Appeals postpones indefinitely the hearing date for appeal of the case to allow sufficient time for all parties involved to consider the final written stipulations of the settlement.

- November 10, 1978 President Carter signs the Endangered Species Act which contains the amendment allowing MBPP construction to proceed while a special review is made by representatives of the Departments of Interior (Fish and Wildlife Service, Bureau of Reclamation) and Agriculture (REA) and the US Army Corps of Engineers. This group will conduct a 60-day study and make joint recommendations on Grayrocks Dam and Reservoir to the Endangered Species Committee.
- November 14, 1978 Informal review hearings by the Interior-Agriculture-Corps of Engineers group begin in Cheyenne.
- December 4, 1978 Agreement of Settlement and Compromise signed by all parties in Lincoln, NE. Major provisions of the agreement include:
1. No limitation is placed on the operation of the Laramie River Station and no changes in cooling or scrubbing technology are required. Maximum annual consumptive use of water at the site is limited to 23,250 acre/feet per year.
 2. Specified water release from Grayrocks Reservoir, with protection for adequate water supply to the power plant.
 3. At such time as the Corn Creek Irrigation District in Wyoming, with which the MBPP has a water supply agreement, becomes operational the Project will annually deliver up to 11,250 acre/feet into the North Platte River. This amount can be made up of water purchased in Wyoming and/or in Nebraska.
 4. Neither Basin Electric, Tri-State Generation and Transmission Association of the Wyoming Municipal Power Agency will, without the consent of the Laramie River Conservation Council and the Powder River Basin Resources Council, appropriate additional irrigation waters from the Laramie River drainage system for the purpose of industrial use before December, 1988.
 5. The Project will establish a Platte River Whooping Crane Habitat Maintenance Trust and convey to that trust the amount of \$7.5 million to be used for the purpose of protecting and maintaining the migratory bird habitat in the Big Bend area of the Platte River between Overtone and Chapman, Nebraska. Trustees will consist of representatives of the Project, the State of Nebraska and the National Wildlife Federation.

6. All objections to the adequacy of the existing EIS and to the Corps of Engineers 404 Permit as amended to the REA loan guarantees are withdrawn.

This signed agreement is submitted to the Federal Endangered Species Committee chaired by Secretary of the Interior Cecil Andrus. If the Committee finds that the agreement meets the requirements of the provisions of the Endangered Species Act, the agreement will be submitted to the courts for dismissal of the lawsuits.

- December 7, 1978 The biological opinion of the Congressionally-directed review of the effects of Grayrocks Dam and Reservoir upon the habitat of the whooping crane is presented to Secretary of Interior Andrus. The biological opinion, signed by the US Fish and Wildlife Director Lynn A. Greenwalt, states that altered stream flows resulting from impoundments by Grayrocks Dam and Reservoir would likely "jeopardize the continued existence of the whooping crane" and would "adversely modify the existence of the whooping crane's critical habitat" along the Platte River. However, the opinion concludes, if "reasonable and prudent" alternatives similar to the terms of the settlement were to be taken. The continued existence of the whooping crane will not be jeopardized nor will its critical habitat be destroyed or adversely modified.
- January 5, 1979 MBPP is notified by the Secretary of Interior that the Interior Department concurs with Section 12 of the Settlement Agreement which stipulates an affirmative opinion from the Department of Interior that the terms of the Agreement of Settlement and compromise satisfy the provisions of the Endangered Species Act.
- January 8, 1979 Hearings are held concurrently by the Interior Department in Cheyenne, Wyoming and Washington, D.C. to establish the administrative record for a decision by the Endangered Species Committee. In Washington, the Interior Administrative Law Judge Joseph McGuire received presentations by MBPP and the National Wildlife Federation. In Cheyenne, Judge Keith Burrowes receives comments by the Nebraska State Irrigation Association, the Wyoming Rural Electric Association and from Mr. Phil White and Mr. John Blevins, representing themselves as interested parties.
- January 23, 1979 The Endangered Species Committee, meeting in Washington, D.C. makes a determination to exempt Grayrocks Dam and Reservoir from Section 7 of the Endangered Species Act. The high-level committee is convened to fulfill the requirements of the specific legislation passed in the closing hours of the Congress directing it to make a decision on

Grayrocks within 90 days after enactment. In exempting Grayrocks, the committee in effect accepted the out-of-court settlement terms as meeting requirements of the law which stipulates that any exemption must make provision for "such reasonable mitigation and enhancement measures, including . . . live propagation, transplantation, and habitat and acquisition and improvement, as are necessary and appropriate to minimize the adverse effects ... upon the ... species or habitat..."

The decision to exempt under these terms and with the understanding that the out-of-court settlement will be accepted as grounds for dismissal by the Eighth Circuit Court of Appeals was unanimous by a 7-0 vote. Preparations are begun immediately by MBPP and all parties to the settlement to request and instruct the appellate court to dismiss the case.

March 23, 1979

Pursuant to the mandate from the United States Court of Appeals for the Eighth Circuit, the District Court dismissed the lawsuit.

1. BACKGROUND

A primary responsibility of the Colorado River Recovery Implementation Committee is to develop and recommend priorities for the annual use of funds under the Recovery Program. The Recovery Program's recommended annual budget in FY 96 is \$2.99 million. This is a 2.6 percent increase (based on the 1994 Consumer Price Index) over the \$2.92 million FY 95 budget. Additional funding expected from the Fish and Wildlife Service (Service) and the State of Colorado brings the total FY 95 annual budget to \$3.39 million. Funds from Reclamation for capital projects in FY 95 are expected to total \$6.37 million. Other funds (additional agency contributions, FY 88 appropriation funds, and Section 7 funds) total 1.67 million, bring the total FY 96 Recovery Program budget to \$11.44 million.

ANNUAL FUNDS

	(Established Annual Funds Contribution)	Expected Annual Funds Contribution	Capital Project Funds
Fish and Wildlife Service	(\$781,800)	\$1,124,000 ¹	
Bureau of Reclamation	(\$1,956,300)	\$1,956,300	\$6,373,000
State of Colorado	(\$135,600)	\$ 186,900 ²	
State of Utah	(\$95,200)	\$ 95,200	
State of Wyoming	(\$30,200)	\$ 30,200	
	<u>(\$2,999,100)</u>	<u>\$3,392,600</u>	<u>\$6,373,000</u>

OTHER FUNDS

CWCB cash contribution for compact allocation	\$1,161,000
Water Users Section 7 Funds	\$ 115,900
FY 88 Water Acquisition Appropriation	\$ 151,300
CWCB, CRWCD, BR, and CDOW additional contributions to Yampa Oper. & Mgmt. Plan	\$ 245,000
	<u>\$1,673,200</u>

¹ In addition to \$623,000 in resource management funds and \$200,000 in Section 6 funds, the Service expects to provide \$284,000 for hatchery/refugia operation and maintenance and \$17,000 (from a private contribution) for installation of nonnative fish control devices.

² Colorado will provide an additional \$41,300 in in-kind services and an additional \$10,000 in matching funds to the \$100,000 in Section 6 funds they will receive. ^{17,900}

Appendix B:

Section 7 Consultations in Colorado River Basin

July 31, 1995
 Section 7 Consultations Involving Water Depletions
 in the Upper Colorado River Drainage After Initiation of Recovery Implementation Program January 1988

Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized
BIA	Conoco Buttes-Ourray Gas	UT	White	02/06/92	05/06/92	11	130	02/11/92
BLM	James Creek	CO	White	11/23/80	02/23/89	400	4,000	02/03/89
BLM	Jensen-Miller	CO	White	11/18/80	02/18/89	30	300	02/03/89
BLM	Muddy Creek	CO	Colorado	01/24/89	03/24/89	7,716	80,324	02/07/90
BLM	Yellow Eagle Mine	CO	Dolores	04/05/91	07/05/91	24	276	12/06/91
BLM	Colo Interst Uinta Pipeline	CO	Green	10/03/91	01/03/92	17	196	02/10/92
BLM	Somerset Coal Mine	CO	Gunnison	04/17/92	07/17/92	1	12	07/24/92
BLM	Trans-Colorado Gas Pipeline	CO	Colorado	03/01/92	06/02/92	13	149	11/30/92
BLM	Chapman-Riebold Amend	CO	White	11/05/92	02/05/92	35	419	07/29/93
BLM	Devils Canyon	CO	Colorado	01/12/93	04/12/93	15	180	07/29/93
BLM	Dowler Pipeline	CO	Colorado	06/16/93	09/16/93	29	0	08/27/93
BLM	Rocky Mt. Natural Gas	CO	Colorado	06/24/93	09/24/93	9	108	08/27/93
BLM	Willcoxson Water Supply	CO	Colorado	07/20/93	10/20/93	0.55	0	09/27/93
BLM	Mountain Coal	CO	Gunnison	11/26/93	02/26/94	1	12	12/21/93
BLM	Cason Irrigation Pipeline	CO	Colorado	07/20/93	10/20/93	14	169	01/13/94
BLM	Hastings Pipeline	CO	Colorado	12/13/93	02/13/94	44	0	01/20/94
BLM	JQS Pit Reservoirs	CO	Colorado	01/18/94	04/18/94	2.55	31	02/22/94
BLM	Taylor Grazing Pond	CO	Colorado	01/18/94	04/18/94	1.28	16	02/22/94
BLM	Vasten Homestead Waterfowl	CO	Colorado	01/18/94	04/18/94	6.38	79	02/22/94
BLM	Jolly-Potter	CO	Colorado	02/10/94	05/10/94	125	0	03/03/94
BLM	Schenk Water Tank	CO	Colorado	02/25/94	06/25/94	30.4	0	04/07/94
BLM	Greenhorn Stock Pond	CO	Colorado	01/18/94	04/18/94	2.55	31	04/07/94
BLM	North Northwater Spring	CO	Colorado	04/05/94	07/05/94	1.61	20	05/31/94
BLM	Clough-Alber Ponds	CO	Colorado	04/05/94	07/05/94	1.28	16	05/31/94
BLM	New Castle Water Tank	CO	Colorado	04/08/94	07/08/94	446.22	-----	05/31/94
BLM	Jolley Irrigation	CO	Colorado	04/13/94	07/13/94	393	-----	05/31/94
BLM	Programmatic Colo <125	CO	Colorado	05/29/94	08/29/94	{ 1500 hist 1400 new }	-----	06/13/94
BLM	Rock Creek	UT	Green	11/06/85	04/18/86	120	1,200	03/24/89
BLM	Columbia Gas Development	UT	Colorado	08/08/91	11/00/91	15	173	10/02/91
BLM	Hog Canyon Reservoir	UT	Colorado	02/14/92	05/14/92	1	12	06/04/92
BLM	Buckhorn Wash	UT	Green	11/06/92	02/06/93	15	180	12/10/92
BLM	Aable Trucking Co	UT	Colorado	05/17/93	08/17/93	20	240	06/21/93
BLM	Moab District	UT	CO-Green	02/02/94	05/02/94	531	*4	05/06/94
BLM	Monument Butte	UT	Green	05/14/94	08/14/94	500	6,170	07/18/94
BLM	Balcon Oil & Gas Development	UT	Green	12/02/94	03/02/95	441	5,605	04/21/95
BLM	Enron Oil & Gas	WY	Green	04/10/89	07/10/89	30	300	04/12/89
BLM	Chavron	WY	Green	08/11/89	11/11/89	8	00	09/08/89

July 31, 1995
 Section 7 Consultations Involving Water Depletions
 in the Upper Colorado River Drainage After Initiation of Recovery Implementation Program January 1988

Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized
BLM	Pac. Enterpr. Oil	WY	Green	08/11/89	11/11/89	2	20	09/08/89
BLM	Coastal Oil and Gas	WY	Green	11/09/89	02/09/90	4	40	11/17/89
BLM	Texaco	WY	Green	11/09/89	02/09/90	8	80	11/17/89
BLM	Mobil Oil Drill	WY	Green	05/09/90	08/09/90	8	83	05/11/90
BLM	Amoco Moxa Avch	WY	Green	06/11/91	09/11/91	82	895	08/06/91
BLM	Big Piney/La Barge Crd Act P1n	WY	Green	06/26/91	09/26/91	0	0	08/06/91
BLM	PG&E Fontenelle Gas Infill	WY	Green	06/16/91	09/16/91	61	666	08/14/91
BLM	Mobil Tip Top/Hogsback	WY	Green	05/13/94	08/13/94	162	*4 *7	06/27/94
BR	Lake City/Blue Mesa	CO	Gunnison	12/13/88	03/15/89	25	Exempt	03/08/89
DR	Paradox Valley Salinity	CO	Dolores	03/29/89	06/29/89	1,448	Exempt	06/08/89
BR	Drought-Related Water Sales	CO	Gunnison	03/13/90	06/13/90	Up to 6,000	Exempt	03/28/90
DR	Crested Butte/Blue Mesa	CO	Gunnison	06/03/91	09/03/91	98	Exempt	06/21/91
BR	Paonia Water Sale	CO	Gunnison	08/02/91	11/02/91	800	Exempt	10/23/91
BR	Collbran Project Amend	CO	Colorado	06/24/92	09/24/92	746	Exempt	06/29/92
BR	Lone Dome Ditch	CO	Dolores	03/04/93	06/04/93	240	Exempt	03/12/93
BR	Grand Valley BLM Stk Ponds	CO	Colorado	09/24/93	12/24/93	21	Exempt *7	11/10/93
BR	Crawford Reservoir	CO	Colorado	09/30/93	12/30/93	8	Exempt *7	11/10/93
BR	Ruedi Rsvr Round 2 Water Sale	CO	Colorado	09/--/94	12/--/94	17,000	Exempt *7	05/26/95
BR	Strawberry Aqueduct CUP	UT	Duchesne	-----	-----	108,000	Exempt *3	08/31/90
BR	Narrows Amendment	UT	Green	07/07/94	10/09/94	157	1,995*3*7	01/09/95
BR	Church & Dwight Co	WY	Green	12/14/87	03/14/88	1,250	Exempt	04/19/88
BR	Flaming Gorge	WY	Green	1978	06/01/90	0	Exempt	11/25/92
BR	Fontenelle Resv Water Contract	WY	Green	02/22/95	05/22/95	500	Exempt *7	05/15/95
BR/COE	Narrows	UT	Green	11/08/91	02/07/92	5,400	62,100 *3	03/25/92
BR/SCS	Price-San Rafael	UT	Green	08/09/88	02/15/90	25,310	----- *3	02/04/92
COE	West Slope Refinery	CO	Colorado	02/08/89	05/08/89	2,650	Exempt	08/15/89
COE	Frost & Sons	CO	Colorado	04/25/89	07/25/89	22,460	258,290	12,092
COE	Cole Div. Wld. Rio Blanco	CO	White	06/26/89	09/26/89	1,209	3,881	08/16/89
COE	Steamboat Springs Pipeline	CO	Colorado	03/20/90	06/20/90	200	2,082	11/02/89
COE	Town of New Castle	CO	Colorado	07/06/90	10/06/90	27	285	04/13/90
COE	Colorado OOM Crystal Hatch*2	CO	Colorado	01/24/90	04/24/90	2	22	07/21/90
COE	Bluestone/Roan Creek	CO	Colorado	10/09/90	01/09/91	2	21	11/14/90
COE	Everist Gravel	CO	Colorado	03/08/91	06/08/91	2,000	21,820	03/11/91
COE	Snowmountain Ranch	CO	Colorado	03/15/91	06/15/91	4	45	05/31/91
COE		CO	Colorado	03/15/91	06/15/91	83	908	06/15/91

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Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *	Opinion Finalized
COE	Indian Partnership	CO	Yampa	12/04/90	03/04/91	2	25	06/17/91
COE	City of Craig	CO	Yampa	06/23/91	09/23/91	600	6,646	09/19/91
COE	Colorado Ute Nuc Sta	*2	Dolores	02/11/92	05/11/92	886	10,189	03/03/92
COE	Indian Meadows	CO	Colorado	04/20/90	07/20/90	139	1,599	03/24/92
COE	Snowmountain Amend	CO	Colorado	05/15/92	08/15/92	6	64	06/03/92
COE	Eagle Golf Course	CO	Colorado	07/30/92	10/30/92	235	2,702	09/04/92
COE	Cross Bar Ranch	CO	Gunnison	10/14/92	01/14/93	4	40	11/13/92
COE	Colorado DOT	CO	Colorado	09/09/92	12/09/92	3	36	12/08/92
COE	Hahn's Peak Dam	CO	Yampa	09/16/91	12/16/91	31	357	02/12/93
COE	Flannery Reservoir	CO	Colorado	02/23/93	05/23/93	133	1,598	07/02/93
COE	Trout Lake Dam	CO	Dolores	02/17/93	05/17/93	203	0	07/16/93
COE	Pat.-Jacobson Ditch	*2	Colorado	03/19/93	06/19/93	103	0	07/29/93
COE	Clifton Diverston	*2	Colorado	02/05/93	05/05/93	994	0	09/02/93
COE	Lake Windemere	CO	Colorado	04/21/93	07/21/93	4	48	09/07/93
COE	Evans/McKenzie Ponds	CO	Eagle	08/20/93	11/20/93	0.39	6	11/01/93
COE	West Pond	CO	Colorado	12/09/93	03/09/94	0.16	2	01/13/94
COE	Town of Dolores	*2	Dolores	12/08/93	03/16/94	36.3	0	01/18/94
COE	Palmer Creek	CO	Colorado	03/02/94	06/02/94	0.94	12	03/28/94
COE	Carns Pond	CO	Colorado	02/11/94	05/11/94	8	93	03/29/94
COE	Dry Hollow Creek	CO	Colorado	08/04/93	11/04/93	2.3	28	04/04/94
COE	Town of Granby	CO	Colorado	03/28/94	06/28/94	41	*4	04/11/94
COE	Walfalt Wetland	CO	Colorado	03/24/94	06/24/94	4.5	56	04/15/94
COE	Oen Pond	CO	Colorado	03/09/94	06/09/94	.43	5	05/31/94
COE	Rivergreen	*2	Gunnison	03/22/94	06/22/94	{ 3.68 hist } { 1.14 new }	12	05/31/94
COE	Avon Metro	*2	Colorado	03/25/94	06/25/94	{ 38.3 hist } { 1.1 new }	14	05/31/94
COE	Independence Pond	CO	Colorado	05/03/94	08/03/94	2.15	27	05/31/94
COE	Miller Creek Ranches	CO	Green	08/27/94	11/27/94	45.62	563	06/28/94
COE	Pollard Pond	CO	Colorado	04/21/94	07/21/94	3.72	46	07/01/94
COE	Permit 94-475135	CO	Colorado	06/01/94	09/01/94	.3	4	07/01/94
COE	Alpine Land Dev.	CO	Colorado	06/01/94	09/01/94	254.6	3,142	07/08/94
COE	City of Steamboat Spgs	GLF Crs	Yampa	05/24/95	08/24/95	178.2	2,265	06/06/95
COE	Rio Blanco Reservoir #2	CO	White	04/01/95	07/01/95	133	0	06/27/95
COE	Upper Eagle Diverston	CO	Eagle	05/24/95	08/24/95	603	7,664	07/26/95
COE	High Gross Creek	WY	Green	10/09/91	01/09/92	6	66	10/24/91
COE	Fremont Lake	WY	Green	05/15/92	08/15/92	1,000	11,500	08/07/92
COE	Green River/Rock Springs Water Board	*2	WY	09/09/93	12/09/93	{ 3,244 hist } { 1,547 new }	18,533	09/27/93

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 Section 7 Consultations Involving Water Depletions
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Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized	
COE	Corral Creek	WY	Green	01/26/94	04/26/94	1.37	17 *	03/15/94	
COE	Jimmy Creek	WY	Green	01/26/94	04/26/94	8.12	100 *	03/17/94	
COE	Little Twin Creek	WY	Green	01/27/94	04/27/94	6.5	81 *	05/19/94	
DOE	Uranium Mill Tailings-Rifle	CO	Colorado	12/01/88	03/01/89	215	2,150	08/14/89	
DOE	Uran Mill Tailings-Gunnison	CO	Gunnison	10/01/90	01/01/91	88	960	12/11/90	
DOE	Uran Mill Tailings-Naturita	CO	Dolores	10/01/90	01/01/91	37	404	12/11/90	
DOE	Uran Mill Tailings-Grnd Jctn	CO	Colorado	04/19/91	07/19/91	18	209	01/10/92	
DOE	Uran Mill Tailings-Stickrock	CO	Dolores	07/29/93	10/29/93	59	707 *	08/27/93	
DOE	Naval Oil Shale Res #3	CO	Colorado	05/06/94	00/06/94	4.87	60 *	06/01/94	
DOE	Maybell UMTRA	CO	Colorado	11/15/94	02/15/95	280	3,559 *	02/17/95	
FS	Lake Catamount Ski	CO	Yampa	12/17/90	03/17/91	24	262	06/11/91	
FS	White Banks Alabaster	CO	Colorado	06/16/92	09/16/92	1	12	07/24/92	
FS	Wolf Creek Gas Wells	CO	Colorado	08/06/92	11/06/92	3	30	09/09/92	
FS	White River Oil & Gas Lease	CO	Co	11/06/92	02/06/93	1	*4	02/02/93	
FS	Routt Oil & Gas	CO	Co	11/06/92	02/06/92	62	*4	03/08/93	
FS	Widler Tunnel	CO	Co	01/21/93	04/21/93	2,000	0	*7	07/06/93
FS	Smith-Ermale Pipe	CO	Colorado	03/11/93	06/11/93	0.2	0	*7	08/02/93
FS	Overton to Terrell Ditch	CO	Colorado	01/27/93	04/27/93	48.1	0	*7	08/05/93
FS	Gilbert Family Trust	CO	Umcompahgre	03/11/93	06/11/93	1.96	24	*7	09/04/93
FS	7 Natl Forests Small Dep	CO	Colorado	04/21/93	07/21/93	{ 1,085 hist}	2,937 *	09/07/93	
FS	Fish Creek Reserv Expan	CO	Yampa	02/23/93	05/23/93	{ 245 new }			
FS	Alsburry Res. Enlargement	CO	Colorado	05/20/93	08/20/93	{ 445 hist }	7,059 *	09/24/93	
FS	Irwin Water Lines	CO	Gunnison	03/11/93	06/11/93	{ 656 new }			
FS	Illeman	CO	Gunnison	03/03/94	06/03/94	{ 133 new }	1,641 *	02/10/94	
FS	Peck Spring	CO	Umcompahgre	05/16/94	08/16/94	0.5	6	*7	02/22/94
FS	Porter Ditch	CO	Colorado	02/02/94	05/02/94	242	0	*7	03/28/94
FS	Horsefly/Johnson Spring	CO	Colorado	06/30/94	09/30/94	130.3	---	*7	06/08/94
FS	Snowmass Ski Devel	CO	Colorado	06/11/93	09/11/93	450	5,553 *	*7	08/15/94
FS	Telluride Ski Resort	CO	Colorado	08/10/94	11/10/94	202.7	0	*7	08/15/94
FS	ChemStar Lime CO	CO	Colorado	05/08/95	08/08/95	{ 14 hist }	1,218 *	*7	02/10/95
FS		CO				{ 70 new }			
FS		CO				{ 14 hist }	5,453 *	*7	03/22/95
FS		CO				{ 429 new }	0	*7	05/24/95
FS		CO				250			

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Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized
FS	Cyprus Coal Drilling	UT *2	Green	08/01/91	11/01/91	2	23	10/07/91
FS	Cyprus 3 Hole Drilling	UT	Green	10/09/92	01/09/93	1	12	10/21/92
FS	Mountain Coal Exploration	UT	Green	12/01/92	03/01/93	0.6	7	12/14/92
FS	Manti-LaSal Oil & Gas	UT	Green	11/03/92	02/03/92	67.6	*4	12/18/92
FS	Pacific Corp Coal Expl	UT *2	Green	08/10/93	11/10/93	0.74	0	09/17/93
FS	PacificCorp	UT	Green	05/02/94	09/02/94	1.4	*4	06/30/94
FS	Convulsion Canyon	UT	Green	05/02/94	08/02/94	.15	*4	07/01/94
FS	Soda Unit Natural Gas	WY	Green	12/13/88	03/16/89	102	1,020	03/14/89
FS	Bridger/Teton Forest Plan	WY	Green	03/27/89	08/15/89	*4	*4	08/15/89
FS	Pelican Ponds	WY	Green	08/16/94	11/16/94	174	2,145	09/22/94
FS	Lapadakis Special Use Permit*2	CO	Colorado	12/21/94	03/21/95	260.3	0	01/13/96
FWS	Ouray Fish Hatchery	UT	Green	08/03/92	11/03/92	36	0	09/23/92
FWS	Featherdown Wetland	WY	Green	10/15/92	01/15/93	4	47	11/13/92
FWS	Small Depletions	REG	CO-Green	---	---	1000	Exempt *4*7	07/03/94
FWS	Small Depletions	REG	CO-Green	---	---	2000	Exempt *4*7	03/09/95
NPS	Natural Bridges National Monument	UT	Colorado	07/22/92	10/22/92	1	12	08/13/92
OSM	Colowyo Coal Company	CO	Yampa	01/11/88	04/09/88	127	1,270	04/18/88
OSM	Trapper Mine	CO	Colorado	03/25/88	06/25/88	123	1,228	04/18/88
OSM	Apex #2 Mine	CO	Yampa	08/30/88	11/30/88	3	34	10/18/88
OSM	Munger Canyon Mine	CO	Colorado	09/12/88	12/12/88	2	20	08/08/89
OSM	Munger/McCane Mine	CO	Colorado	03/02/92	06/02/92	4	40	04/16/92
OSM	Colowyo Coal Expand	CO	Yampa	01/14/92	04/14/92	3	30	05/22/92
OSM	Salt Creek Mine	CO	Colorado	03/05/92	06/05/92	3.5	40	06/02/92
OSM	Sanborn East Tract	CO	Colo	12/11/92	03/11/93	30	364	02/03/93
OSM	Hayden Gulch Loadout	CO	Yampa	03/02/93	06/02/93	56	676	07/23/93
OSM	Orchard Valley Mine	CO	Gunnison	03/15/94	06/15/94	37.5	463	05/31/94
OSM	Bear Mine #3	CO	Colorado	03/29/94	06/29/94	15.3	189	05/31/94
OSM	Kemmerer Mine Mod	WY	Green	06/11/87	09/11/87	107	1,600	02/09/88
OSM	Black Butte Mine	WY *2	Green	02/05/88	05/05/88	72	720	04/18/88
OSM	Lion Coal Swanson Mine	WY	Green	11/09/93	02/09/93	11	148	12/22/93
OSM	Mt. Coal West Elk	CO	Gunnison	09/16/93	12/16/93	17.1	211	06/30/94
OSM	Foidel Creek Mine	CO	Yampa	04/20/95	07/20/95	165.45	2,103	05/04/95
SCS	Bray Irrigation	CO	Dolores	05/12/94	08/12/94	11.84	146	06/03/94

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Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized
<u>Pending</u>								
BLM	Coors Duchesne Oil & Gas	UT	Duchesne	09/19/91	12/19/91 *5	*4	*4	
BR	Aspinall	CO	Gunnison	1980		0	Exempt	

*1 \$10/AF Pro FY 1990, \$10.41/AF FY 1990, \$10.91/AF FY 1991, \$11.60/AF FY 1992, \$11.98/AF FY 1993, \$12.34/AF FY 1994, \$12.71/AF FY 1995

*2 Historic Depletion

*3 Subject to Flaming Gorge Biological Opinion

*4 Amount to be determined on project specific basis

*5 Consultation period extended

*6 No depletion charge because project has net benefit to fish

*7 Consultation under Section 7 Agreement

*8 Payments were collected under individual consultations for Enron, Chevron, Pacific, Coastal, Texaco, and Mobil

Note: Since 1988, the Service has consulted on 170 projects with a potential to deplete a total of 207,3 acre-feet in the Upper Colorado River Basin, of which 38 are historic depleting 16,560 acre-feet.

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 Section 7 Consultations Involving Water Depletions
 in the Upper Colorado River Drainage in Accordance with Section 7 Agreement 10/15/93

Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized
BLM	Chapman-Riebold Amend	CO	White	11/05/92	02/05/92	35	419	07/29/93
DLM	Devils Canyon	CO	Colorado	01/12/93	04/12/93	15	180	07/29/93
BLM	Dowler Pipeline	CO	Colorado	06/16/93	09/16/93	29	0	08/27/93
BLM	Rocky Mt Natural Gas	CO	Colorado	06/24/93	09/24/93	9	108	08/27/93
BLM	Wilcoxson Water Supply	CO	Colorado	07/20/93	10/20/93	0.55	0	09/27/93
BLM	Cason Irrigation Pipeline	CO	Colorado	07/20/93	10/20/93	14	169	01/13/94
BLM	Hastings Pipeline	CO	Colorado	12/13/93	03/13/94	44	0	01/28/94
BLM	Jolly-Potter	CO	Colorado	12/10/94	05/10/94	125	0	03/03/94
BLM	North Northwestern Spg	CO	Colorado	04/05/94	07/05/94	1.61	20	05/06/94
BLM	Jolley Irrigation	CO	Colorado	04/13/94	07/13/94	393	-----	05/31/94
BLM	New Castle Water Tk	CO	Colorado	04/08/94	07/08/94	446.22	-----	05/31/94
BLM	Programmatic Colo <125	CO	Colorado	06/29/94	08/29/94	{ 1500 hist } { 1400 new }	----- *4	06/13/94
BLM	Moab District	UT	CO-Green	02/02/94	05/02/94	531	*4	05/06/94
BLM	Monument Butte	UT	Green	06/14/94	08/14/94	500	6,170	07/18/94
BLM	Balcon Oil & Gas Development	UT	Green	12/02/94	03/02/95	441	5,605	04/21/95
BLM	Mobil Tip Top/Hogsback	WY	Green	05/13/94	08/13/94	162	*4	06/27/94
BR	Ruedi Rsvr Round 2 Water Sale	CO	Colorado	09/--/94	12/--/94	17,000	Exempt	05/26/95
BR	Narrows Amendment	UT	Green	07/07/94	10/09/94	157	1,995	01/09/95
BR	Fontenelle Resv Water Contract	WY	Green	02/22/95	05/22/95	500	Exempt	05/15/95
COE	Flannery Res	CO	Colorado	02/23/93	05/23/93	133	1,598	07/02/93
COE	Trout Lake Dam	CO	Dolores	02/17/93	05/17/93	203	0	07/16/93
COE	Pat.-Jacobson Ditch	CO	Colorado	03/19/93	06/19/93	103	0	07/29/93
COE	Clifton Diversion	CO	Colorado	02/05/93	05/05/93	944	0	09/02/93
COE	Lake Windemere	CO	Colorado	04/21/93	07/21/93	4	48	09/07/93
COE	Evans/McKenzie Ponds	CO	Eagle	08/20/93	11/20/93	0.39	5	11/01/93
COE	West Pond	CO	Colorado	12/09/93	03/09/94	0.16	2	01/13/94
COE	Town of Dolores	CO	Dolores	12/08/93	03/08/94	36.3	0	01/18/94
COE	Palmer Creek	CO	Colorado	03/02/94	06/02/94	0.94	12	03/28/94
COE	Carns Pond	CO	Colorado	02/11/94	05/11/94	8	93	03/29/94
COE	Town of Granby	CO	Colorado	03/28/94	06/28/94	41	*4	04/11/94
COE	Welfelt Wetland	CO	Colorado	03/24/94	06/24/94	4.5	56	04/14/94
COE	Little Twin Creek	CO	Green	01/27/94	04/27/94	6.6	81	05/19/94
COE	Rivergreen	CO	Gunnison	03/22/94	06/24/94	{ 3.68 hist } { 1.14 new }	12	05/31/94
COE	Den Pond	CO	Colorado	03/09/94	06/09/94	.43	5	05/31/94
COE	Independence Pond	CO	Colorado	05/03/94	08/03/94	2.15	27	05/31/94

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 Section 7 Consultations Involving Water Depletions
 in the Upper Colorado River Drainage in Accordance with Section 7 Agreement 10/15/93

Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized
COE	Avon Metro	*2 CO	Colorado	03/25/94	06/25/94	{ 38.3 hist } { 1.1 new }	14	05/31/94
COE	Miller Creek Ranches	CO	Green	08/27/94	11/27/94	45.62	553	06/28/94
COE	Pollard Pond	CO	Colorado	04/21/94	07/21/94	3.72	46	07/01/94
COE	Permit 94-475135	CO	Colorado	06/01/94	09/01/94	.3	4	07/01/94
COE	Alpine Land Dev.	CO	Colorado	06/01/94	09/01/94	254.6	3,142	07/08/94
COE	City of Steamboat Spgs	Glf Crs CO	Yampa	05/24/95	08/24/95	178.2	2,265	06/06/95
COE	Rio Blanco Reservoir	*2 CO	White	04/01/95	07/01/95	133	0	06/27/95
COE	Upper Eagle Diversion	CO	Eagle	05/24/95	08/24/95	603	7,664	07/26/95
COE	Green River/Rock Springs	*2 WY	Green	09/09/93	12/09/93	{ 3,244 hist }		
COE	Water Board					{ 1,547 new }	10,533	09/27/93
COE	Corral Creek	WY	Green	01/26/94	04/26/94	1.37	17	03/15/94
COE	Jimmy Creek	WY	Green	01/26/94	04/26/94	8.12	100	03/17/94
DOE	Uranium Mill Tailings Siltlock	CO	Dolores	07/29/93	10/29/93	59	707	08/27/93
DOE	Maybell UNTRA	CO	Colorado	11/15/94	02/15/95	200	3,559	02/17/95
FS	Widler Tunnel	*2 CO	Colorado	01/21/93	04/21/93	2,000	0	07/06/93
FS	Smith-Ermelle Pipe	*2 CO	Colorado	03/11/93	06/11/93	0.2	0	08/02/93
FS	Overton to Terrell Ditch	*2 CO	Colorado	01/27/93	04/27/93	48.1	0	08/05/93
FS	Gilbert Family Trust	CO	Uncompahgre	03/11/93	06/11/93	1.96	24	09/04/93
FS	7 Natl Forests Small Dep	*2 CO	Colorado	04/21/93	07/21/93	{ 1,085 hist }		
FS	Fish Creek Resery Expan	*2 CO	Yampa	02/23/93	05/23/93	{ 245 new }	2,937	09/07/93
FS	Alsburry Res Enlargement	*2 CO	Colorado	05/20/93	08/20/93	{ 445 hist }	7,059	09/24/93
FS	Irwin Water Line	CO	Gunnison	03/11/93	06/11/93	{ 13 hist }	1,641	02/10/94
FS	Illeman	*2 CO	Gunnison	03/03/94	06/03/94	0.5	6	02/22/94
FS	Peck Spring	*2 CO	Uncompahgre	05/16/94	08/16/94	242	0	03/28/94
FS	Porter Ditch	CO	Colorado	02/02/94	05/02/94	130.3	0	06/08/94
FS	Horsefly/Johnson Spring	*2 CO	Colorado	06/30/94	09/30/94	450	5,553	08/15/94
FS	ChemStar Lime CO	*2 CO	Colorado	05/08/95	08/08/95	202.7	0	08/15/94
FS	Snowmass Ski Devel	*2 CO	Colorado	06/11/93	09/11/93	260	0	05/24/95
FS	Telluride Ski Resort	*2 CO	Colorado	08/10/94	11/10/94	{ 14 hist }	1,218 *7	02/10/95
FS						{ 70 new }		
FS						{ 14 hist }		
FS						{ 429 new }	5,453 *7	03/22/95

July 31, 1995
Section 7 Consultations Involving Water Depletions
in the Upper Colorado River Drainage in Accordance with Section 7 Agreement 10/15/93

Federal Agency	Project Name	State	River	Initiation Date	Due Date	Depletion Ac. Ft.	Fund \$ *1	Opinion Finalized
FS	Pacific Corp Coal Exp)	*2	Green	08/10/93	11/10/93	0.74	0	09/17/93
FS	PactfiCorp	UT	Green	05/02/94	08/02/94	1.4	*4	06/30/94
FS	Convulsion Canyon	UT	Green	05/02/94	08/02/94	.15	*4	07/01/94
FS	Pelican Ponds	WY	Green	08/16/94	11/16/94	174	2,145	09/22/94
FS	Lapadakis Special Use Prmt*2	CO	Colorado	12/21/94	03/21/95	260.3	0	01/13/95
FWS	Small Depletions	REG	CO-Green	--/--/--	--/--/--	1,000	Exempt *4	07/05/94
FWS	Small Depletions	REG	CO-Green	--/--/--	--/--/--	2,000	Exempt *4	03/09/95
OSM	Hayden Gulch Loadout	CO	Yampa	03/02/93	06/02/93	56	676	07/23/93
OSM	Orchard Valley Mine	CO	Gunnison	03/15/94	06/15/94	37.5	463	05/31/94
OSM	Bear Mine #3	CO	Colorado	03/29/94	06/29/94	15.3	189	05/31/94
OSM	Mt. Coal West Elk	CO	Gunnison	09/16/93	12/16/93	17.1	211	06/30/94
OSM	Foidel Creek Mine	CO	Yampa	04/20/95	07/20/95	165.46	2,103	05/04/95
SCS	Bray Irrigation	CO	Dolores	05/12/94	08/12/94	11.84		06/03/94
				TOTAL		49,333		

Appendix C:

Upper Colorado River Recovery Program Agreement

COOPERATIVE AGREEMENT

for

RECOVERY IMPLEMENTATION PROGRAM FOR
ENDANGERED SPECIES IN
THE UPPER COLORADO RIVER BASIN

1. Purpose. The parties hereto agree to participate in and implement the recovery program as provided for in the document "Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin" (Program), dated September 29, 1987. The parties also agree to participate in the Recovery Implementation Committee which will be established to oversee the implementation of the Program. The Program provides for a broad range of measures to manage and recover three endangered fishes and to manage the razorback sucker, while providing for new water development to proceed in the Upper Colorado River Basin. The Program has five principal elements: (a) habitat management through the provision of instream flows; (b) nonflow habitat development and maintenance; (c) native fish stocking; (d) management of nonnative species and sportfishing; and (e) research, data management, and monitoring. The Program depends on the effective implementation of all of these elements and on their successful coordination. It is agreed that the Program may be modified from time to time by the Committee as experience is gained in implementing the Program.

2. Geographic Scope. The Program and this Cooperative Agreement apply only to the Upper Colorado River Basin above Glen Canyon Dam, excluding the San Juan River Subbasin.

3. Term. This Cooperative Agreement shall remain in effect for a period of 15 years from the date of its execution.

4. Amendment. This Cooperative Agreement may be extended, amended, or terminated by agreement of the parties, or any party may withdraw from this Cooperative Agreement upon written notice to the other parties.

5. Authorities and Responsibilities

A. Federal Cooperation with States. Section 2(c)(2) of the Endangered Species Act, states that "the policy of Congress is that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." Under Section 6 of the Act, the Secretary of the Interior is directed to cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act and to consult with affected States before acquiring any land and water, or interest therein, for the purpose of conserving endangered species. Under Section 6 of 41 USC 505, an executive agency should enter a cooperative agreement when anything of value will be transferred to a State or local government to carry out a public purpose authorized by Federal statute.

B. Recovery Plans and Teams. Under Section 4(f) of the Endangered Species Act, the Secretary is directed to develop and implement plans for the conservation of endangered species and may procure the services of public and private agencies and institutions in developing and implementing such recovery plans.

C. Consultation and Coordination Among Federal Agencies. Under Section 7 of the Endangered Species Act, Federal agencies shall utilize their programs and authorities in furtherance of the purposes of the Act and ensure

that their actions are not likely to jeopardize listed species. Under Section 2 of the Fish and Wildlife Coordination Act, Federal agencies must consult with the Fish and Wildlife Service and with State wildlife agencies on the fish and wildlife impacts of Federal or federally licensed or permitted water projects.

D. Operation of Federal Water Projects. The Bureau of Reclamation is charged with the operation of the Flaming Gorge and Curecanti storage units under the 1956 Colorado River Storage Project Act and with the operation of Ruedi Reservoir under P.L. 87-590 and other applicable Federal laws.

E. Applicable State Law. Pursuant to applicable State laws and interstate compacts, Colorado, Utah, and Wyoming administer water rights, including water rights for instream flows, and oversee development of water resources, allocated and apportioned to them in perpetuity by interstate compacts. Each of these States also has certain statutory authority and responsibility to protect and manage its fish and wildlife resources.

6. No Delegation or Abrogation. All parties to this Cooperative Agreement recognize that they each have statutory responsibilities that cannot be delegated, and that this Cooperative Agreement does not and is not intended to abrogate any of their statutory responsibilities.

7. Consistency with Applicable Law. This Cooperative Agreement is subject to and is intended to be consistent with all applicable Federal and State laws and interstate compacts.

8. Legislative Approval. All funding commitments made under the Program and this Cooperative Agreement are subject to approval by the appropriate State and Federal legislative bodies.

Donald Paul Hodel

Donald Paul Hodel
Secretary of the Interior

Jan 21, 1988

Date

Roy Romer

Roy Romer
Governor of Colorado

1/21/88

Date

Norman H. Bangert

Norman H. Bangert
Governor of Utah

1/22/88

Date

Mike Sullivan

Mike Sullivan
Governor of Wyoming

1/21/88

Date

William H. Clagett

William H. Clagett
Administrator, Western Area Power
Administration, Department of Energy

21 Jan 88

Date

Appendix D:

Fiscal Year '96 Funding Estimate for
Upper Colorado River Recovery Program

1. BACKGROUND

A primary responsibility of the Colorado River Recovery Implementation Committee is to develop and recommend priorities for the annual use of funds under the Recovery Program. The Recovery Program's recommended annual budget in FY 96 is \$2.99 million. This is a 2.6 percent increase (based on the 1994 Consumer Price Index) over the \$2.92 million FY 95 budget. Additional funding expected from the Fish and Wildlife Service (Service) and the State of Colorado brings the total FY 95 annual budget to \$3.39 million. Funds from Reclamation for capital projects in FY 95 are expected to total \$6.37 million. Other funds (additional agency contributions, FY 88 appropriation funds, and Section 7 funds) total 1.67 million, bring the total FY 96 Recovery Program budget to \$11.44 million.

ANNUAL FUNDS

	(Established Annual Funds Contribution)	Expected Annual Funds Contribution	Capital Project Funds
Fish and Wildlife Service	(\$781,800)	\$1,124,000 ¹	
Bureau of Reclamation	(\$1,956,300)	\$1,956,300	\$6,373,000
State of Colorado	(\$135,600)	\$ 186,900 ²	
State of Utah	(\$95,200)	\$ 95,200	
State of Wyoming	(\$30,200)	\$ 30,200	
	<u>(\$2,999,100)</u>	<u>\$3,392,600</u>	<u>\$6,373,000</u>

OTHER FUNDS

CWCB cash contribution for compact allocation	\$1,161,000
Water Users Section 7 Funds	\$ 115,900
FY 88 Water Acquisition Appropriation	\$ 151,300
CWCB, CRWCD, BR, and CDOW additional contributions to Yampa Oper. & Mgmt. Plan	\$ 245,000
	<u>\$1,673,200</u>

¹ In addition to \$623,000 in resource management funds and \$200,000 in Section 6 funds, the Service expects to provide \$284,000 for hatchery/refugia operation and maintenance and \$17,000 (from a private contribution) for installation of nonnative fish control devices.

² Colorado will provide an additional \$41,300 in in-kind services and an additional \$10,000 in matching funds to the \$100,000 in Section 6 funds they will receive.

Appendix E:

FERC Comments on Preferred Alternative for

Kingsley Dam and North Platte/Keystone Projects

2. **FERC'S ANALYSIS AND THE STAFF-PREFERRED ALTERNATIVE DO NOT MEET THE LEGAL REQUIREMENTS OF THE ESA, THE FPA, OR NEPA.**

A. **The Staff-Preferred Alternative Does Not Meet the Requirement of the Endangered Species Act in Protecting Endangered and Threatened Species.**

Section 7 of the Endangered Species Act ("ESA") unequivocally requires each federal agency, FERC included, to afford the highest degree of protection to endangered and threatened species. The Department of the Interior has designated the Platte River downstream of the projects a "critical habitat" for the whooping crane and acknowledges that the river provides essential habitat to other endangered and threatened species. Because the Platte River is a critical habitat for endangered and threatened species, Section 7 requires FERC to use all of the means at its disposal to protect it:

Each Federal agency shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined . . . to be critical

16 U.S.C. § 1536(a)(2). This statutory statement is a mandate to the federal agencies to protect endangered species. See also South Carolina Wildlife Fed'n v. Alexander, 457 F. Supp. 118, 130 (D.S.C. 1978) ("'[S]hall is the language of command.' . . . [W]here the statute's purpose is the protection of public or private rights, as opposed to merely providing guidance for government officials, courts usually interpret 'shall' as imposing mandatory rather than directory duties.") (quoting Escoe v. Zerbst, 295 U.S. 490-93 (1935)). As the Supreme Court stated in TVA v. Hill, 437 U.S. 153, 173 (1978), "One would be hard pressed

to find a statutory provision whose terms were any plainer than in § 7 of the Endangered Species Act This language admits of no exception."¹

The Supreme Court has held that the ESA and its legislative history firmly establish that Congress intended to resolve any conflicts between the ESA and other federal statutes in favor of the ESA. *Id.* at 185 ("The pointed omission of the type of qualifying language previously included in endangered species legislation reveals a conscious decision by Congress to give endangered species priority over the 'primary missions' of federal agencies.") Subsequent decisions similarly acknowledge the superiority of the ESA over an agency's enabling statute. See *Carson-Truckee Water Conservancy Dist. v. Clark*, 741 F.2d 257, 259 (9th Cir. 1984); *cert. denied*, 470 U.S. 1083 (1985) ("Appellants concede that the Secretary [of the Interior]'s obligations under ESA supersede his obligations under . . . Federal reclamation laws."). The ESA "imposes substantial and continuing obligations on federal agencies." *Defenders of Wildlife v. EPA*, 882 F.2d 1294, 1299 (8th Cir. 1989). Indeed, "[e]ven though a federal agency may be acting under a different statute, that agency must still comply with the ESA." *Id.* (emphasis added). *Cf. City of Centralia, Wash. v. FERC*, 799 F.2d 475, 483 (9th Cir. 1986) (FERC refused remand in part due to Centralia's inadequate proposal to mitigate adverse impact on fish habitat).

FERC has acknowledged its need to comply with the ESA in taking actions under the Federal Power Act ("FPA") and stated its plan to initiate the long-awaited formal consultation with the United States Fish and Wildlife Service ("FWS") "concurrent with the transmittal of

¹ Congress amended Section 7 after *TVA v. Hill*. However, "these amendments do not diminish the precedential force of the Supreme Court's decision in *TVA v. Hill*." *Sierra Club v. Marsh*, 816 F.2d 1376, 1383 n.10 (9th Cir. 1987).

the staff's Revised DEIS." See RDEIS at 1-3. The final EIS along with the Section 7 baseline developed by FERC at FWS's request will provide the basis of the Service's biological opinion. Id. In sum, FERC possesses the authority and command to insert wildlife protections in the Districts' licenses. Hence, because its actions "[are] permissible under the [FPA], then [those actions are] required under the Endangered Species Act." Riverside Irrigation Dist. v. Andrews, 568 F. Supp. 583, 588 (D. Colo. 1983); aff'd, 758 F.2d 508 (10th Cir. 1985).

Finally, Section 7(a)(1) of the ESA provides,

All other federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species.

16 U.S.C. § 1536(a)(1). A related section defines the purposes of the ESA as "provid[ing] a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved" Id. at § 1531(b). Moreover, "It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter." Id. at § 1531(c)(1). "The key term in these sections, 'conservation,' means ' . . . the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'" Pyramid Lake Paiute Tribe of Indians v. United States Dept. of Navy, 898 F.2d 1410, 1416 (9th Cir. 1990) (quoting 16 U.S.C. § 1532(3)). Thus, under

Section 7(a)(1), FERC's own conclusion that the projects have and will irreversibly injure the habitat require it to use whatever authorities it has, within its discretion, to protect the endangered and threatened species that use the habitat.

In a challenge to the operation of the Federal Columbia River Power System, the district court in Idaho Department of Fish & Game v. National Marine Fisheries Service, 850 F. Supp. 886, 900 (D. Or. 1994), found that

NMFS has clearly made an effort to create a rational reasoned process for determining how the action agencies are doing in their efforts to save the listed salmon species. But the process is seriously, "significantly," flawed because it is too heavily geared towards a status quo that has allowed all forms of river activity to proceed in a deficit situation -- that is, relatively small steps, minor improvements and adjustments -- when the situation literally cries out for a major overhaul. Instead of looking for what can be done to protect the species from jeopardy, NMFS and the action agencies have narrowly focussed their attention on what the establishment is capable of handling with minimal disruption.

(Emphasis in original.) Similarly, the RDEIS, as it stands, while an improvement over the first draft, does not provide a preferred alternative that significantly reverses the downward trend of habitat suitability and will not prevent continued degradation of the habitat and endangered and threatened species.

Although the preferred alternative purports to "offer the best overall balance among the resources values," (RDEIS at xxv), it maintains 100% irrigation demands, provides higher Lake McConaughy storage demands than under the baseline, "slightly" reduces hydropower production (4%), and only provides minimal improvements in instream flows (RDEIS at 5-19 to 5-21). Clearly, the preferred alternative has not significantly shifted the balances among resource values to insure protection of endangered and threatened wildlife.

As discussed in greater detail in the technical comments below (Sections 4 and 6), the staff-preferred alternative does not pass muster under the ESA, in large measure because of inadequate instream flows.² The staff-preferred alternative certainly does not "'insure' that the [whooping crane's] habitat is not disrupted." TVA v. Hill, 437 U.S. at 173. Rather, it is clear that FERC's action will have the opposite effect -- continued habitat degradation. Id. at 174; RDEIS at 4-45, 5-7). The RDEIS must be revised to provide habitat and wildlife protections that will insure that further degradation does not result from the Districts' operations.

B. FERC Uses an Improper Baseline of Current Operations to Measure the Impacts of Alternatives on the Habitat.

In the June 1992 DEIS, FERC used a baseline of current operations as the measure of comparison for the impact of alternatives on the Platte River habitat. DEIS at 4-1. FERC has not changed the baseline, RDEIS at 2-9, despite heavy criticism of it by the Trust, FWS, and others. The Trust disputed then and continues to dispute the choice of such a measure because it accepts as the working status quo the degradation already suffered by the habitat as a result of the projects' past operations. See June 15, 1992 Comments of the Trust on the DEIS at 6-7. Against this baseline, FERC has admitted that the environmentally-preferred alternative (the staff alternative) would lead to continued channel narrowing and degradation of the habitat. DEIS at 4-92, 4-93; RDEIS 4-45, 5-7.

² The Supreme Court, in PUD No. 1 v. Washington Department of Ecology, 114 S. Ct. 1900, 1912-13 (1994), recently affirmed that "water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all its designated uses, be it for drinking water, recreation, navigation or, as here, as a fishery."



UTE MOUNTAIN UTE TRIBE

Mike Wash Road, Tribal Complex
 P.O. Drawer JJ
 Towaoc, Colorado, 81334
 Phone: 303-585-8781
 Fax: 303-585-8549

August 22, 1995

Mr. Mike Smith
 c/o Senator Craig Thomas
 302 Hart Building
 Washington, DC 20510

**RE: Comments of the Ute Mountain Ute Indian Tribe to
 Proposed Endangered Species Act Amendments**

Dear Mr. Smith:

I submit in this letter comments of the Ute Mountain Ute Indian Tribe, headquartered in Towaoc, Colorado relating to proposed amendments to the Endangered Species Act.

1. **The Endangered Species Act Has Devastated the Tribe's Senior Water Rights in the San Juan River System**

The comments of the Ute Mountain Ute Indian Tribe (the Tribe) emerge from its five year experience with the Endangered Species Act (ESA) summarized below. While the Tribe supports in principle the preservation of endangered species, recent federal policies implementing the current legislation are destructive and frequently unprincipled.

Under the Colorado Ute Indian Water Rights Final Settlement Agreement (December 10, 1986), and the Colorado Ute Indian Water Rights Settlement Act of 1988, Public Law No. 100-585, 102 Stat. 2973 (referred to jointly as the Settlement), the United States is obligated to deliver water to the Tribe from the Animas LaPlata Project (ALP). The ALP - first authorized by Congress in 1908 - is the last of the major water storage facilities authorized to permit the productive use of Colorado River waters. The project benefits the Tribe, the

Southern Ute Indian Tribe, and cities and farmers in Colorado and New Mexico.

Almost to the day construction was to commence in 1991, federal officials issued a jeopardy opinion under the ESA – halting the development of these long promised water resources. In the years since 1991, the Tribe and others have agreed to temporary but significant limitations on the delivery of water and have helped fund a federally sponsored research program to determine the limitations in the San Juan River System causing the threatened and endangered designation of the Colorado squawfish and razorback sucker. In the meantime, environmentalists have attacked all aspects of this project – distorting the modest environmental issues involved and challenging the integrity of the Tribes to plan their own Reservation economies.

At the present time, a supplemental environmental impact statement is being prepared to address all environmental issues, including the staging of the project caused by the implementation of the ESA. As a practical matter, the ESA program in the San Juan River System has operated to single out for punitive limitations a handful – and only a handful – of water users. Water users dependent upon federal facilities other than the ALP and dependent upon non-federal facilities have suffered no impact. While the Tribe and others spend thousands of hours and thousands of dollars to pursue yet undefined biological research concepts, the great majority of water users in the Basin go about the business of expanding the regional economy. Given this experience, the Tribe offers the following suggestions.

2. Comments Relating to S. 768 – Introduced by Senators Gorton and Johnson

S. 768 purports to preserve many of the concepts currently embodied in the ESA. At the same time S.768 proposes badly needed rules to limit federal discretion, to encourage local participation, to accelerate the protection process, and to reduce the financial burden on those private citizens, like the Tribe, which have in the past borne a disproportionate burden in the process of protecting endangered species. There is much in S. 768 that the Tribe supports. We will briefly address the important concepts contained in S. 768 and will suggest several conceptual amendments, important not only to the Tribe, but also to any water user confronted with the potential need by endangered species for additional river flows.

a. The Fast Track Development of a Species Protection Plan

At the centerpiece of S. 768 is § 201, which provides for "fast track" coordination of conservation decision making for a species after a listing determination. Thus, § 201 requires (i) The Secretary to appoint an assessment and planning team within thirty days of listing; (ii) Within 180 days the Secretary is to receive a full assessment of specie viability including biological, economic and inter-governmental impacts; (iii) Within thirty days thereafter the Secretary is to issue a conservation "objective" for the species. The Secretary has full discretion to issue a conservation objective which ranges from full recovery to no federal action other than enforcement of take prohibitions under § 9.

A conservation plan must be issued within 18 months of the listing determination. The Secretary must meet a "national interest" standard in order to issue any conservation objective for a listed distinct population segment. The Secretary must also by the end of the 18 month period designate critical habitat and such designation must balance the benefits and impacts, must describe the economic impacts and must include the following. The bill suballent eliminates private citizen petitions requiring the Secretary to designate critical habitat. Second, the definition of critical habitat now requires that such habitat be "essential to the subsistence of the species over a 60 year period." § 202(b) (7). Third, § 7 consultation triggered by adverse impacts on critical habitat has been strengthened to read that a federal agency in invoking § 7 must find that its proposed activity may destroy or adversely modify any habitat that is proposed to be designated by the Secretary as critical habitat of such a species "in a manner that is likely to jeopardize the continued existence of the species." That is, adverse impacts alone will not trigger § 7 powers.

Section 201 (e) (2) provides the Secretary with broad discretion to establish a range of conservation objectives. Within that section the Secretary may recommend a full recovery of the affected species (such as we have currently in the San Juan) or may establish a reduced level of conservation, taking into account what is practicable and reasonable in evaluating the extent the benefits of the conservation justify the human and economic costs. It is this section (if it were in place at the time of the 1991 jeopardy opinion of ALP) which would have permitted the Secretary (not FWS) to determine that the appropriate level of conservation for the squawfish and the razorback sucker did not include the San Juan

River, given the strength of those species elsewhere and their paucity in the San Juan system.

Section 201(h) designates three and only three conservation plan priorities. In developing plans the Secretary is to give priority where two or more endangered species are likely to benefit, where conflicts between conservation of species and development projects are likely to exist and where conservation measures will have the least economic and social costs. The Tribe proposes as an amendment the creation of a fourth priority for the Secretary the development of a conservation plan which adversely affects Tribal land, water and wildlife resources only when the Secretary has exhausted all efforts to develop a satisfactory conservation plan which does not impact Indian resources. See, proposed Attachment A.

Once a conservation objective is established then the action agency (not FWS) may determine that its actions are consistent with the conservation plan and thereafter be deemed to have complied with § 7 of the Act. Moreover, in the event of indecision on the part of the action agency, the question of whether its proposed actions are consistent with a conservation objective is to be made by the Secretary, not FWS.

Section 202(b) provides that the respect to existing recovery plans (such as the one on the San Juan River) for species listed in more than one state, the Secretary shall commence the development of a conservation objective under S. 768 within two years from the date of the amendments. This means that a new conservation plan under the amendment must be in place in the San Juan River 8-1/2 years after the adoption of the proposed amendments. Importantly, § 202(h)(6) provides that no increase in a site specific § 7 management action may be required by FWS until a conservation objective (under the proposed amendments) is finalized. This has the effect of "freezing" the ability of FWS to impose additional limitations on depletion in the San Juan River during the 3-1/2 year period described above.

B. Securing Tribal Government Participation in Endangered Species Decision Making

Section 501 provides that a local government having authority over an area affected by a determination that a species is endangered may enter into a cooperative management agreement with the Secretary to allow it to govern the administration and

management of each area that the Secretary identifies as habitat for the affected species. Presently Indian Tribes are not included within the definition of local government. They should be. I attach a proposed amendment. See proposed Attachment B.

C. The Sharing of Endangered Species Costs

Section 501 also provides that the Secretary shall pay fifty percent of the direct costs of implementing the terms and conditions of a cooperative management agreement including costs incurred by a local government. The Tribe supports this long overdue change.

Section 609 provides that any person is entitled to 50 percent federal cost sharing for the costs of undertaking a conservation plan where the costs exceed \$10 million and may receive federal cost sharing where the costs are less than \$10 million. More importantly for non-federal parties including the Tribes is § 609 (a) which requires 50 percent federal cost sharing for any costs incurred by a non-federal person resulting from the "requirements imposed on the person" under § 7. Under this section in the setting of the San Juan River the Tribes are entitled to have the United States pay 50 percent of any temporary or permanent loss of income (attributable, for example, to construction employment under Indian preference or from the use of water allocated to ALP). Attached is an amendment which clarifies that the 50 percent obligation operates only when there does not exist a pre-existing United States commitment relating to the water rights affected under § 7. See proposed Amendment D.

Independent of S. 768 S. 606 (Omnibus Property Rights Act of 1996) introduced in March, 1996. Section 501, et. seq., of those provisions provides that in implementing the Endangered Species Act and § 404 of the Federal Water Pollution Control Act federal officials are to comply with applicable state and Tribal government laws and to administer the acts in a manner that has the "least impact on private property owners' constitutional and other legal rights." Section 503. Moreover, §§ 506 and 507 give specific administrative appeal authority to any determination under § 404 or under the Endangered Species Act which has an adverse impact on a private property owner. Specifically with respect to the ESA, a finding of jeopardy with respect to a particular parcel of property or the imposition of an order substantially limiting the use of property will give rise to both an immediate right of administrative appeal and may give rise to an order of compensation. Moreover, under § 508 if either a § 404 or Endangered Species Act action deprives a

private property owner of 33 percent of the fair market value of its property, such property owner is entitled to receive compensation. Because the provisions of S. 605 overlap with the provisions of S. 768, the legislative process needs to integrate these related proposals.

D. The Necessity of a Basin-wide Solution to Endangered Species Plans Involving River Flows

Section 608 of S. 768 appears to exempt the Tribes' water rights from being used to implement endangered species activities and appears to convert any federal reserved water right to a state water right. Section 608 states that "any water right...otherwise used...for any purpose under this Act shall be...exercised in accordance with the laws of the state in which the water will be used..." Taken literally this means that if the laws of the state do not permit depletions for in-stream flow purposes then the Endangered Species Act cannot do so. This also plainly imposes on federal Indian reserved water rights limitations found in state law. One of those limitations – helpful to the Tribes – is that in the San Juan River only the State of Colorado can assert an in-stream flow right. Thus, based on this view of § 608, S. 768 operates to take away from the Endangered Species Act the ability to capture in-stream flows to benefit fish. Obviously, such a prohibition will engender much opposition in Congress.

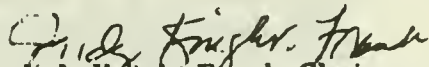
What is really needed in the water rights area can perhaps be supplied via a Tribal amendment. In my judgment, what is needed is authority in the Secretary to spread the reduction in water supplies caused by the reservation of flows for the endangered fish among all water users – not just water users subject to § 7 consultation. Moreover, the Secretary should be guided by the priority system except in areas where it would be inequitable to do so. I attach a proposed amendment (Attachment C) which attempts to create an equitable plan for sharing water shortages.

3. Conclusion

The Tribe has attempted to utilize its painful "real life" experience in the San Juan Basin to provide the United States Senate with concrete suggestions as to how the preservation of endangered species can be improved. We have focused on S. 768 because of our familiarity with its concepts. Our comments and our suggested amendments are deserving of consideration regardless of the status of S. 768.

We thank you for the opportunity to provide these comments. We remain interested and available to provide any additional. We remain interested and to answer any question which these comments might provoke.

Very truly yours,


Judy Knight-Frank, Chairman
Ute Mountain Ute Indian Tribe

cc: Jim Tate, C/O Senator Kempthorne
605 Hart Building
Washington, DC 20510

ATTACHMENT A

Section 201 (h) is amended to provide a new subpart (4). It should read:

Development of a conservation plan affecting Tribal land, water and wildlife resources held in trust only when the Secretary has exhausted all efforts to develop a satisfactory conservation plan which does not impact Indian resources.

ATTACHMENT B

Amendment to § 501 of S. 768

Section 501 (b) (1) is amended to read:

On the request of any state or group of states, political subdivision of a state, local government, or Indian Tribe having authority, control, or ownership over the area affected by any determination that a specie is an endangered species...

The purpose of this proposed amendment is to provide Indian Tribes with equal status with other local government entities in entering into a cooperative management agreement to govern the administration and management of the area as habitat for affected species.

ATTACHMENT C

Amendment to § 608 of S. 768

Section 608 is amended to substitute the following at the end of 16 U.S.C. § 1535 (F):

In the event any water right is acquired, or otherwise used, by the United States, a permit or license applicant, or any other non-federal party for any purpose under this Act, the Secretary shall allocate among all other water right holders, in accordance with state priorities, the shortages, if any, occasioned by the allocation of water under this act.

ATTACHMENT D**Amendment to § 609 of S. 768**

Section 16 U.S.C. § 1531 (C) as proposed is amended to read:

The Secretary shall pay 50 percent of allowed costs incurred by a non-Federal person or Federal power marketing administration that results solely from requirements imposed on the person or marketing administration under § 7, except that any pre-existing commitment by the United States relating to habitat affected under § 7 shall not be reduced by this paragraph.

August 14, 1995

The Honorable Senator Craig Thomas
Member of EPW Subcommittee
302 Hart Building
Washington, D.C. 20510

RE: Testimony of Endangered Species Act

Dear Senator Thomas,

The Endangered Species Act has had a devastating effect on the timber industry. The ESA has been another weapon in the arsenal of the preservationists' to shut down the timber industry when good science and management practices prevail and prove that proper land management of our National Forest is in the best interest of all concerned.

The preconceived and common sense intention of both the ESA and the appeals process has been grossly mis-used by certain preservation groups to willfully and maliciously cause rural communities and families great economic burden and personal suffering.

A perfect example of this is the spotted owl in the Pacific Northwest. Under the guise of the ESA the general public was led to believe that the Northern Spotted Owl population was at alarmingly low levels and still dwindling. Also, the public was tricked into thinking that the removal of "Old growth timber" was THE cause of the supposedly dwindling habitat that was directly responsible for the decline in the owl population.

Before the real scientific evidence could come out, these preservation groups carefully manipulated the laws and the public to get the Northern Spotted Owl listed on the Endangered Species List. Since it's listing we now know that there is a larger population than originally estimated. We know that the owl is quite adaptive to other habitats, including airports, for nesting. In fact the same preservation groups that were so active in getting the owl listed have publicly admitted that the owl was only a tool to shut down logging and they knew full well that it was not an endangered species when they deceitfully got it listed.

I feel this is proof positive that there is urgent need for a re-vamping of the ESA. After the successful listing of the Northern Spotted Owl, the flood gates were opened and the constant barrage of attempted listings of plants, animals and micro-organisms has been never-ending. It has resulted in millions of dollars in lost revenue, millions of dollars to taxpayers in federal expenditures, declining forest health, loss of tax base in rural communities, loss of jobs and so on.

It's time to put an end to the doom and gloom preservationists' who carefully manipulate legislation and legal wording to ruin the true environmentalists that have proven their commitment to sound land and resource management.

The ESA needs to recognize that economic factors have to be taken into consideration on any proposed listing.

Accurate, factual scientific data must be used to determine population densities, habitat, similar species etc. before proposed listing.

I feel local citizens should be given greater consideration on listing or de-listing of species. Especially those counties and states which have land use plans which address these concerns. In short, the locally affected population must live with their decisions and suffer the consequences of those decisions good or bad.

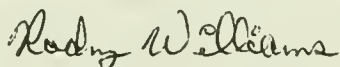
Also, maybe we need to address the issue of whether or not it is our obligation or duty to disrupt the natural order of the theory of evolution. Are all living organism supposed to continue to exist on Earth or is extinction a natural part of living and dying?

When people continue to starve in the U.S. and we spend millions of dollars on wolf reintroduction in Yellowstone, then we're in severe need of an overhaul on the ESA. The wolf is protected under the ESA yet thousands exist in Canada and Alaska.

Somehow we've lost the common sense that used to be applied to rules and regulations. If this is the case we've got to rewrite the ESA so that the wording cannot and will not be mis-used by special interest groups on either side of the issue.

Thank you for the opportunity to submit comment on this very important issue.

Sincerely,

A handwritten signature in cursive script that reads "Rodney Williams".

Rodney Williams



Wyoming Association of Conservation Districts

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August 20, 1995

Senate Environment and Public Works Committee
Drinking Water, Fisheries, and Wildlife Subcommittee
2201 Federal Building
Casper, Wy 82601

Dear Committee Members,

On behalf of the Wyoming Association of Conservation Districts, I would like to submit the following comments as our testimony, to the recent hearing held in Wyoming on the reauthorization of the Endangered Species Act.

We regret that we were unable to attend the hearing, however the Endangered Species Act and its affect on both the management and use of natural resources is of great importance to our membership. The Wyoming Association of Conservation Districts represents Wyoming's 34 local Conservation Districts. Our membership consists of 170 locally elected Supervisors who are responsible for representing the citizens of their District on issues and policies that affect the conservation and use of natural resources and the impact such policies may have on the local tax base.

1. Level of scientific inquiry

The scientific data required to list a species is minimal at best. The listing of an endangered species only requires best scientific and commercial data available. A decision to list can be based on incomplete and insufficient data. With the potential of detrimental affects to communities, it is extremely important that justifiable, sound, comprehensive scientific data be required prior to the listing of a species. Species listing should be based upon clear and convincing scientific data showing that the listing is justified. In addition, the data utilized should be peer reviewed to ensure that the decisions to list are based truly on a scientific basis and not politically pressured actions.

2. Impact of Species listing on economic viability of communities

As we have witnessed many times, the listing of a species can completely devastate entire communities and regions. Once a species is listed, the severe regulations placed on the use of resources, eliminates the ability of industry to utilize the resource in a sustained manner for both the benefit of the species and humans. If the current method of species protection is continued, it is very likely that enough communities will be eliminated that the impacts will create an enormous price tag for American taxpayers. It is possible to balance species protection with resource use and economic vitality, not only is it possible, its absolutely necessary.

3. Impacts of species being provided an elevated status

As a result of the Endangered Species Act and subsequent court actions, species which are listed as endangered have been provided such an elevated status as to receive consideration above all else - including humans. Providing one species such status, removes any possibility of managing for an entire watershed or ecosystem. One species cannot dictate the management of an entire area without having detrimental affects on the entire balance of a watershed. For instance, removing the ability to utilize or manage a forest due to an endangered species places that particular forest at risk and likely diminishes the health of the Forest or eliminating grazing can diminish the health of rangeland. Management is necessary to maintain a healthy resource base. In addition, humans are part of the system and their needs should be treated accordingly.

4. Impact of Recovery Plans

a. The implementation and development of recovery plans are intended to be advisory in nature. However, federal agencies, such as the Bureau of Land Management, are basing their resource management planning decisions on the measures outlined in recovery plans. For example, in the case of the desert tortoise in the Southwestern United States, the Fish & Wildlife Service has recommended in a recovery plan that livestock grazing be banned in desert tortoise habitat. In turn, the Bureau of Land Management has proposed to ban livestock grazing in desert tortoise habitat through the land management planning process. However, not one scientific study has ever shown that livestock grazing poses any conflicts to the desert tortoise. Consequently, the resource management decisions are not advisory in nature, but set policy for other federal agencies to blindly follow.

b. The recovery plans are based on inadequate, unreliable "scientific data." As a result, decisions are again being based on assumptions rather than truly scientific documentation.

5. Listing of species that have existing sustained populations

Recently, the taxpayers of America, have borne the cost to reintroduce the wolves into Yellowstone National Park as an endangered species. However, several thousand wolves can be found in North America. The Endangered Species Act's intent, was to protect species that are truly endangered, not to spend millions of dollars to reintroduce a species that already has a sustainable population.

6. Difficulty in delisting species once recovered

The grizzly bear recovery has been deemed successful in Yellowstone Park area. In fact the grizzly bear are migrating hundreds of miles from the park. It has been determined that there is a sustained population of the grizzly bear. Currently, US Fish & Wildlife Service is attempting to complete the process to delist the grizzly. However, due to cumbersome regulations and processes the delisting has yet to occur. In the mean time significant livestock losses are occurring due to the migrating of the bear populations. Unfortunately, the effort to delist is based on political pressure rather than the fact that sustainable populations exist.

7. Lack of incentive provided through the Endangered Species Act to protect endangered species

As the Endangered Species Act is currently being administered and applied there is absolutely no incentive for a landowner/manager to provide habitat or make efforts to protect such species. In fact, the management decisions and efforts utilized to protect such species act as a complete disincentive for any type of recovery. Currently, if a determination is made that an endangered species exists, it is likely that a landowner would have such extreme restrictions placed on the use of his resource base, and without any type of compensation, that most individuals have no economic return on efforts to protect such species. The Conservation Districts, in partnership with the Natural Resources Conservation Service, have been working in Wyoming for over 50 years to provide assistance to landowners in utilizing their natural resources in a sustainable manner. This assistance comes in the form of technical expertise and financial incentives.

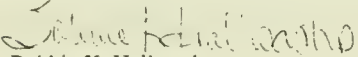
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Endangered Species Act Comments
8/20/95

As a result, many conservation improvements have been made resulting in improved water quality, reduced soil erosion, increased wildlife habitat, and economic gains. If the American people truly want to protect threatened or endangered species then they must give landowners/managers, communities, and states an incentive to do so.

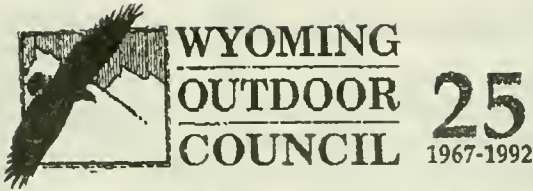
In summary, we support an Endangered Species Act that is incentive based, requires stricter scientific data, and has a much more human friendly, common sense approach.

Thank you for the opportunity to provide comments on this very important piece of legislation.

Respectfully,


Bobbie K. Hallwachs
Executive Director

cc: Wyoming's Conservation Districts



August 23, 1995

Drinking Water, Fisheries and Wildlife Subcommittee
United States Senate
(202) 224-2322

Thank you for the opportunity to serve as a "lottery" witness in the Drinking Water, Fisheries and Wildlife Subcommittee hearing on the ESA in Casper, Wyoming this past Wednesday, August 16, 1995. I want to take this opportunity to follow up my oral testimony with written testimony.

The obvious outcome of the hearing was the conclusion in Wyoming that the ESA has in fact been an overwhelming success in this state and has strong support among the citizens of Wyoming.

In addition, I wish to emphasize a few points on the ESA in Wyoming I raised in my oral testimony:

- In Wyoming, critics of the ESA have not been able to demonstrate one single concrete example where the ESA has caused an economic hardship in Wyoming. We hear a lot of philosophical discourse, innuendo and myth on the ESA. We have openly challenged the leaders of the special interests critical of the ESA to give even one Wyoming example where the ESA has cost hardship or economic activity. The typical response given is silence, followed by a couple of stutters and ultimately the launching into philosophical hyperbole, because in Wyoming there is not one single example critics can cite.

- Walton allotment/Mr. Shram problem has nothing to do with the ESA and Shram was compensated for 100% of his losses. There is much, much more to the "Walton allotment" and Mr. Shram's problem than came out at the hearing. This is a classic case where there are two sides to the story. What was presented by only one side at the hearing was primarily fiction. Mr. Shram's problem is not a problem created or even exacerbated by the ESA. Mr. Shram's allotment is in Situation 1 grizzly bear habitat on public lands and he has been compensated for his losses. In addition, evidence demonstrates that the vast majority of Mr. Shram's losses occurred because of poor management practices and resulting larkspur poisoning. The grizzly killings that have occurred have been because a few problem bears became habituated to larkspur-killed carcasses. The problem bears have been dealt with, Mr. Shram was compensated and losses are again minimal. Again, this issue has nothing to do with the ESA.

25 years of Wyoming Conservation Action

201 Main

Lander, Wyoming 82520

(307) 332-7031



• **The State of Wyoming cannot be trusted to take responsibility for endangered species.**

1-Wyoming has no ESA-type program or protections

2-Wyoming has no NEPA-type process providing for public notice and public participation. The experience in Wyoming is that citizens have a much better opportunity for public participation through the federal process compared to the state process.

3-Unbelievably, Wyoming still has a law categorizing the gray wolf as a predator, which can be shot on sight.

4-Earlier this year in 1995 (not 1895), both houses of the Wyoming State Legislature adopted a bill establishing a \$1,000 bounty on the newly reintroduced gray wolf.

5-If the State of Wyoming had its way, they would literally kill off Wyoming's free-roaming bison herds.

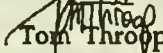
6-The one legislator invited to testify at your Wyoming hearing on behalf of the state legislature amazingly called for both the repeal of the ESA and reductions in the populations of some ESA listed species such as the grizzly bear.

In conclusion, turning ESA responsibility over to state government in Wyoming would be the equivalent of repealing the ESA outright.

• **Wyoming public support reintroduction of the Gray Wolf into the Greater Yellowstone Ecosystem.** You heard a very one sided version of the reintroduction of the gray wolf into the Greater Yellowstone Ecosystem. In fact, the record will show that the comments during the public hearings were overwhelmingly in support of reintroduction. Though you may have heard to the contrary from a few special interests, the public in Wyoming strongly supports reintroduction. In fact, even the Wyoming Heritage Society (the statewide association serving as the voice in public affairs for business and industry) conducted a poll of their own members on a variety of subjects. 62% supported reintroduction of the gray wolf!

• **In conclusion,** the bald eagle, the peregrine falcon, the black footed ferret, the grizzly bear and the Wyoming toad have all been definitive success stories in Wyoming. Again, in Wyoming, there has not been one single concrete example of a problem caused by the ESA. Criticism, at least in Wyoming, has been purely fear of the unknown and innuendo.

Sincerely,


Tom Throop
Executive Director

CASPER
Star Tribune
 WYOMING'S STATEWIDE NEWSPAPER

FOUNDED IN 1891

WEDNESDAY, AUGUST 23, 1965

Feds may accelerate wolf reintroduction

Success of program exceeds biologists' expectations

From staff and wire reports

CASPER — It may be possible to restore wolves in Yellowstone National Park and central Idaho quicker and at less cost if more wolves are transplanted this fall than originally planned, a top official on the project says.

Federal biologists have discussed bringing up to 30 wolves to central Idaho, double the number released earlier this year, and up to 20 wolves to Yellowstone. Ed Bangs, overseer of the recovery program for the U.S. Fish and Wildlife

Service, said the move could end the program early and under budget.

"The number one thing we've heard from everybody is that if they're going to do it, they ought to do it as cheaply as possible," Bangs said from his Helena, Mont., office.

"If we could reintroduce more wolves this year, then we wouldn't have to do it again and would end up saving a couple hundred thousand bucks, at least," he said. "We're talking about it, but we don't have any plans to do it now."

Bangs said once he sees his final bud-

get, possibly by early October, a decision will be made on how many wolves will be relocated this year.

"Right now we don't even know if we can get more wolves" from Canada, he said.

The original timetable for the recovery program calls for 15 wolves to be released annually in Yellowstone and central Idaho over five years with the goal of establishing a population of 10 breeding pairs and roughly 100 individuals in each area.

Earlier this year, 15 wolves were re-

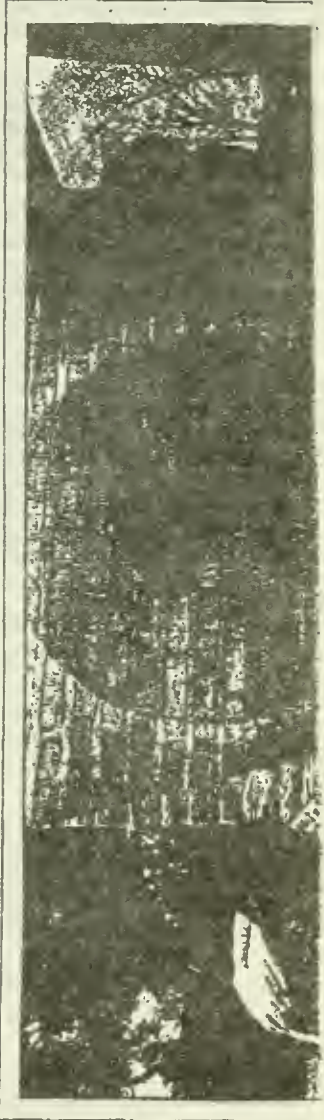
leased in central Idaho and 14 in Yellowstone.

In the Yellowstone area, with the addition of two unexpected litters, there are at least 22 wolves. While none of the Idaho wolves have produced a litter, six of the wolves have paired and established territories in "good areas," Bangs said.

Project biologists had much less ambitious goals for the first year. They had some hope that they would see some reproduction, especially in Yellowstone, WOLVES, A8



Filling up — what's up at Sunrise/C1



BLM LAND TRANSFER

**Simpson:
 Bill should
 guarantee
 land access**

WOLVES: At least 22 wolves in Yellowstone already

Continued from A1

and had hoped there would be some initial pack formation in Idaho.

"The success has kind of caught everyone off guard," Bangs said.

Now, the federal officials are asking, he said, "Is there a way to capitalize on the success and get more wolves faster and cheaper?"

The program, which has been criticized by ranchers and many Western members of Congress since it was first suggested more than 20 years ago, faces new challenges.

U.S. Sen. Conrad Burns, R-Mont., has urged cutting the program's \$600,000 proposed budget by a third and using the money to combat whirling disease, which has appeared in some Montana fisheries.

With a \$200,000 cut, "we're not even sure we can do any reintroduction," Bangs said Tuesday. "It would be difficult at best."

Discussions of bringing in more wolves have focused on central Idaho, he noted. Scien-

tists used a "hard release" there where the wolves were simply released to the wild from the transportation boxes that carried them from Canada.

In Yellowstone, under a "soft release" technique, the wolves were held for about 10 weeks in acclimation pens. National Park Service biologists fed them elk and other carrion and the pens were subject to 24-hour security.

Officials are considering a possible combination of both soft and hard releases in Yellowstone, Bangs added.

The USFWS spent about \$330,000 on this year's transplant, Bangs said. A number of one-time costs were included in that figure, including the kennels and the cost of radio-collaring some Canadian wolves and paying the Alberta provincial wildlife agency to monitor them.

The Park Service paid about \$149,000 for the transplant this year. Those funds paid for archaeological surveys, wranglers, and security.

"This year, we're predicting

we can probably get by on half that," he said.

Those numbers do not include the salaries of regular staffers like himself, Bangs noted.

If the project scientists decide they have the funds to transplant more wolves, Bangs said federal officials will have to consult the Canadians to determine if more wolves are available and work out other logistical concerns.

Agency attorneys will be consulted to ensure that the move is not contrary to the Environmental Impact Statement prepared on the wolf restoration project.

But he noted the EIS looked at the effect of 100 wolves in each of the reintroduction areas.

The transplanting of more wolves would be aimed at achieving that objective sooner, he said.

"At this stage, it's in a discussion phase. It hasn't really progressed beyond that. All these options are being evaluated," Bangs said.



August 21, 1995

Senator Craig Thomas
302 Hart Senate Office Building
Washington, D C 20510-5003

RECEIVED AUG 25 1995

Dear Senator Thomas

**Statement of the Wyoming Resource Providers Coalition
before the Senate Environmental and Public Works subcommittee
Endangered Species Act hearing in Casper, WY
August 16, 1995**

Mr. Chairman and members of the subcommittee. My name is Dallas Valdez. I am the State Coordinator for a statewide multiple use organization, the Wyoming Resource Providers Coalition. I appreciate this opportunity to present testimony and compliment the committee and our own Senator Craig Thomas for holding a Senate Field Hearing in Wyoming. This hearing gives the citizens of Wyoming the opportunity to be heard and discuss their concerns with the Endangered Species Act.

The Endangered Species Act stemmed from a deep respect for our planet, which the fast pace of technology seemed to be ignoring. Its intention to protect animals and their habitat is something that every American agrees is a laudable idea. Since the act's introduction it has been amended many times each time becoming more cumbersome and expensive to the American public.

The ESA's track record has proven that it does not work. It has failed to conserve the species it was meant to protect, and in the process, has wreaked havoc and social distress on communities throughout our nation. It fails to recognize that humans coexist with all other species on earth and need to be part of the equation. Hundreds of communities have been economically and socially devastated by the restrictions imposed under the ESA's growing cloud of doom.

We have all heard of the Spotted Owl in the Pacific Northwest which has plunged whole communities into economic crisis. The absolute terms of the ESA encourage recovery plans and biological opinions with extraordinary price tags regardless of the overall benefits or adverse impact on the affected communities. This proliferation of ESA's "train wrecks" around the country has generated a strong climate for significant changes aimed at softening the Act's impact on people and jobs. Even Secretary Babbitt recently proposed modest reforms.

Unlike other federal environmental and natural resource statutes, the ESA does not provide the administering agencies with discretion to balance competing values. The ESA has elevated the preservation of species of whatever value to humans to an absolute imperative taking precedence over all other human needs and claims, including jobs and property rights. The ESA places major restrictions on the use of private property, causing severe devaluation of properties most importantly without compensation for this loss of value or use of the property.

The Act is able to preempt other laws governing the conservation and management of lands and water. This ability, sets species protection among the highest priority of the federal government and creates a conflict with the multiple use concept enshrined in other statutes. At risk are a large number of economic activities on one third of the acreage of the United States and over 50% of Wyoming, including mining, grazing, timber harvesting, oil & gas production, and pipeline construction, to name just a few.

The 1996 requested appropriation to the Fish and Wildlife Service for ESA is \$119 million alone, not counting the indirect cost to the American public. The Act must be reformed. The legal powers of the ESA are being abused by environmental groups to stop economic activities they object to by "discovering" an endangered species in the locality. Such abuse is made easier by protecting subspecies and distinct population segments of vertebrates that may be plentiful elsewhere.

The WRPC would like the Act reformed providing local governments with the authority and the ability to balance competing values, and preserve economic stability. Landowners should be compensated for their loss of property and the environmental community should be responsible for the cost to the American public. An improved ESA would advocate peer review of the methodologies and scientific processes used in listing a species. The reformed ESA would increase the involvement of all affected parties in the decision making process. Public notification and hearing provisions should be made mandatory with expanded requirements for advertising listings and direct notification of affected landowners. Additionally, deliberations relating to the ESA should be published in the Federal Register at least 90 days before any final action on the listing, to allow the public sufficient time to respond before final action is taken.

Landowners should be given financial incentives to engage voluntarily in mitigation and habitat conservation planning, they should not be forced to participate through a governmental taking of their land. A reformed ESA should encourage the replacement of

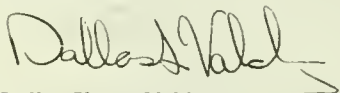
intrusive federal management of species with cooperative management agreements that are entered into voluntarily by local governments, the private sector, state agencies and conservation groups before and after a species becomes threatened or endangered.

The Act needs a mechanism requiring designation of critical habitat and promulgation of a recovery plan at the same time as the listing, tied to a requirement that a listing cannot be made until there is sufficient data to designate critical habitat and the actual need to list the designated species. Additionally, we need a mechanism that promotes the delisting of species that have reached their recovery level in a timely and cost effective manner.

Most importantly congress should clarify that the term "cost" includes the direct and indirect social and economic cost that result from a recovery measure. Recovery plans and regulations should be limited to those found feasible and cost-effective. Finally, the 95.5 million acres of wilderness should be the primary lands used to manage the preservation and recovery of listed species. The potential use of such lands for these purposes should be exhausted before regulations are applied to multiple use federal lands and to private, local or state lands.

The ESA is being used to achieve ethnic cleansing of rural America. Manipulation rather than resolution has become its twisted purpose. The WRPC encourage Congress not to deprive our young people of the courage to face the great problems by sending them the message that there are no solutions. What we need to pass on to them is an improved ESA realigned with ethics, and straightforwardness to ensure our futures, without ego or manipulation at its heart. Let us lay the truth on the table and live the reality.

Thank You,



Dallas Skeets Valdez
State Coordinator WRPC

STAN FLITNER, Greyhull, *President* • NEIL SMITH, Sundance, *First Vice President*
 DAN HAIN, Moorcroft, *Second Vice President*, DOUG THOMPSON, Lander, *Second Vice President*, JON KIRKBRIDE, Meriden, *Second Vice President*
 CINDY GARRETTSON-WEIBEL, Cheyenne, *Executive Director*

WYOMING STOCK GROWERS ASSOCIATION



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Phone 307-638-3942
 Fax 307-635-2524

August 22, 1995

The Honorable Craig Thomas
 U.S. Senate
 302 Hart Senate Office Building
 Washington, D.C. 20510-5003

VIA FAX: 202-224-1724

Dear Senator Thomas:

In response to the Endangered Species Act field hearing held in Casper, Wyoming on August 16, 1995, the Wyoming Stock Growers Association would like to provide the following written comments, to be entered into the official record.

The Wyoming Stock Growers Association, representing more than 1,500 ranching families in the state of Wyoming, supports protecting endangered species; however, we believe that the current Endangered Species Act should be reformed. The original intent of the Act, which was to protect those species which were in danger of extinction, has been replaced by seemingly well-intentioned, but unrealistic, efforts to save every species of plants and animals that exist on this earth, with no regard for private property rights.

While WSGA sees several areas in the existing Act that need to be amended, the following recommendations are among the most critical areas that should be addressed:

1. **Private property rights should not be ignored.**
 As urban areas of the United States continue to expand, thus diminishing rural communities, it appears that the burden for protecting threatened and endangered species has been placed most noticeably on private landowners and natural resource users. With new takings legislation, the Endangered Species Act should be amended to conform with private property rights legislation. Compensation should be provided when private property values are diminished, due to results of ESA actions.

Guardian of Wyoming's Cow Country Since 1872

2. **Endangered species need to be assigned priority.** Administratively, threatened and endangered species have been prioritized on a "hit and miss" basis. It is important to realize that it is impossible to save every species that is endangered. The Act's purpose is defined as conserving ". . . to the extent practicable [emphasis added] various species of fish or wildlife and plants facing extinction." Species with no chance of survival should not be considered for listing; likewise, species that are rare in one area, yet plentiful in another, should not be considered threatened or endangered. The Administration should heed the "practicality" of listing a species.

Furthermore, we must not overlook the natural process of evolution, of which extinction is a part. The Act currently gives the Secretary of Interior authority to list a species based on "other natural [emphasis added] or manmade factors affecting its continued existence." We must be careful that we are not interfering with Mother Nature's natural evolution process.

3. **Critical habitat needs to be better defined.** The current definition includes areas outside currently occupied habitat. Critical habitat should be limited to only that habitat currently occupied by the species. In addition, any expansion in habitat area should be on a voluntary basis by affected landowners.
4. **Subspecies should be excluded from the Act.** Including subspecies in the Act expands the scope of possible listings and does not consider the overall status of a species. In its present form, the Act allows for a species that is rare in one area to be listed, even though it is abundant in other areas, and is in no manner facing extinction. Only those species truly facing extinction should be considered for listing.
5. **Greater criteria for listing species needs to be defined.** This section in the Act needs strengthened. Species proposed for listing should be considered based upon verifiable scientific data, accompanying the listing petition. A great deal of time and money is expended by the Department of Interior to research the validity of a petition for listing. More stringent listing guidelines should be developed to help prevent scientifically unfounded petitions from even being considered.
6. **De-listing process needs to be revised.** The Act currently makes de-listing a species very difficult. If proper management objectives are

outlined when a species is listed, the species should be de-listed immediately, once these recovery plans are met.

7. **Greater cooperation with state and local communities.** For the Endangered Species Act to be feasible, the federal government must cooperate with state and local communities, in addition to private landowners who are affected. Voluntary agreements should be developed for the well-being of the state, local community, and other affected parties.

Since this country was founded, landowners have been saving species from extinction by developing water, providing habitat, and otherwise caring for species. Most of these have been concerted efforts to maintain plant and animal species, some have been a subsidiary benefit of continued good stewardship. Increasing governmental regulations is not the answer to maintain this pattern of good stewardship and species protection. Common sense, flexibility and less regulation is the answer. We cannot continue to take advantage of those who seem to be most overlooked in this equation - the very people who are providing the habitat for threatened and endangered species. The rights of private property owners must be protected for this Act to be most beneficial.

I thank you for this opportunity to comment.

Sincerely,

Cindy Garretson-Weibel

Cindy Garretson-Weibel, Executive Director
WYOMING STOCK GROWERS ASSOCIATION

cc: Governor Geringer
Senator Alan Simpson
Congresswoman Barbara Cubin
WFBF
WWGA
WDA

AUG 30 1995



TRANSMITTED VIA FACSIMILE: 202-228-3976

Page 1 of 2

August 22, 1995

The Honorable John H. Chafee
Senator from Rhode Island
506 Dirksen Building
Washington, DC 20510

Dear Senator Chafee:

RE: Comment on Endangered Species Act Reform

We are writing to thank you for holding a hearing in Casper to get the views of Wyoming residents.

The Wyoming Rural Electric Association represents twelve rural electric cooperatives in Wyoming who provide electricity and other services to our member/consumers in nearly every county.

Our members, most of whom are ranchers, farmers and small businesses, are impacted on several levels by government bureaucracy related to the Endangered Species Act.

Not only have our consumers supported the \$7.5 million trust fund for whooping crane habitat in central Nebraska, they have by their membership in Tri-State Generation and Transmission Association, lost 528 MW of generating capacity at the Glen Canyon Dam in northern Arizona due to environmental regulations, including protection of the Colorado humpback chub.

Closer to home, Wyoming electric cooperatives and our member consumers are impacted by regulations promulgated through the Act that impact business decisions while the benefit to species preservation remains undefined.

The Honorable John H. Chafee
Page 2
August 22, 1995

People in the West are naturally conservationists. We must preserve the land in order to profit from it. We do not push to repeal the Act.

We urge reform and reauthorization of the Endangered Species Act that provides consideration of the economic impacts of species recovery programs; allows for locally developed alternatives that forestall listings; ensures that the cost of recovery efforts are equitably borne; and, refines the Act's purposes to constrain courts and administrative actions from overextending the intended purpose.

Sincerely,



Judy Eastman
Executive Director

JLE:kjh

cc: Senator Craig Thomas

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