

**ENDANGERED SPECIES ACT: WASHINGTON, DC—
PART I**

**OVERSIGHT HEARING
BEFORE THE
TASK FORCE ON ENGANGERED
SPECIES ACT
OF THE
COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION
ON
THE IMPACT OF THE ENGANGERED SPECIES ACT ON
THE NATION**

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MAY 10, 1995—WASHINGTON, DC
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THE ENDANGERED SPECIES ACT: WASHINGTON, DC—PT. I

WEDNESDAY, MAY 10, 1995

**HOUSE OF REPRESENTATIVES, COMMITTEE ON RE-
SOURCE, TASK FORCE ON THE ENDANGERED SPECIES
ACT,**

Washington, DC.

The task force met, pursuant to call, at 2:10 p.m. in room 1334, Longworth House Office Building, Hon. Richard Pombo (chairman of the task force) presiding.

STATEMENT OF HON. RICHARD POMBO, A U.S. REPRESENTA- TIVE FROM CALIFORNIA, AND CHAIRMAN, TASK FORCE ON THE ENDANGERED SPECIES ACT

Mr. POMBO. The hearing will come to order. Good afternoon. I apologize for being late. I welcome my colleagues to this hearing of the Endangered Species Act Task Force.

The task force was established by Chairman Don Young to conduct oversight hearings throughout the country to study the implementation of the Endangered Species Act. The task force held seven field hearings in various areas of the country and heard from over 100 witnesses representing many different views in different sectors of society. I believe that we received extremely valuable input from all of these witnesses who appeared at the field hearings. I wish all of you could have heard from these individuals, as we did.

We estimate that over 5,000 people attended at least one of these field hearings. We have received hundreds of written comments and letters. This has been an incredibly open and inclusive process.

As we complete our hearing process here in the Nation's Capital, we wanted to ensure that Members of Congress were given an opportunity for input into the process of preparing legislative recommendations, and that is the purpose of this hearing today. I sent out a Dear Colleague on May 3rd, inviting Members to testify or submit written testimony to the task force and we are happy with the response that we have received.

I want to express my appreciation to the Members of Congress who are taking time from today's busy schedule to give us the benefit of their views on this issue. Since many Members who will testify today had a great deal of experience with the workings of the Act in their districts, I believe that they have a great deal to offer in terms of solutions to difficult choices that must be made.

I hope that we can work together to develop a balanced and fair approach to reauthorization of this Act. I look forward to hearing

from all of the Members who will testify today, and would at this point like to recognize the Ranking Member, Mr. Studds.

**STATEMENT OF HON. GERRY E. STUDDS, A U.S.
REPRESENTATIVE FROM MASSACHUSETTS**

Mr. STUDDS. Thank you very much, Mr. Chairman. As you know, I could not attend the first few of those field hearings, and later I chose not to attend the remaining ones. I would also say to you that my departure early today is not an act of protest. I must be on the Floor for the Clean Water Act, which is also either under deliberation or assault, depending on your point of view.

Mr. Chairman, there are many important things to say about the successes and the failures of the Endangered Species Act. However, I feel obliged to focus my remarks today on my very grave concerns about the turn this debate has taken.

When this task force was formed and when I was asked to serve as its Ranking Member, it set out, I thought, to take a tough new look at how and at whether we should weigh the impacts of human enterprise on the hundreds of species whose existence hangs in the balance. Over the celebrated first 100 days, however, we have not lived up to these objectives. The rhetoric and Floor debate, at hearings and in the press, has been misleading and inflammatory, giving an implicit institutional wink at individuals and groups who, sadly, have very different agendas.

It surprises no one in this room that I have heartfelt personal views about the importance of an ESA that helps to preserve threatened species, and I might add an ESA that works predictably, efficiently and without undue burdens on landowners. I readily concede how difficult it is to draw the fine lines, and I remain prepared to hash out the facts and judgments at the core of our policy disagreements.

That, however, seems to be viewed these days as a quaint, anachronistic way to legislate.

In this ESA debate, birds and butterflies and other furry critters are considered enemies of the people. As we have heard in Big Sky country, "Shoot 'em, shovel 'em, and shut up."

What is more frightening is the same characterization applied to people who work for the government each of us is sworn to uphold, Federal employees who are guilty of nothing more than doing their jobs or who want their children to inherit the world as we know it complete with bald eagles, gray whales and desert tortoises.

While some of its proponents may not admit it, the ESA does have serious problems which cry out for serious debate. We do need to respond more quickly to local governments and individuals concerned about listings, to minimize impacts on private property, and to review the role of States and species conservation. That, however, seems to lead some to view the ESA as a government plot to steal property, to undermine free enterprise and to convert the United States to a socialistic dictatorship where insects mean more than jobs.

I do not presume—let me repeat, I do not presume—to speculate on the intersection of cause and effect over the last few tragic weeks, but let us be honest about what we do know. Employees of the Fish and Wildlife Service and of the National Forest Service—

and, in many cases, their families—have been verbally and physically harassed. Able personnel fear disclosure of their home addresses. They are getting briefed on what to do if they get arrested for doing their duty and they are seeking transfers in ever greater numbers. Last week the Wall Street Journal reported that a Fish and Wildlife employee is moving his family out of Texas after receiving repeated bomb threats.

These developments do not change the core questions in the ESA policy debate before us, but they most certainly ought to make us reflect carefully on the quality of our work and of our words.

Incendiary rhetoric on Capitol Hill has validated misrepresentation and inaccuracies so appalling that it is no wonder that rational citizens are shaking their head at the statute. We can use our imagination about less rational ones.

So that is where we now stand: with a variety of well-meaning people concerned about their physical safety—and, in some cases, that of their spouses and children—over a law designed to prevent extinction and to preserve nature.

I am committed, as I believe the task force Chairman is, to getting down to the business of examining what works and what doesn't work about the ESA. In the end, it may be the collective wisdom of this Congress to allow species to fall over the brink of oblivion.

We may decide that the medicine locked inside another rosy periwinkle or another yew tree, perhaps with a potential cure for AIDS or Alzheimer's or breast cancer, is not worth slowing timber harvests, or that cheap hydropower is preferable to the demise of the Pacific salmon fishery.

Wherever we are headed, let's get there honestly and with full cognizance that words and deeds have consequences. Let's call a cease-fire on the tree frogs, the Audubon Society and the Fish and Wildlife Service. Sound and fury to the contrary, red wolf biologists in North Carolina, botanists in California and ornithologists in Texas are not the enemy.

We clearly come to this debate with astonishingly different visions of the world, but the American people assembled us to rewrite this law without chronic hyperventilation. Let's get on with the work with some semblance of respect for each other, for our witnesses, for our Nation's workforce, for endangered species and for the truth before we find ourselves mourning the loss, through fear or through violence, of another public servant.

Mr. Chairman, 23 years ago this law was written in this room, and for some 22 years, I had the privilege of serving on the committee with subsequent oversight jurisdiction over it. And I would remind people that it was signed into law by a President by the name of Richard Nixon. It was not some devious plot by alien forces perpetrated upon the people of the country. And over the years, although it has raised serious questions and stirred emotional debate, it has been conducted in this very room in a spirit worthy of the nature of the statute, without partisanship, without rancor, and without threat.

Many people, the world over, view this statute as a model for all the nations of the world and wish that they could be as successful as we have been in trying to protect biodiversity.

I think, if I may conclude—and I apologize for taking so long—if we need anything at all at this point—and I include all of us in this, right, left, middle, whatever it may be, although it is hard to conceive of what is right and left when we talk about biodiversity—I think it is a little humility, and I include myself in that as well. We are talking about the manifest forms of life on earth.

We don't have any idea how many species there are. We don't have any idea how many we have lost or how many we will lose. But we do know that with every species we lose, we lose a potential to cure diseases; we know not, in effect, what we have lost. And in that overwhelming state of ignorance, it seems to me that the proper course is one of caution, of humility in the face of overwhelming ignorance, and if I may use a badly and often misused word, genuine conservation.

I think we could use some more conservatives, in the English-language sense of the word, when approaching the diversity of life on earth.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

Without objection, I would like to include any other opening statements in the record and begin to hear from our witnesses.

Without objection, Congressman Dicks from the State of Washington is first up. You may proceed.

**STATEMENT OF THE HON. NORMAN D. DICKS, A U.S.
REPRESENTATIVE FROM WASHINGTON**

Mr. DICKS. Thank you, Mr. Chairman. I would ask unanimous consent to have my statement placed in the record.

I come as one from the Pacific Northwest who has probably been under the gun more than anyone else on the Endangered Species Act. In my district, we have seen the listing of the northern spotted owl, we have seen the listing of the marbled murrelet, we see the potential listing of a whole series of salmon species. And this has been a problem of great concern to the people of the Pacific Northwest, who, I think, truly want to preserve the species and also want to see if there is not a way to make this Act work more effectively for the country. And I share those views about, let's try to make this Act work, let's try to figure out ways in which we can make it more acceptable to people.

In that sense, one of the things that I would like to see done as an amendment to this Act—and I intend to introduce this legislation—would be the creation, the development of multispecies Habitat Conservation Plans, either on a statewide basis, or as part of a bioregion.

Currently, we wait until a species is either threatened or endangered before we take constructive action. Under my vision of the Endangered Species Act, I would like us to have a new alternative, and that is, if you were, say, in the State of Washington and a few years ago you recognized that we are going to have problems with the northern spotted owl, you could have gotten the Federal agencies, the State agencies, and maybe your large private landowners together to develop a statewide, multispecies Habitat Conservation Plan.

Today, in the State of Washington, we are regulating the Federal lands under the President's forest plan that we call Option 9, which in essence is a multispecies HCP. My vision is that you could take that as the basis, and then if you have the State of Washington on its lands and then the Weyerhausers, the Rainiers, the other major private landowners with their lands, you could come together and develop a very significant Habitat Conservation Plan, either on a statewide basis; or you could designate an area like the Olympic Peninsula, which I represent, where you have the Olympic National Park, the Olympic National Forest, you have major State holdings, major private holdings, and you could create a bioregion within a State. The Everglades could be a bioregion. And that would give us a way to deal affirmatively with this problem, rather than waiting until species are either threatened or endangered, you could go ahead and have a plan put in place.

You would develop it from the bottom up. I mean, in other words, you would have the local government agencies, the State agencies, the Federal agencies, working on constructing such a plan.

My vision of it is that the smaller landowners—and this would be voluntary. For the private companies, it would be voluntary; for the State, it would be voluntary. And in our situation, the State of Washington, I could conceive of a situation where, like under the 4-D Rule, you could drop out the smallest landowners. They would not have to be part of the plan, because you would have enough habitat on the Federal lands, the State lands and on the large private lands so that you wouldn't have to have the small individuals. You would have to make a decision in your Habitat Conservation Plan about what that threshold would be.

In the 4-D Rule they chose in the State of Washington, for example, they chose 70 acres, that private owners with 70 acres or less would be exempted from the program.

We also in Washington State have developed on the eastern side of the State what we call the Washington State Ecosystems Project, where we have, with the large farmers in our State and small farmers on a voluntary basis, with a small amount of Federal and State money, gotten them to go on their lands and restore habitat voluntarily.

So I would still hold out the option that these small landowners who would be exempt from the program could be involved in the program, if they wanted to, on a voluntary basis, so that like the land and water conservation, under the Nature Conservancy, you could go there and restore habitat on those small landowners' property. And I would think that there needs to be some small authorization of funds for that purpose.

But I think if we did this, this would give us a chance to deal affirmatively with these problems, not wait until we get species after species, with each one having their own recovery plan, each one being dealt with separately and all the conflicts.

And the other thing is, once you have your plan submitted to the Secretary, either the bioregion plan or the State plan, that is it. There would be no further listings from that point forward. You would have certainty, you would know.

Now, if you got—say, every 10 years you wanted to—on a voluntary basis, go back and look at the plan and all the parties

agreed that they wanted to modify it because of some new concern, that would be done only if—in my bill, only if it were agreed to unanimously by all of the parties.

So this would give us certainty, it would allow us to plan affirmatively, and in my judgment, it would give us a chance to deal with what I think is the fundamental flaw.

We wait too long before we come up with a strategy for dealing with these problems, and then when we have to do it at the end of the game, the consequences to the communities are so great that you have all of this tremendous opposition. And then, I think, by exempting the little guys, you get away from a lot of the political problems and you can involve them voluntarily if they have crucial habitat, but only if they want to be involved in the program.

So I am drafting this, and I would love to submit it to your task force, and I think it would make a—I think in an area where there is tremendous controversy, it seems to me that this is one thing, one idea that we could do that both sides should be able to agree to in this debate.

[The statement of Mr. Dicks may be found at end of hearing.]

Mr. POMBO. Thank you.

Do you have a timeframe in terms of coming up with a bill that you are describing?

Mr. DICKS. It is being drafted right now. This would be an amendment—this is not a comprehensive substitute for the ESA.

Mr. POMBO. Just dealing with multispecies HCPs?

Mr. DICKS. Right. Or bioregions within a State, or—and also this fund and authorization for involving these small landowners voluntarily in this program.

Mr. POMBO. We would be very interested in seeing the language that you come up with on that, because that is one of the issues that we have spent a lot of time, both hearing about and exploring, in how we deal with the multispecies habitat, or HCPs in general.

I have another question. In large public land States, how would you manage those public lands that were included in a broader HCP in terms of being able to extract natural resources off those lands? Would that be part of the overall—

Mr. DICKS. Yes, that would be in essence, what you do now with the private companies, when they do an HCP. Let's take the Weyerhaeuser Company or Toby Murray's company in Tacoma, they work out a plan between the Federal Government and themselves about how they are going to manage those lands. And obviously, in our State of Washington, where we have a major Federal landholding that is already being managed under Option 9, they have worked out a strategy for a multispecies HCP, so it allows for them to do harvesting on the Federal land—I mean, on the private lands, and that is negotiated between the parties.

And so, you know, when you have got a base here of large Federal lands involved, it will make it possible, in my judgment, to have a less onerous restriction on State and private lands. And as I said, the small—in my view of this thing, the small landowners on a case-by-case basis would be dropped out at some point; and then if they wanted to be involved in the program, we have a little pot of money so the government can come in and work with them,

if there is some crucial habitat on their land, that it can be purchased.

So we get out of this adversarial thing. This is what is killing the Endangered Species Act.

Mr. POMBO. What you are talking about is a system that is much more cooperative.

Mr. DICKS. And much more bottom-up, so that the communities feel they are involved in developing these plans and that it is just not being imposed upon them by a bunch of scientists who don't care about the people in the communities, or they think that they don't care. Obviously, that is a controversial point.

Mr. POMBO. Yes.

Mr. DICKS. But the thing I heard over and over again is, we want to be involved in the planning of this thing. So I think this kind of an approach will give us another tool, another option to make this thing work more effectively.

Mr. POMBO. Thank you. I have no further questions.

Mr. DICKS. I will have the draft over to you by the end of the week.

Mr. POMBO. Thank you very much.

Mr. Vento, did you want to ask any questions?

Mr. VENTO. No, I don't have any questions of my colleague. I look forward to reading his amendment.

Mr. POMBO. Do any of the other Members have questions that they would like to ask?

Thank you, Mr. Dicks.

Mr. POMBO. The next person is Mr. Vento.

You can do it there; it is all right.

**STATEMENT OF THE HON. BRUCE F. VENTO, A U.S.
REPRESENTATIVE FROM MINNESOTA**

Mr. VENTO. Well, thank you, Mr. Chairman. I won't take the full time. I have a statement and I will submit it to the Members.

I attended the first task force hearing in Louisiana and regret that I could not attend others, due to the intensity of the schedule—and of course, as the Chairman knows, I had some concerns with regard to the hearing in the nature of what occurred, in good faith, at that time.

I think that when we have individuals coming before the committee that we should try to have the other side of the story, that is, of the land managers' views in those local areas. As you recall, I mentioned that; and I think—the upshot of that, of course, has been that we have received a lot of statements made at the task force which have gone, in essence, unchallenged. As one Member out of the ten or nine that were present that day, obviously I was interested in challenging some of the statements, but obviously time did not permit that.

But I wanted to just say to my colleagues and to others, as we consider the modifications and legislation to reauthorize it, the debate becomes more and more polarized. But up to this point, the sound and the fury have often left us with empty rhetoric. The fundamental point is that the Endangered Species Act works.

Is it a law without problems? No. There certainly are some changes that need to be made, but the core of the law and its purpose should remain intact.

From statements made by some Members of Congress on the task force and others, it seems they feel that saving endangered species is a luxury, a good idea when we can afford the Endangered Species Act, but one to be dispensed with when associated costs reduce the profits of business and/or industry. They appear ready to abolish or drastically weaken the Act and illustrate the necessity to do so with partial information and anecdotes detailing the adverse impact of economic activities on private property under management of the endangered species.

One could spend some time countering a lot of the anecdotes that were made, but that has already been done for us by some of the conservation groups. I would direct my colleagues to the work done by the National Wildlife Federation who has been a driving force in the writing of the law and policy over the years. And I would direct my colleagues' attention to the Fish and Wildlife Service report which talks about many success stories. I mean, there is much more that is positive than is negative in some of the allegations made.

So I would just submit those—after your perusal, Mr. Chairman and others'—for the record. I don't want a redundancy of items in the record, nor do you. But I think—to be certain, I think they should be referenced. They are important insights with both sides of the issue fairly represented.

Unfortunately, significant issues, and therefore the chance to have a knowledgeable debate, too often are lost in the rhetoric. The truth may not always be as exciting as stories. Perhaps more importantly, we seem to forget the basic reason for having a law that protects threatened and endangered species. Preserving biodiversity benefits everyone—biologically, economically and morally. The Endangered Species Act has had the effect of preserving biodiversity and therefore enhances our ability to survive on this planet.

Before man dominated the environment, a bird or mammal species went extinct every 100 to 1,000 years. Today, we lose at least one bird or one mammal each year and, of course, many observers calculate we lose three species of all kinds every hour, 74 each day, 27,000 each year.

Of course, we talk a lot about the spectacular species; or the conspicuous, I should say, we pay more attention to them than the less conspicuous. But I might say that almost all diacyradic acid, Mr. Chairman, is equal in terms of its ability to promote and form different types of life that can be put to use and employed by us. We know the reason for a lot of this pressure on species is the human population increases. I won't go into that, but mankind has altered about 40 percent of the surface of the Earth, and as you know, we are dismally disrupting the fate and contrast of the oceans. It has tremendous impacts on a global basis. My figures come from Larry Nielsen, the Director of the Pennsylvania State University School of Forestry, and it is referenced in my statement.

Candidly, the species declining phenomena that continues to adversely affect the flora and fauna, the biological diversity around

the globe, speaks to a reinforcement and strengthening of the American commitment to the Endangered Species Act, not a weakening. Many proposals being advanced to change the Endangered Species Act have the impact of undercutting international law and treaty agreements. Certainly, adverse actions by the U.S. Government to weaken the Endangered Species Act would at the very least shred the moral authority of the U.S. internationally to, in fact, hold up or to give advice. The Endangered Species Act makes economic, environmental and ethical common sense. Losing a species basically is the equivalent of throwing away an unopened gift because we don't know the source or how it could be useful to us.

The Endangered Species Act safeguards many of the species that we rely on for lifesaving medicines, to fight cancer and other threatening diseases. As you know, Mr. Chairman, today we have lively research going on, for instance, with regards to the antigen antibody reactions concerning various types of amphibians, which holds a promise to open up doors as we are overworking the various types of plant antibody antigen reaction factors such as penicillin and other types of fungi. We find that many are available from the amphibian species. So it may be that the Houston toad is enormously important, for instance, in terms of producing those types of products, as an example of one species that is under pressure.

While only a tiny fraction of all species has been studied for beneficial uses, about 25 percent of the medicines found in your local pharmacy are derived from these forms. They actually are the templates. Very often, we learn to copy them as we did in the case of taxol. But you have to have the basic model to do the chemical work—to pattern the configuration of a particular medication.

With each lost species, our genetic library, the pool of biodiverse life form suffers a little bit more. There is the example of a woman in Potomac, Maryland, with ovarian cancer that has been the beneficiary of taxol, a substance found on the bark of the Pacific yew. It is found in the temperate rain forests of the Pacific Northwest, and was once thought a trash tree and discarded or burned at the site, seldom used for anything at that point. Today, of course, we know that it has been the template for the development of synthetic taxol.

Economically, of course, many opponents argue that the Act isn't working. It puts the need of wildlife ahead of those of humans and unfairly burdens private landowners. The importance of slowing down the unprecedented extinction of the fauna and flora is sometimes a difficult point to make, especially to one whose livelihood has been adversely affected by important conservation areas.

One of our mentors, actually the former Chairman of the committee, the Resources or the Interior Committee, Mo Udall, said that there are two types of Members of Congress, those that don't know and those that don't know they don't know. I include myself. I agree with Mr. Studds, in terms of talking about the need for all of us to have a certain amount of humility. I know that that may go against our holding ourselves up for obvious reasons, Mr. Chairman, and the work we sometimes do, but frankly, I think his admonition is one that we need to keep in mind with regards to subjects like the subject that is before us.

We need certainly to improve the Endangered Species Act by considering incentives that encourage and help landowners protect species. However, the fifth amendment, in my judgment, is the wrong place to start. People do not have, and never have had the right to extinguish species. Contrary to the horror stories you may hear, most private property owners want and need protection from damage that others may cause to the value and safety of the land.

In terms of the criticisms that have been leveled at the Endangered Species Act, I think you ought to see if the individuals actually utilized the permit process provided under the law. In fact, some of the most celebrated examples have been where people have not sought a certain type of permit for an incidental taking under the law. I think it is important to separate that out. I mean, if we can facilitate the process by adding additional technical assistance or permits for small land areas, like the Secretary of Interior has proposed to do, to exclude small landowners and actions, I think it is fine. But I think we really want to be careful not to burden the law if they are not using the existing process right now, what purpose to establish yet more alternatives in the sense that they are not being used today?

Mr. POMBO. I am going to have to ask you to wrap it up, Bruce.

Mr. VENTO. Sure. I appreciate that. In my home State, of course, of Minnesota we have had a number of spectacular successes, as many have had, with the bald eagle, the timber wolf, other types of raptors; and I hope, Mr. Chairman, that—those examples, I think, stand as many successes along with the others that I have submitted for the record to show this. I would just submit the rest of my statement and be happy to respond to questions of my colleagues.

I thank the Chairman for the opportunity to testify.

Mr. POMBO. Thank you. And I appreciated you attending the hearing in Louisiana, and I just wish that you had had the opportunity to attend more of them, because I think that we all learned a great deal from the hearing process, but I do appreciate you going to the one in Louisiana.

Do any of my colleagues have any other questions for Mr. Vento? [The statement of Mr. Vento may be found at end of hearing.]

Mr. POMBO. Seeing none, we will proceed.

Mr. Stenholm, you are next up.

**STATEMENT OF THE HON. CHARLES W. STENHOLM, A U.S.
REPRESENTATIVE FROM TEXAS**

Mr. STENHOLM. Thank you, Mr. Chairman. I am delighted to be here today to talk about injecting some much-needed common sense into the Endangered Species Act. But first I would like to both thank and commend you and the members of this task force for your important work in this area.

I was glad to be a part of the field hearing in Boerne, Texas, and I believe it provided some valuable information from folks who are impacted by ESA regulations.

The ESA, as currently written and implemented, is not achieving its stated goal of recovering endangered and threatened species to levels where protection under the Act is no longer needed. The ESA

also fails to recognize other Federal authorities and does not strike a balance between environmental and economic interests.

Since its passage in 1973, the ESA has embroiled farmers, resource users, and landowners in ongoing, political and legal controversies. The confusing and burdensome listing, consultation and exemption processes required by the Act impose significant costs on businessmen and women, industries, and regional economies. Added to this are the financial and personal costs of the litigation against the government and environmental activist groups that these private parties often must confront under the ESA. In many instances, the Act has been effectively used by activist groups as a tool to control land use and resource management through the Federal courts. Preserving endangered species is, without a doubt, a worthy goal; however, when pitting the interests of people against the interests of endangered species, both extreme caution and common sense must be used.

First and foremost, we must have some system of checks and balances in place to ensure that the rights and well-being of birds, animals and other species are not put ahead of the rights and well-being of property owners. The protections guaranteed to citizens under the Fifth Amendment to the Constitution should preclude us from having to even consider legislation to require compensation for landowners when their land has been substantially diminished by ESA regulations. The sad fact is that we would not be here today if there were not so many horror stories of how private property owners' rights are being violated. Unfortunately, I have first-hand experience of the detrimental effect of ESA regulations on landowners. As I mentioned at the field hearing in Boerne, the 17th district of Texas has served as host, at great expense, to the Concho water snake and the golden-cheeked warbler.

Secondly, the process of listing a species must become more scientific and pragmatic and much less political and emotional. Consideration of cumulative impacts from both listing and designation should be required. The burden should be on the petitioner to make their case based on sound, verifiable science when proposing a species for listing.

When approving recovery plans, economic cost of the plans, socioeconomic impact, State and local efforts to protect the species, and the likelihood of recovery of the species should be taken into account. Also, public hearings should be required in the affected counties prior to selection of a final recovery plan.

Furthermore, I believe independent peer review is essential to the success of the Act. An objective, independent peer review based on sound science would take some of the emotion out of the decisionmaking process and help us take a balanced approach in meeting the goal of the Act.

I have mentioned just a few of the recommendations that I believe are key to the success of the Act. However, there are many proposals we need to explore as the Congress reauthorizes the ESA.

Thank you for the opportunity to share our views. I look forward to working with you in this committee in crafting a proposal that will strike an equitable balance between the environment, the economy, and the American people.

Mr. POMBO. Thank you, Mr. Stenholm.

Mr. POMBO. Do any of my colleagues have any questions?

Mr. VENTO. Mr. Chairman?

Mr. POMBO. Mr. Vento.

Mr. VENTO. I didn't have a chance to participate in the Texas hearing, but I appreciate your interest and I understand the importance of being here today. But when you suggest that the law isn't effective, are you talking about that it doesn't save the endangered species, that it isn't an effective law with regards to that?

Mr. STENHOLM. I was referring specifically to the unfortunate incidents I mentioned—two, one of which is well documented, of the Concho water snake, in which the people of west Texas were forced to spend in excess of \$4 million meeting somebody's belief of how to protect a water snake other than building him a lake. I have never understood how anybody could have ever come to a conclusion that if you built a lake for a water snake, you were going to do something detrimental to the future preservation of that species. But after having spent \$4 million on a non-Federal project attempting to meet the ESA guidelines, as we were forced to do under the current law, I came to the conclusion that a responsible change was in order.

Mr. VENTO. Well, Mr. Chairman, because when you suggest the law isn't effective, I mean, I don't know the details of the issue with regards to the construction of the lake, but the information I have is that the populations that have been listed of the total species number in the hundreds—less than 1,000 and about 500 abroad—that 40 percent of the listed species are stable or improving, and a certain percent, about 30 percent, of the information is unknown and we lost about 2 percent. That doesn't add up to 100, Mr. Chairman.

But the information I have from the Fish and Wildlife Service is that the law does work. I mean, obviously there are some problems, but I thought my colleague was suggesting that it does.

You know, obviously when you talk about having hearings in every county, what do you do with the American eagle? You have 48 States that are affected. Or the wolf? Do you have to go to a hearing out in Alaska? I think that is—you know, it is a sort of problem that we have.

But I understand that your concern is more specific to the incident where it occurs in a limited area; is that correct?

Mr. STENHOLM. Well, it is not just—those are just the two that I am personally familiar with. But I have also, as a result of the hearing process, heard horror stories that I think confirm even more so the basic statement that I made in my testimony.

Mr. VENTO. I would suggest to my colleague—I would share with him some of the suggestions and then hear the other side of it too. And I know he knows both on his own. But I have submitted this for the record. I won't continue. Thank you.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you. Do any of my colleagues have questions? Seeing none, thank you very much, Charlie.

Mr. POMBO. Mr. Weldon.

**STATEMENT OF THE HON. CURT WELDON, A U.S.
REPRESENTATIVE FROM PENNSYLVANIA**

Mr. WELDON. Thank you, Mr. Chairman. I have no horror stories today; I have a success story. I thank you for allowing me to testify before you today.

As an eight-year member of the Merchant Marine Committee I had the fine pleasure of working in this hearing room, and serving on a committee that had jurisdiction over the Endangered Species Act. I would like to take the opportunity today to tell you about a real-life case which brings to the forefront of the debate an issue that is not too often discussed. I come here today to talk about one of my constituents, six-year-old Jackie Buckley, whose photograph is over here on the side.

Jackie was diagnosed with leukemia three years ago. While the hopes that Jackie would ever reach adulthood once looked slim, this energetic six-year-old has become a national symbol, helping us all understand the important role that nature's plant species play in the high tech world of medicine. Jackie's illness is now in remission and she has a 99 percent chance of living a long, productive life, thanks to a cancer fighting medicine derived from a rare wildflower.

According to Jackie's physician, Dr. Kevin Brownogehl, the extract from the rosy periwinkle plant put her disease in remission. It was first discovered in Madagascar and is a source of vincristine, a major treatment for leukemia, especially among children. While the medicine has only been around for about 10 years, it has shed important new light on the importance of our natural resources.

The rosy periwinkle plant does not stand alone as a defense against illness. Taxol, a drug used in treating ovarian and breast cancers, comes from the Pacific yew. The purple foxglove has provided us with the heart medicine digitalis, and the Australian mulberry and the Cameroon vine tree appear to produce AIDS fighting compounds.

These natural remedies are saving lives. Yet, only 5 percent of the flowering plants worldwide have been studied chemically. We simply do not know the future medicinal value of our plant species until further studies have been completed. Current successes indicate that we are just seeing the tip of the iceberg. The useful substances derived from the small sample of plants studied is staggering.

Mr. Chairman, last November the electorate sent us a message in Washington that we were not only fed up with overzealous Federal regulations, which I agree with, but also fed up with the Washington bureaucracy sometimes out of touch with the real world. Jackie Buckley represents the real world, and it is imperative that we do not take a wrecking ball to the Endangered Species Act. We must provide for adequate protection of these vital resources in a common sense approach.

I have come here today to urge you to strike an effective balance between preserving our natural resources and protecting the individual liberties of our citizens, that I too support, while at the same time taking into consideration real-world cases, like Jackie Buckley's. We must empower our State and local officials to conserve

species before they become endangered. Endangered species are not just a liberal issue and liberal concern.

For example, Mr. Chairman, I represent three of the most Republican counties in Pennsylvania, including the most conservative Republican county in the Commonwealth, Chester County. I share the representation of that county with our colleague, Bob Walker. Chester County, despite being one of the most conservative counties in the State, has its local officials and its voting electorate by an overwhelming margin recognize the importance of conserving open space, biodiversity and endangered species by passing a \$50 million bond issue to institute an integrated approach to nature conservancy making it a part of the county infrastructure. As a result, over 40,000 acres are being set aside for the protection of endangered species, for biodiversity, all in the absence of a Federal mandate, approved overwhelmingly by a Republican conservative constituency.

Mr. Chairman, there are ways that we can come together on this issue. I, too, have concerns about the "big brother" approach of government coming in and dictating. But we should be looking for ways to encourage local governments and States to do what is happening in my State, where Chester County has taken the local initiative, where neighboring Montgomery County, where I share representation with John Fox and Jim Greenwood, has passed a \$100 million bond issue, again protecting biodiversity, endangered species and wetlands.

In closing, I just want to stress again the fact that we are just beginning to discover the medicinal value of plant species. The Endangered Species Act has played an important role in protecting these resources from danger, and I think it is our responsibility to take a common sense approach to reauthorizing this Act legislation.

I thank you.

Mr. POMBO. Thank you very much, Mr. Weldon. I think that your testimony is very valuable in our deliberations, trying to find how we find a common sense approach and some balance in this system. And I applaud your county for setting aside 40,000 acres as permanent habitat or as a conservation easement. I think that that is very useful.

I would tell you that my home county would gladly set aside 40,000 acres, if that is all they had to do. And that, you know—unfortunately, a big part of our problem is that some of the eastern States have different land use patterns than what we have in the West, so a lot of these issues are viewed very differently in the East than they are in the West, and that is where we come into conflict.

Hopefully, as we move forward with this bill, we can find a way to balance what you are presenting to us in terms of setting aside a small portion of a county as habitat, like that, versus some of the problems that we have out in the West, so that we do reach some kind of a balance in habitat protection and in endangered species protection against the rights of individual property owners. And that is the balance that we search for and that we are trying to find.

Mr. WELDON. Thank you.

Mr. POMBO. But thank you very much for your testimony.

Mr. POMBO. Mrs. Chenoweth?

Mrs. CHENOWETH. Mr. Chairman and Mr. Weldon, I think that you pointed out the fact that science does march on in spite of the Endangered Species Act. But isn't the rosy periwinkle found only in Madagascar?

Mr. WELDON. Well, I am not a plant expert, so I don't know. I pointed that out as an example of how plant species today are being used for medicinal purposes. I am not an expert in that area. Perhaps the gentledady is.

Mrs. CHENOWETH. And isn't it true that the foxglove was never listed as endangered?

Mr. WELDON. I don't know that either. My purpose was not to discuss specific plants under the Endangered Species Act, but rather to point out that this committee needs to understand that plant life is very important in terms of looking at possible solutions to medical illnesses and problems that we do not yet fully understand.

We have only looked at 5 percent of the entire species on the face of the Earth; that was my point.

Mrs. CHENOWETH. And I think your point is so well taken, and I appreciate you for bringing that particular point up, because as the bill is right now presently constructed, to even cut any of those plants would be a taking which would be a criminal offense. And so I join with you in needing to see a change in the existing law. Thank you so much.

Mr. WELDON. Thank you.

Mr. POMBO. Thank you.

Mr. Cooley.

Mr. COOLEY. Representative Weldon, I spent 27 years in the pharmaceutical industry. I ran the nuclear research institute, and if the Endangered Species Act is so important to the pharmaceutical industry, why aren't they here?

I want to tell you something.

Mr. WELDON. I think the hearing is for Members only.

Mr. COOLEY. Well, I mean, on any of the endangered species hearings. I have attended all of them except, I think, one.

But let me tell you something else about the system. We have had in the field for over 50 years plant biologists checking different plants around the world, and have been and will continue doing that to find molecular structures that plants have that we have not been able to duplicate in the laboratory. When we find a molecular structure that has some molecules that we know have some therapeutic, benefit to man, we take it back and we synthetically redevelop those processes and then use them in studies. So basically, this has been going on for years.

I have one thing I will say about your comments that partially have some truth to them and partially don't. But the other part is that we concur with your idea that local control is better than Federal control about endangered species.

If your particular county or your State or your region wants to set aside and make their decision locally to put aside this amount of property, for whatever reason, we think that is very good. But we do not believe that at the Federal level, which involves control of different groups, controls of environment and controls of local

communities, involves some economic thing, and miles and miles away that people making the decisions have no idea how they are impacting these people should be taken a look at. And I think that when we rewrite the Endangered Species Act, I think part of the rewrite or reform—we are not going to get rid of it—should include some local participation in the listing process and the recovery process instead of making decisions from a bureaucratic standpoint by people 3,000 miles away that really do not care one way or another about the local communities which they are affecting.

Mr. WELDON. Well, my point was exactly that, that we should be providing incentives and encouragement for local municipalities to take the lead in their land-use planning that includes biodiversity, endangered species and wetlands. If we did that, we wouldn't be down here fighting over the spotted owl in the western part of the State or snakes in Texas, because it would have encouraged that.

I agree that perhaps all of that should not be directed from Washington, but I do think there is a Federal role in the process.

Thank you.

Mr. POMBO. Thank you.

Mr. POMBO. I would like to next recognize Mr. Brewster.

**STATEMENT OF THE HON. BILL K. BREWSTER, A U.S.
REPRESENTATIVE FROM OKLAHOMA**

Mr. BREWSTER. Thank you, Mr. Chairman. Before I start my testimony, I would like to comment that the gentlelady from Idaho is correct in her two statements on the plants, Mr. Cooley. As one who spent a year in pharmacology, getting a pharmacy degree, plants are important, but the foxglove was never endangered and the periwinkle is from Madagascar.

The other point is, if the plant were endangered, you couldn't utilize it for medical research anyway. But so much for that.

Mr. Chairman, thank you for allowing me the opportunity to testify today. It is my hope hearings such as this will allow us to move the Endangered Species Act and other conservation programs toward a more workable legislative and regulatory framework.

During the last few years, we have experienced an explosion of government overregulation. Without balancing environmental and economic costs and benefits, we will continue to alienate and lose public support for conservation efforts.

The maintenance of sensitive habitat and species is dependent upon the stewardship of the farmer, rancher and sportsman. Therefore, we must develop systems which promote conservation among those individuals who are in a position to have the greatest positive impact.

A popular conservation program may be achieved only with a combination of practical legislation and regulation and incentive-based voluntary programs. While there will always be a place for minimal amounts of mandatory legislation regulation, those regulations must take the human costs into account.

If we look at the most successful government programs, they have inevitably involved incentives, not mandates. A perfect example is the Conservation Reserve Program, or the CRP. CRP provides an excellent example to demonstrate how environmental programs can be structured and administered. Agricultural produc-

tion, maintenance of viable population of wildlife and environmental quality are not mutually exclusive objectives. CRP proves agricultural policies and environmentally oriented objectives can be compatible and result in public benefits on a national scale.

Since the mid-1980's, the CRP has demonstrated its high potential as a proactive management strategy. CRP participation is voluntary. It is an incentive-based conservation program that helps landowners meet their land management and conservation objectives. CRP compensates private landowners for producing conservation benefits which the Nation as a whole enjoys, but for which no private market incentives exist.

CRP has created 36.4 million acres of grassland and other wildlife habitat. This represents an area equivalent in size to Illinois or Iowa, and twice the size of all national wildlife refuges and State wildlife management areas within the lower 48 States. CRP is demonstrating that widespread wildlife population declines are reversible by extensive habitat restoration. In the long run, CRP could prevent many species from becoming threatened, endangered or extinct. The greater prairie chicken, formerly a State-listed endangered species in Colorado, was changed to threatened status in late 1993, because of the substantial population and range increases fostered in part by CRP habitats. In Idaho, the Columbian sharp-tailed grouse, a candidate species for Federal listing, is making a dramatic recovery on CRP land.

Some estimates report 3 million additional ducks were produced in 1994 in the Dakotas and Montana because of CRP. Apparently, the voluntary CRP is helping to prevent many species from becoming threatened, endangered or extinct. CRP is not only responsible for \$3.5 billion in air and water quality benefits, but CRP is also responsible for several other incidental benefits, which is leading to public support for conservation initiatives.

As those of us from rural America know all too well, net farm income, though volatile, remains stagnant. Conversely, CRP has stimulated rural economic activity across the country through increased expenditures associated with hunting and other wildlife-related recreational activities. For example, the program is responsible for generating 4.5 billion in small game and waterfowl hunting and \$4.1 billion in wildlife viewing benefits. In particular, increased pheasant populations in South Dakota attracted almost 48,000 nonresident and 80,000 resident hunters in 1993. While engaged in this recreation, these hunters spent more than \$50 million in the State of South Dakota.

In closing, if proper incentive-based options such as CRP are made available, rural America can provide practical environmental gains at a relatively low cost. Therefore, in addition to practical common sense changes to the Endangered Species Act, we must continue to support and expand programs such as CRP.

Mr. Chairman, I spent my time on CRP, but I think it is a program that all of us can support very strongly. It shows what can be done with voluntary programs with the government and the farmer, the rancher, the sportsman, the environmentalist all working together. It is far better than some of the horror stories you hear.

Just recently I heard stories from hearings the U.S. Fish and Wildlife Service held in south Texas in the early part of this year concerning the jaguar. The last jaguar was seen in Texas in 1941. At the close of the hearing, it seems that one of the ranchers said, well, if you are going to list it endangered in Texas you might ought to in Nebraska and Kentucky as well. You are just about as likely to see one there as in Texas.

But I think we need to do some practical things on endangered species. We all support making a truly endangered species be very well controlled if actually endangered. But we need to make sure that we get away from kangaroo rats and all the horror stories we hear, because we are losing support for the thing that we feel is important and that is a truly endangered species.

Thank you for your time.

[The statement of Mr. Brewster may be found at end of hearing.]

Mr. POMBO. Thank you. What do you think would—and I like your idea about using the CRP as an example—but how would we structure a program with ESA that would be along the same lines as what we have done with CRP in the past?

Mr. BREWSTER. The main thing we need to do, I think, is reauthorize as much of CRP as we can, because that provides habitat for all species. Any endangered or threatened species has to have habitat. Often, they are threatened or endangered because of encroachment on their habitat. So first and foremost, we need to reauthorize the CRP to the greatest extent possible.

True, part of the land enrolled in the CRP may have been better farmland than should have gone in the program, but the highly erodible land, the very important habitat for endangered species, is something that we all must work together to reauthorize.

Mr. POMBO. Thank you.

Mr. Vento.

Mr. VENTO. Well, Mr. Chairman, I want to go along with your endorsement of the conservation reserve program and swamp-buster and crop-buster programs.

Bill, I think you may have an ulterior motive, though, of those nonindigenous species in South Dakota, if I am not mistaken.

Mr. BREWSTER. Well, I am certainly not in favor of doing anything to further endanger endangered species.

Mr. VENTO. I share that conflict of interest.

Mr. BREWSTER. We want all species to be very abundant.

Mr. VENTO. Especially those that we might want to go out in the autumn and check out and see if they can still fly fast enough to get away from a shotgun shell.

Mr. BREWSTER. The ones that taste good are especially important.

Mr. VENTO. As a biologist, I understand, but of course the Endangered Species Act and the related agreements affect international matters. The template—if you don't have the template, you can't make a copy of the molecular configuration of a particular substance so you can copy it and use it.

Mr. BREWSTER. That is correct.

Mr. VENTO. But that is the concern. If you don't have it, you can't copy it, and obviously, trying to keep that preserved.

It might be of interest to my colleagues, but we actually sell the rights for taking certain types of, blue-green algae out of Yellowstone to make into various antibody types of substances that fight infection. They talk about—"mining it" is the word. That should get my colleagues' attention. But if you don't have a template, you can't copy it. So that is the real problem here.

Our problem here isn't, of course, whether you are going to be able to protect an endangered species; it isn't a voluntary matter. I think we often fall into a pattern of trying to build up all of this confrontation between the States and the Federal Government, the Fish and Wildlife Service. The fact of the matter is that it is sort of a seamless relationship between local departments of natural resources and the Feds. In terms of the stories that are told very often it is a State, a fish and game person that is going out and trying to work with the Federal Government.

The relationship there has actually been a pretty good one, and it should be improved or could be improved. But I don't know that making this voluntary is within the context of what we are trying to do. I don't think we can. I think we could do that or buy land or get an offset. I mean, obviously paying someone for that gets into the particular issues and we all have differences about that.

Mr. BREWSTER. Mr. Vento, you are very aware of the impact aid situation, and I have some schools in my district that have 70 percent Federal land. I would be more inclined to want to sell some Federal land and encourage private people to be more involved in habitat for all wildlife.

Mr. VENTO. I think we need a stewardship program that reaches and deals with that on an individual basis. Obviously, the existing format is causing a great deal of anxiety and tension that I would be in favor of trying to reduce.

Mr. BREWSTER. And on the plant life as you mentioned, Mr. Vento, there are quite a few medications which have come from plants. Today, most plant life in America has been tested. That is why most any new plant life medication is coming from other countries.

Foxglove, digitalis was found in the 1940's. It was estimated 300,000 people were killed with digitalis before they figured out how to properly use it. However, it has been very important for heart attack victims ever since.

Mr. VENTO. Well, I know the level of research in some of this is far from—is as extensive as probably necessary, but there has been some done, I understand.

Mr. Chairman?

Mr. POMBO. Thank you.

Mr. VENTO. We will continue this conversation.

Mr. POMBO. Mr. Cooley.

Mr. COOLEY. Help us with that CRP, will you?

Mr. BREWSTER. Well, Mr. Cooley, as you can tell, I certainly am supportive of CRP.

Mr. COOLEY. Right. We need a little help there. We will appreciate that help if you can help us out.

Mr. BREWSTER. We don't have much of it in Oklahoma, but it has been very important for all species in my State in areas where we do have the CRP program.

Mr. COOLEY. Very helpful in our State too and helping with our wildlife reserve and bringing back a lot of the fowl that travel up to Canada; and we would like to try to retain that program as well. But we are having, as you know, a little problem there, so if you can help us, we would appreciate that as well.

Mr. BREWSTER. No question about it, and the benefits far outweigh the costs.

Mr. COOLEY. I know that. But we need some help. Thank you.

Mr. POMBO. Thank you. Thanks.

Mr. POMBO. Mrs. Morella.

**STATEMENT OF THE HON. CONSTANCE A. MORELLA, A U.S.
REPRESENTATIVE FROM MARYLAND**

Mrs. MORELLA. Thank you, Mr. Chairman. Thank you, members of the subcommittee. It is really kind of you to invite Members to come and testify on the Endangered Species Act. I know you have had so many hearings, you have heard so many sides of it; and I still think it is very appropriate for you to open it up to Members, too, and I thank you for that.

Recently, the Smithsonian held a two-day conference on biodiversity which brought together some of the leading scientists and those whose work and lives interact with the species that we are endeavoring to save. The information that was presented pointed out the importance of your effort to make the Endangered Species Act keep its mission while making it less burdensome to the affected citizens. Today, then, I would like to focus on the successes of the Endangered Species Act as a way of urging you not to do anything that would adversely affect any of the listed or about-to-be-listed species.

First of all, I would like to mention a constituent of mine. Her name is Elaine Foreman; she is a cancer survivor, thanks to the National Institutes of Health taxol program. Ms. Foreman had been a woman of excellent health with a family history of longevity and an exemplary lifestyle, but she became very ill with breast cancer in 1991. Unfortunately, her cancer responded to none of the treatments available, including chemotherapy, cisplatin, cytoxin. It was taxol derived from the Pacific yew tree found in the old growth forests of the Northwest, and previously burned as scrap, that has given her not just a normal life, but the ability to give so much back to the community.

She is very active now. Her list of volunteer activities since regaining her health include organizations helping the hungry, the homeless, and malnourished children. She has also started a restaurant with her children. And so to Elaine, I say, thanks for letting us share the story of your misfortune that was turned into a success.

This is just one tangible example to show that we must never consider a plant, animal or microorganism as without value.

I just want to give you a few other examples of some successful stories. Economic benefits have come to communities in Iowa, Illinois, Missouri, and along the Mississippi River, due to the presence of bald eagle populations. Tourism in Kirkland, Michigan has flourished, thanks in part to introducing automobile self-guided tours through the warbler habitat. The continued presence of rare pro-

tected migratory birds and other wildlife in Arizona is playing a key role in the \$8 billion per year tourism industry. In Siskiyou County, California, a private landowner and two government agencies have been cooperating on a California Partners for Wildlife project to restore selected cropland to seasonal wetlands. This has not only helped migrating waterfowl and shore birds, but provided habitat for the peregrine falcons, bald eagles and sandhill cranes.

In Hawaii, there is an interesting example of the Federal Government using the consulting provisions that are in the Act to help to control the rat population by locating a safe, but effective, rat poison that doesn't harm the endangered Hawaiian hawk, and according to one of the professors at the Smithsonian conference, Dr. Daniel Simberloff of Florida State University, our rate of species loss worldwide has shown a great acceleration in the last three centuries. This sadly includes the loss of 144 out of 266 species on the Malaysian peninsula, and, in just one year, 1980, the elimination of 90 plant species on the top of an Ecuadorean mountain.

And here at home, 17 freshwater fish species have been eliminated, and Professor Simberloff stated that 22 percent of all vertebrates and 60 percent of all mollusks were in a threatened condition. On the positive side, it is only because of advanced conservation biology in the last 15 years that we are beginning to understand the reasons for these losses. Surely, this gives us reason for reauthorizing a strong Endangered Species Act, which can also include provisions addressing the very real concerns of landowners and the concerns of businesses that feel that they are not being treated fairly.

I know that you worked extremely hard on this task, and there is a whole world of creatures out there who are rooting for a strong but fair bill; and I know that this subcommittee will do it for them, and I thank you for the opportunity to share my views. I also am in favor of reauthorizing the CRP.

Thank you very much, Mr. Chairman.

Mr. POMBO. Thank you.

Mr. POMBO. Mr. Hayworth?

Mr. HAYWORTH. I thank the Chairman and I thank the gentledady from Maryland for coming and spending some time with us. I think we all rejoice, Connie, in the news of Elaine's recovery. And I think again we may be, in a sense, mixing apples and oranges here because, to my knowledge, the Pacific yew tree is not endangered, and the molecular structure has been reproduced synthetically to deal with that. So we certainly rejoice in that.

Also, I would just like to thank the gentledady for mentioning the great State of Arizona, and I would say that in addition to wildlife, in whatever form, there is great weather and spectacular scenery; and we hope that that is another reason for tourism within the great State of Arizona. I thank you for your appearance here.

Mrs. MORELLA. Well, it is indeed, but you must admit that there are plenty of other reasons that Arizona contributes to tourism—with regard to the birds and, as you mentioned, the wildlife. And with taxol, it is an indication of so much that is being done now in terms of coming up with some possibilities of breakthroughs using plants to great advantage. And thank you very much for letting me appear before the committee too.

Mr. HAYWORTH. Thank you.

Mrs. MORELLA. I don't know why you didn't have people from the biotechnology community who have not—I know this was mentioned earlier—who did not come en masse to talk to you about some of the breakthroughs.

Mr. POMBO. Well, hopefully in a hearing that we have in a couple of weeks, they will have the opportunity to do that.

I think maybe that canyon has something to do with the people going to Arizona too.

Mr. Cooley.

Mr. COOLEY. Mrs. Morella, I answered one of your questions that the pharmaceutical industry has basically examined almost all plant life in the United States and in the North American continent and South America. They have been doing this clear back from the early 1940's. So most everything here, and this is pretty well documented, has been looked at already. We are looking other places, but we really have covered this area very well.

You mentioned a report that came out of the National Geographic Association. The problem with those types of reports is that they never tell about, where they weren't counting, how many species disappeared. You know, we don't have dinosaurs anymore, nobody knows why not, but obviously something occurred.

I think we have lost a lot of species, not particularly because of man, but just because the evolution area has changed and we do lose species. So I think to condemn society for the loss of species sometimes probably is not founded.

Another thing I would like to point out to you—and I understand where you are coming from, and I do appreciate that—but if you go to the West, who have a tremendous amount of public land which we need to use in order to retain a tax base, in order to fund our schools and promote some of our social programs, this particular piece of legislation has prohibited us from doing anything in many cases and, therefore, taken away part of the reason that we had the original act put in place where we had multiple uses.

So I think that we need to truly look at reform. I think we truly need to put some common sense into the law.

I don't think anybody sitting on the task force would agree that we are going to eliminate the Endangered Species Act, but I think that there are some parts of it that very definitely need to be reformed, need to have more local input, need to have some other factors involved in it which are not present in the present legislation.

Mrs. MORELLA. I thank you. I think partnerships are important, getting the local people and getting the experts also involved in the solutions. I guess I just feel that sometimes when we—when we endanger the environment, it could be irreversible, and as Shakespeare said, "to nature none more bound," and I just think we need to remember that as we try to come up with fair—I understand what you are saying—with a fair solution.

Thank you.

Mr. COOLEY. Thank you.

Mr. POMBO. Thank you. Thank you for your testimony.

Mr. POMBO. Mr. Condit.

**STATEMENT OF THE HON. GARY A. CONDIT, A U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. CONDIT. Thank you, Mr. Chairman. I want to thank you for allowing us to have this opportunity to come before you and the task force, and I also want to commend and congratulate you for your leadership in this area. You have done a great service by bringing these hearings directly to the people across the country. The business people, local governments, and environmentalists across the country have had an opportunity to speak before your task force, and I want to commend you for that effort.

I just want to reiterate probably what has already been said here today that what we are doing here is not to destroy the Endangered Species Act, but to try to find some common sense and balance, and we desperately need to do that. We are going to be in a situation where the people across the country are going to lose confidence in us, in the things that we do here, if we can't add some balance and a more common-sense approach to this.

We need to be focused on sound, scientific data; that needs to be our focus. I believe we need to consider economic and social consequences of our actions, and we must emphasize some protection of private property rights which we in Congress have begun to move in that area.

I know you have heard from other people today, and I don't want to just repeat everything that has been said, but just give you a couple of quick examples of what is going on in my district. And probably each of you can give your own horror story about the Endangered Species Act and how it has impacted you, but we in California have just gone through a great flood, and not all of the damage or all of the blame can be placed on the point I am going to make, but there is certainly a certain amount that can be blamed on what I am going to say, and that is that at least in my district and in Monterey County, in several creeks in that particular area, as well, we have been waiting for months and years for approval from government agencies to clean and snag the creeks. Had we been able to get that approval, we might have been able to save some of the damage that was caused by the flood.

And my point is that it is OK for us to want to maintain or protect any kind of endangered species, whether it is plant, wildlife, what have you, but when the flood came through there and the creeks were flooding the endangered species, it is questionable whether they are still left or not. So there has to be some common sense, some timeframe for us to be able to get in and do those kinds of projects.

We have requested from the administration some relief in this area, for them at this very moment to suspend some of those rules and regulations for us to have the ability to go in and snag and clean some of those creeks. If we are not able to do that in a short period of time, I am telling you, we will flood again in some areas when the snow pack begins to melt; and that is an immediate problem that we have, and we need to have some immediate relief in that area. We have farmers and business people who are willing to even pay the cost, and in some cases willing to do the work, but we can't work out any kind of arrangement for them to do it in the

short-term, and it is an immediate problem and one we need to deal with.

In addition to that, the second problem I want to discuss is the—Richard will know about this; the rest of you won't—and I have five in California. There is a little place called Santa Nella, California and it is sort of a stop area for people to get off of the freeway to get something to eat, to gas their car, and so on and so forth, and they depend on commercial development. They have a project there that has been approved for years; it is waiting to get approval for water service. The water service has been rejected. The only reason it has been rejected is because they are next to an endangered species piece of property where they say the kit fox exists in an endangered species area.

The area has met all of the qualifications, met all of the criteria set forth by the local municipalities there, and counties—is approved; it is not in an endangered species zone, but it is being held up for development because it is next door to an endangered species area. That is clearly unfair and we need to take action to correct those kinds of situations.

We have situations like that all through our communities. I know all of you have them as well. I want to bring them up to you to point out the thing that has been pointed out here today consistently, and that is that we need to add some fairness, some balance to the Endangered Species Act, and I believe that we have the opportunity to do that this year. And I think this committee, this task force, with the leadership of Mr. Pombo, I believe we are going to do that this year. So I am here to lend my support and encourage this committee to carry on and do what we want to do, on behalf of the people of this country, is restore some confidence in the Endangered Species Act.

So with that—I have detailed examples if you are taking it for the record, Mr. Chairman. I would like to submit for the record—I don't want to repeat what everyone has said, but keep up the good work and hopefully we will be able to go back at the end of the session and say we have done something to change this Endangered Species Act for the better.

[The statement of Mr. Condit may be found at end of hearing.]

Mr. POMBO. Thank you very much, Gary.

I would like to have you respond to one thing, and since you brought up the issue of the kit fox in Santa Nella and the problem that you had in clearing your creeks, your drain ditches, a lot of criticism that has come of some of these stories that we have heard is that they are only anecdotal stories that are partially, if not wholly, made up.

How would you respond to that charge, specifically with the two instances that you bring up that happened in your district, that you are very familiar with?

Mr. CONDIT. Well, I could take anyone who makes those charges directly toward Orestimba Creek and Salado Creek, which are in Stanislaus County, a county that I represent, and show them exactly what I am talking about.

We can also put them in contact with the wildlife people that we have been working through to try to get the permits to get in and clean them up for years, and not been able to come up with an

agreement. I can take them to the farmers who in past years made an agreement with government agencies to actually do the work themselves, to get their own equipment and go out and do the work at minimal cost to the county government or to the Federal Government or the State government. I can put people together to document proof that this is a real problem. It is not a problem we can't solve. If we just get together and understand we have got a problem and people really want to solve the problem, and, likewise, I can give evidence on the kit fox in Santa Nella and probably other places up and down the State of California.

But the point is, this is a real problem. We can document it. We are not out here just crying wolf. We really have a problem, and what it really boils down to is because we have this problem and we are not dealing—we are not willing to deal with it and fix it, the spin-off is that you really hurt some people in terms of the economy and their own use of their land, making a living, and doing things that they should be able to do because they are in the proper zoning; they have met all the criteria from all the local governments; they have done everything properly.

Then what happens is they lose faith, they lose faith in the Federal Government, and they think that we are silly. They think the things that we are pushing here are a little bit silly because they live on the land. They want to take care of the land; they have a high regard and a high respect for trying to protect the land and the species on the land, but they realize that one has got to have some balance and common sense.

But I guess that is kind of a long-winded answer, but I can document the attempts to you, the many attempts to try to get agreements to clean the creeks, in addition to the kit fox situation.

Mr. POMBO. Thank you. Are there any further questions? Seeing none, thank you very much for appearing.

Mr. CONDIT. Thank you.

Mr. POMBO. Mr. Gilchrest.

Mr. GILCHREST. Mr. Pombo.

Mr. POMBO. You can talk now.

Mr. GILCHREST. All right.

Mr. POMBO. Wayne, it is your turn.

Mr. GILCHREST. Are you playing center field or right field this year?

**STATEMENT OF THE HON. WAYNE T. GILCHREST, A U.S.
REPRESENTATIVE FROM MARYLAND**

Mr. GILCHREST. I want to make some general comments. I realize there are some people that want to manage the land as if there is no people, and that is a problem. There are also some people who want to manage the land as if there is nothing else but people, and I think it is important for us as we look into the reauthorization of the Endangered Species Act, we hold on to some sense that we as people share the planet with other living things, and those other living things to a large extent help to retain and ensure, perpetuate the quality of our life, that we can't live out here without the dependency in something called biological diversity. It is difficult sometimes to look into what source is the most reliable to give us the proper information that we need, and there is a lot of discus-

sions about species that have gone extinct in the past and dinosaurs have come and gone, and some day we will be gone as well.

Newt Gingrich talked to us sometime ago, and he said the ultimate thing that will happen to all of us is that we are all going to die, whether we live 50 years or 90 years, each of us is going to pass away eventually.

I think the important thing for us to deal with as we deal with legislation is what we do now not only impacts us but to a great extent it impacts those people who will be here after we are gone, and if there is anything that we want to hold on to, it is the quality of the air and the quality of the water, and much of that is dependent upon the vast array of species that live on the planet, so as we reauthorize the Act I think we have to be very, very sensitive to the kinds of things, and there are problems with the Act, and we all can talk about horror stories, real or imagined; there are stories where people have had problems with the Endangered Species Act, including the farmer in Montana that couldn't shoot the grizzly bear that ate 34 of his sheep, and that is unacceptable. There are hundreds of other stories that can be documented certainly that are unacceptable about the overzealousness sometimes of the Fish and Wildlife and those people enforcing this regulation.

One quick comment about species extinction, then I just want to—then I have two or three other quick things that will take about a minute. This is documented scientifically, and other people have differences of opinions, but I put it out just as another fact for us to process. Before there was impact of human beings based on scientific data that was collected, and this is pretty easily researched to back up this statement, about one species per million became extinct every year; one species per million on the planet became extinct. Today, it is between 1,000 and 10,000 species become extinct on the planet as a result of human activity. I don't say that because we don't want to correct any of the problems with the Endangered Species Act. I raise that because we do live on a living planet.

Now, when I first came in people were talking about the conservation reserve program as far as agriculture is concerned. And if there is anything in the appropriations for the Ag bill that we want to hold on to, and that is the CRP programs and those other programs that deal with agriculture, because not only do they save the land which in future years is going to be extremely valuable for us to produce edible crops on, but it also provides habitat right now for a number of species. You can't look at agriculture like you look at General Motors or Grumman or some other factory that operates whether there is a drought or too much rain or regardless of the frost.

The last thing I want to comment on is something that is a little closer to home, and that is where my district is on the eastern shore of Maryland, and I think Arizona is on the western shore, you know, in proximity to the Chesapeake Bay—California, Washington, and those other places.

I really would like to get some of the members of the task force to come and talk to some of the people in the First District to see how well we work with Fish and Wildlife, Corps of Engineers, the State Fish and Game people, because whenever there is a problem,

we all get together and sit down. Maybe we don't follow the regulations, maybe we don't do things the way other people do, but if we can build into this Act the type of cooperation that we on the eastern shore of Maryland and in other areas of Maryland have had with the Federal and State agencies and people to provide flexibility to allow for development, to allow people with the incentive that they need to protect the bald eagle's nest, to bring about a program that brought back the rock fish, the game and commercial fish of the Chesapeake Bay from commercial extinction in 1985 to fully recovered in 1995, which also adds to the bald eagle population because they now have fish to eat, it is a matter of we deciding that we want to do something positive, not trample on anybody's property rights, get the Fish and Wildlife to carry that grizzly bear out of there or give the guy money to build a fence to protect his sheep, but I think we can sit down together and do something positive here that when we are gone the future generations will look back on this Congress and say they were very creative, very inventive, and found alternatives to conventional solutions. Thank you.

Mr. POMBO. Thank you. Are there any questions?

Mr. HAYWORTH. Just the observation, Mr. Chairman, for our good friend from Maryland that we have plenty of sand in Arizona, very little surf as of right now, but I do appreciate the perspective you bring to this discussion, Wayne, and I also would add that I think, as you articulated in your testimony, the notion that people can get together in a nonconfrontational mode is what is so vital to find areas of cooperation, and I am certainly glad to hear that on the eastern shore of Maryland that has been the case.

Mr. GILCREST. Thank you, J.D.

Mr. POMBO. Thank you. Just before you go, Wayne, I just want to ask you to do one thing. You talked in your statement about the extinction rate, one per million, and I believe you said 1,000 per 10,000?

Mr. GILCREST. Before there was human impact on the planet, on an average, one species per million would become extinct on an annual basis. Now, this is global, this statement is global, not in the United States, globally between 1,000 and 10,000 out of every million are becoming extinct on an annual basis.

Mr. POMBO. Could you give—

Mr. GILCREST. I will bring—there are two texts that I have read that in. I will give that to you.

Mr. POMBO. I appreciate that. Even if you don't include it for the record, if you give it to me.

Mr. GILCREST. One is E.O. Wilson's book called "The Diversity of Life," and the other one is by a Dr. Eisner, who also recently, I will add this, recently discovered a small plant in Florida that had previously gone unnoticed in an area of about 300 acres, and that is the only place they found it in the United States, or the world, that has very interesting anti-insecticide characteristics, and it is now under study to potentially be used to replace conventional chemical pesticides. I will get you that information as well.

Mr. POMBO. Thank you.

Mr. GILCREST. Thank you.

Mr. POMBO. I will call on Mr. Bonilla next. If Mr. Edwards and Ms. Furse want to come up to the table. Henry.

**STATEMENT OF THE HON. HENRY BONILLA, A U.S.
REPRESENTATIVE FROM TEXAS**

Mr. BONILLA. Thank you, Chairman.

First of all, Chairman, I would like to thank you for your leadership in reforming the Endangered Species Act. You are a leader nationally in this effort, and also for all of us who are concerned in this country about restoring the constitutionally guaranteed property rights that are unique in this world to citizens of this country, and I would also like to thank the other members of the committee, Mr. Hayworth, Mrs. Smith for their hard work in this. I know that a lot of research and forethought is going into this process.

In my view this is probably, if you had to pick one or two issues that are at the top of the list this year that we need to reform, this is it. Endangered species reform is so critical. Sometimes in this country, Chairman, problems have to get so bad before they start to get good again, the pendulum swings so far in the wrong direction before people finally have to wake up and understand that we need to do something to correct a wrong. In its current form, the Endangered Species Act, though well intentioned, works contrary and often against the human species in this country, and I think that is finally coming to light across this country.

In central Texas many hard working ranchers, farmers, homeowners, and small business owners have a greater fear of something called the golden cheeked warbler than they do of tax hikes and tornadoes. In my own hometown of San Antonio, the entire source of water has been held hostage by Federal agencies and courts over a small fish called the fountain darter, something that very few people have ever even seen in their lifetime, but it is being used to abuse the—as a way abusing the Endangered Species Act. We in Congress must act to ensure that human beings no longer play second fiddle to spiders and snakes.

For this reason, I, along with my colleague who happens to be sitting here today, as well, Mr. Chet Edwards, introduced H.R. 571, a bill which will suspend the further listing of endangered or threatened species and the designation of new critical habitat until the Endangered Species Act is reauthorized by Congress. As you well know, the ESA's authorization expired. This bill is a realistic vehicle toward reforming the ESA. Passage of moratorium legislation will compel Congress to consider human factors and bring balance to the ESA when it considers reauthorization. ESA must be reconstructed with amendments that not only protect the environment but respect property rights.

Protecting property rights does not mean that threatened species cannot be protected. This is a very important point because oftentimes those of us who are interested in reforming the Endangered Species Act are painted as people who are not concerned about clean air and water in this country. I have got to tell you, some of the people who are the greatest forces behind reform in this country are some of the folks who have spent generations caring for their property, passing it on from generation to generation with a clear idea and goal of preserving it for their future children and grandchildren.

This simply means that human costs should be considered when the ESA is imposed. It also means that government agencies such

as Fish and Wildlife should be creative in finding ways to balance these goals rather than slamming the heavy fist of the Federal bureaucracy down on innocent landowners who are in their own right environmentalists. The Federal Government should work in concert with the true stewards of the land instead of threatening them with fines without warning. It is time that we bring sanity and common sense to the ESA process. We need to stop current abuses and make real reform of the ESA possible.

Again, I commend your work and would be happy to provide any information that this committee needs in looking at this issue this year, and it is also a wonderful thing, Chairman, that you have taken hearings into the communities to get input from outside the beltway into this issue rather than listening, sitting around here listening to each other talk about it inside the beltway for countless hours, so thank you for doing that, and I would be happy to answer any questions if there are any at this time.

Mr. POMBO. Thank you, Henry.

Mr. POMBO. If you wouldn't mind, would you expand a little bit on what you mean by the fountain darter and the possible misuse of the act in that respect?

Mr. BONILLA. I would be happy to. This is something that has allegedly been discovered in the Edwards Aquifer, which is the sole source of drinking water for San Antonio. The aquifer needs to be at a certain level in order to preserve, according to some groups, the snail darter's existence, and this has been used by people, frankly, who don't care about the darter, never seen it, but they have used this element of the law because their ultimate goal is to control development and growth and water usage to their own agenda, and in one case the same groups that are behind this also went to court to try to threaten water supplies for all five of our military installations in the San Antonio area, and even pointed out that they did not care that this may, in fact, threaten our military installations, if it meant saving a bug or the snail darter that they were more than happy to do that.

Mr. POMBO. So you believe that in this case it is being used more as a way of controlling water policy than saving a species?

Mr. BONILLA. Absolutely. A lot of folks that are behind this effort again have never seen the snail darter and really don't have any knowledge of its existence firsthand. They simply are using this law to control the social and economic development of this community to try to drive their own agenda rather than allow us to thrive on our own.

Mr. POMBO. Thank you.

Do any of my colleagues have questions? Thank you very much, Henry.

Mr. BONILLA. Thank you, Chairman.

Mr. POMBO. Next is Mr. Edwards.

**STATEMENT OF THE HON. CHET EDWARDS, A U.S.
REPRESENTATIVE FROM TEXAS**

Mr. EDWARDS. Mr. Chairman, thank you very much. I want to thank you and the task force members for the work you are doing on this, and appreciate your coming to Texas and holding the hear-

ing that you had there. I have a written statement that I will just ask to be put into the record, if I could, Mr. Chairman——

Mr. POMBO. Without objection.

Mr. EDWARDS. (Continuing) and make a few comments. It would be much briefer than that.

I think I am an example of what Federal excesses have done. I came to Washington four years ago, having been in the Texas State Senate for eight years. I considered myself an environmentalist in many ways. Chemical companies in Texas didn't like me because I helped sponsor legislation that would crack down on their pollution. I was tough in some other areas and was considered in that context an environmentalist.

I come to Washington four years after putting up with these cases of Federal regulatory excess and arrogance, and I now have jumped many steps backwards in recognizing we have gone way too far in areas. I think what is happening, Mr. Condit pointed this out, that the Federal regulators by overreaching are taking good, decent, common sense people who care about the environment and who care about species, and they are turning them to the point where in Texas, you know, the golden cheeked warbler Henry talked about is number one on the wanted list. You, I am sure, picked that up in your hearings down there.

I am just pleading for this Congress to put some common sense and balance into this measure. I am just thrilled there is a hearing on it, because for two or three years we have been pushing to try to even get reauthorization of the Endangered Species Act before the Congress so we could even debate these issues.

Let me just give you three quick cases of where I think I would like to be specific about, the excesses. When I was first elected in 1990, in 1991 I went to Fort Worth to meet with the Fish and Wildlife Department. They had stopped a major development in our district because of the cave dwelling spider. I met with the Fish and Wildlife people. I said, look, I wasn't in Congress in 1977 when the Act was passed, but certainly there are different degrees of enforcement between protecting a bald eagle and a cave dwelling spider. Certainly common sense would dictate that.

I thought that was a reasonable statement to make. Well, the Fish and Wildlife official looked at me in the eye, and he said, Congressman, they are all God's creatures and we are going to protect every one of them. At that point, I shut my books and notes and left. It is that kind of attitude, I guess, that, you know, causes good, decent people to turn against these agencies and to become cynical about our entire Federal Government.

The second case was the golden cheeked warbler plan that Henry talked about. Again, I know you heard a lot about this, so I will be brief, but 20 million acres of land covering 33 counties, more land than, you know, the land mass of I don't know, a handful of States in this country, every farmer and rancher in those 20 million acres was terrified that if they cut cedar off their property they might be fined to the tune of thousands of dollars. For those of you that have ever been to central Texas, saying a farmer and rancher can't cut cedar is like telling people they can't swat mosquitos at a Fourth of July picnic. It is absurd.

We have one Federal agency saying cut cedar because it is drying up the aquifer, another Federal agency coming in and saying, we are going to fine you thousands of dollars if you cut the cedar tree.

Now after the uproar came up and they nearly created a riot in central Texas, literally, the Fish and Wildlife Department, to convince farmers and ranchers how reasonable they were put out a little pamphlet, and in that pamphlet it said one way to protect the golden cheeked warbler was to put bells on your ranch cats.

Now, I don't know how many of you in this room grew up on a ranch, but trying to catch a ranch cat and put a bell around its neck is like trying to catch a porcupine with your bare hands and kiss it. It is just not something you would want to try to do. I know that is an anecdotal situation, but that is the kind of mentality that is driving good people to just say if we can't come to some common sense, let's just get rid of the whole thing.

I am not here to push for getting rid of the Endangered Species Act. I am here to plead with you to help lead this Congress in bringing some balance and common sense to all this.

The final note I would say is this: I represent Fort Hood, the largest Army installation in the world now in terms of total population of military families, 45,000 soldiers there. They have worked well with Fish and Wildlife, and I commend both agencies for that, the Army and Fish and Wildlife, but I think we need special consideration in the legislation that you will be looking at and considering, Mr. Chairman, that deals with the special needs of our military bases. If we have to start shutting down major military installations because of a snail darter or a cave dwelling spider, I think we do great damage to this country.

Thank you for your leadership on this effort. I look forward to working with you.

Mr. POMBO. Thank you very much.

[The statement of Mr. Edwards may be found at end of hearing.]

Mr. POMBO. What major change could we make in the Act that would make it more workable in your area? Before you answer that, I want to point out for those on the task force who didn't have a chance to see that when he talks about cedar, it is not a tree, it is a bush, it is just a weed like that grows out there. It is not like cedars that we have in California, it is something very different.

What change do you think we could make in the Act that would make it more workable in an area of the country like where you come from?

Mr. EDWARDS. Well, thanks for asking, Mr. Chairman. One of the things I hear often is let's clarify and tighten the criteria for adding species to the endangered species list in the first place. The best available data criterion that is used right now, I believe, is being abused, and even in our State legislative hearings that I attended in Texas on the golden cheeked warbler plan, the Fish and Wildlife Department couldn't come up with the evidence as to why the golden cheeked warbler was put on the endangered species list in the first place.

And somehow, and I know it is objective, you know, what is the value of a rat? I can't tell you the value of a rat or the value of a fly. I understand there is a fly or two on the list, but certainly

most of us would agree that it is not quite as valuable as a bald eagle that is a symbol for our country.

I hope to be more specific in what is a species versus a sub-species: How do you get on the list in the first place; second, build in some sort of private property rights protection that is reasonable and responsible and affordable; thirdly, the military base situation, I think, deserves special consideration. I do believe national defense is our Nation's first responsibility and that deserves special consideration. I think those would be improvements in the bill.

Mr. POMBO. Thank you.

Do any of you have questions? Thank you very much.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. POMBO. Ms. Furse.

**STATEMENT OF THE HON. ELIZABETH FURSE, A U.S.
REPRESENTATIVE FROM OREGON**

Ms. FURSE. Thank you, Mr. Chairman. Thank you for allowing me to testify on this.

I am very concerned about the Endangered Species Act, and it is a pleasure to be here. I am concerned that perhaps the task force members have not always heard what a majority of my constituents, and I believe a majority of Americans feel, that the Endangered Species Act has largely been a successful statute. They mostly feel that we need to maybe improve the legislation, fine-tune it, but not undermine or weaken it, so I am very grateful to be here to express my views to you today.

There are several major points I would like to talk about and emphasize. First, there have been a number of successes under the Endangered Species Act. The bald eagle, the sea otter, the American alligator, and the brown pelican, to name just a few. I would like to talk about a success story in my own backyard and in the backyard of Congresswoman Smith, and that is the Columbian white-tailed deer. This deer was once thought to be extinct, but with a unique collection of private and public entities, a management plan was put together, and the deer population is now at 3,000 animals. Now, that means that it is shortly to be delisted, and that is what the Endangered Species Act is supposed to do. This case study illustrates that it can work.

Secondly, I would like to quote from the Act itself. It says that a species is of aesthetic, ecological, educational, historical, recreational, and scientific value to our Nation, and that there is, indeed, a biological treasure chest in plant and animal species. Forty percent of all pharmaceutical products are derived from natural compounds, and I would like to point out one very important one, the yew, the Pacific yew, which has been discovered to have a very important breast cancer cure possibilities. Species and the habitat in which they live also represent capital, capital which fuels our Nation's economy. Species extinction is a signal that we have been poor stewards of that capital, and our economy will suffer accordingly.

I have heard it said that the Endangered Species Act doesn't take into account the human factor, and I would like to ask, which humans? There are many humans whose livelihood depends on the protections the Endangered Species Act provides.

A good illustration of that is right in my district and the district of Congresswoman Smith. There is a disastrous decline in the Pacific Northwest famous salmon runs where once 16 million salmon fought their way up to spawn, only a thousand, a few thousand now make it up, and this has had a devastating effect on our economy. As recently as 1988, the salmon fishing industry contributed more than 62,000 jobs and \$1.25 billion to the economy of the region. But since 1988 we have lost nearly 47,000 jobs and fishing revenue has plummeted by 90 percent.

Hundreds of small businesses in the Northwest are dependent on a healthy resource, and, Mr. Chairman, if I may, I would like to introduce for the record businesses who have joined a coalition and have written to me in support of the Endangered Species Act, if I may put that in the record.

The role of the Endangered Species Act in all of this is that it has been an alert to us. The Act, unfortunately, has been a messenger of the bad news, and in fact it has been an alert to us that there is a problem. With the listings of the three species in the Snake River, we have been legally forced to admit that something is wrong and that our stewardship is inadequate. It has required us to face the problem. It has made us roll up our sleeves and begin working to bring the salmon back. If species like the Northwest salmon are heading for extinction, weakening or repealing the Endangered Species Act won't bring them back nor will it bring back the economically viable industry they once provided. If we weaken the Act, it will make that situation worse.

I would like to quote, if I may, from the Pacific Coast Federation of Fishermen's Associations. It is the largest association of commercial fishermen and fisherwomen on the West Coast, from San Diego to Alaska. Here is what they say about the Endangered Species Act: "There is no industry more regulated under the ESA presently than the commercial fishing industry, and yet in spite of these short-term dislocations, we view the protections offered by the Endangered Species Act as vitally important in preserving and protecting our industry."

Recovering endangered salmon is not the environment versus jobs, it is jobs versus jobs or, more accurately, it is short-term profits versus long-term sustainable economic development. The Pacific salmon represent just one part of our Nation's fishing industry which contributes \$111 billion annually, and that depends many, many times on the protections offered by the Endangered Species Act.

Now, nobody says the Act is perfect. It can be improved, and I would like to be part of showing you some of the improvements I think we need to make. I see my time is running out.

I would like to end by saying that I urge you as the task force members and as committee members on the full committee to support the endangered species reauthorization in a way that preserves and builds upon our country's leadership in the protection of biodiversity.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

[The statement of Ms. Furse may be found at end of hearing.]

Mr. POMBO. I would encourage you to submit any suggested changes that you may have to the task force so that we can take them into consideration when we are trying to figure out exactly what direction we need to go with the reauthorization of the Act.

Just one question. You stated that there was a job loss in the fishing industry between 1988 and now. Was there one particular event that occurred in 1988 that resulted in the job loss?

Ms. FURSE. Well, the return of the salmon to the Snake River at that time was so low there had been a decline in fisheries. It was with that incredible decline in the Snake River return, that we were triggered to the idea that these fish were going endangered, and of course they have, and more and more species have gone endangered.

There are a number of events that have made that species' decline happen. One of those is, of course, that the El Nino has had an effect, but dams, habitat loss, and hatchery practices have also had an effect, so it has been a steady decline, but from 1988 we have begun to see this tremendous effect on our economy.

Mr. POMBO. Was there continual job loss prior to that as well or—and I am just trying to figure this out, the way you said it was as if in 1988 it fell off the cliff. I am just wondering if there was a specific event that occurred then. We had the hearing in Vancouver that you are aware of, and we heard a lot of testimony about different reasons that could have caused it. Most of those reasons were things that had been occurring over the past 50 years and just differing ideas as to what possibly could have led—you used the figure of 1988—I just wonder if there was one specific thing that happened at that point.

Ms. FURSE. Not necessarily. What happened, though, was we realized we needed a management plan. That is why the Endangered Species Act was so important, it triggered the opportunity to change the situation. So much of our economy has depended on these incredible fish runs. What happened was we realized that something was drastically wrong. The Endangered Species Act allowed us, in fact forced us, to begin to put into place the measures that will rebuild those runs, and of course there is a national interest in doing that as well as a regional one.

Mr. POMBO. I don't know this, and I probably should remember it from the hearing, but I don't, when was the salmon listed?

Ms. FURSE. Snake River salmon were listed in 1991.

Mr. POMBO. In 1991? OK.

Did you have any questions, J.D.?

Mr. HAYWORTH. I just wanted to ask the gentlelady, and I look forward to the documentation she will provide in terms of ways to improve the Act, just outline briefly, if you would, Elizabeth, where you think we really ought to head in terms of reform.

Ms. FURSE. Well, I think multispecies, looking at multispecies listings so we don't run into a species train wreck. You know, we may say that a rat is unimportant, but an eagle is important, but the eagle may depend on the rat as food, so we need to think multispecies. I think that is very important. I think we have to look at the whole ecology of a region, particularly if you think about fishing because you are looking at not just one river but a

whole river system, and therefore I think a multispecies look will be very important as we improve the Act.

Mr. HAYWORTH. Thanks very much.

Ms. FURSE. Thank you.

Mr. POMBO. Thank you very much.

Ms. FURSE. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Laughlin.

**STATEMENT OF THE HON. GREG LAUGHLIN, A U.S.
REPRESENTATIVE FROM TEXAS**

Mr. LAUGHLIN. Thank you, Mr. Chairman. It is a pleasure to be back in my old Merchant Marine and Fisheries Committee room, and it is indeed a pleasure to see Ms. Megginson up there giving you sound advice and assistance.

It is a pleasure to be before you, and I commend you for your leadership in this very important area. There is no question that the endangered species should be protected, and there is no question that the system has been broken for some time.

I have a formal statement I would ask be made a part of the record.

Mr. POMBO. Without objection.

Mr. LAUGHLIN. I would just say to you and the other task force members that as you approach the solutions that we need to the Endangered Species Act, I think you have to keep in mind that there are human beings out there called property owners who have a great stake in America. In fact, while not all the citizens can trace their roots to immigration, many of us do, and they came here for religious freedom and economic opportunity, and in my particular State we are a landowner State, and while we are unique in that we are the only State that fought for and won our own independence and were an independent country for 10 years, it demonstrates why people in my State get up in arms when our government and our relationship runs rough shod over the property owner.

And I think many who are critical of the property owner lose sight of the fact that this relationship between citizen and government has been out of balance when it comes to wetlands and endangered species. Far too often, the government employee, and derogatorily called the bureaucrat, shows up and he or she will direct the property owner who pays taxes and has nurtured that property sometimes not only for their lifetime but for several generations of their family, they are told by the government employee they have to do certain actions or they cannot do certain actions, and we end up with a result of animosity that has been expressed in the last several elections.

I think it was very fortunate that a rumor escaped out of a Fish and Wildlife office either in Albuquerque, New Mexico, or in Austin, Texas, and I am not sure which, but the rumor was that 33 counties in central Texas were going to be put on an endangered habitat, endangered species list protecting the endangered habitat. The result of that rumor was there was great hue and outcry.

One of the media asked me my reaction, and I said I was elated, and that was an unusual response. But when I was asked to explain, there were only two Congressmen in all of central Texas in-

volved in endangered species at that time, one on the side of the animals and I was there with no central Texas assistance, and I had a lot of new colleagues who then realized the problem that property owners were having, and as a result we have people now in Congress that understand that property owners do have rights also, as demonstrated by the overwhelming passage of the property rights bill, and that bill, the provisions of that bill were included in the Clean Water Act which my committee, Transportation and Infrastructure, passed and is on the Floor today and tomorrow.

I think that when you go to look for solutions you have to put some brakes on the Federal employee that they are dealing with a person who has cared and nurtured for the property, has more than passing interest in that property, particularly when he or she have paid not only ad valorem taxes to the State but generally school taxes, hospital district taxes in my part of the State, navigation district, port district taxes, and generally some others that the local government will rely upon, and so to have our Federal Government come along and tell them they are unable to use the property in particular ways without a reasonable, fair, and inexpensive opportunity to have that resolved, and if it is resolved in the public's favor and against the private property owner's favor, without compensation, we could continue that and we would have a real revolution other than at the ballot box or it would be a continual turnover at the ballot box, which is the revolution the Founding Fathers envisioned.

So I would strongly encourage the task force to find those solutions that strike a balance where the American citizen, the property owner, has a right to be heard inexpensively because today one has to be a millionaire with about a half million dollars in resources to fight the Federal Government when they make an adverse decision. So I commend this task force and I am only envious that I am not a part of it.

Thank you very much, Mr. Chairman.

Mr. POMBO. Thank you very much for your testimony. I wish you were on the committee.

[The statement of Mr. Laughlin may be found at end of hearing.]

Mr. POMBO. You talked about the balance that is needed in the Act, and one of the points that you brought up was that the people in your State, which is a private land State, almost all of it is owned by private property owners, and the importance of bringing them into the equation, and when you talked about the 33 counties being habitat, how could we amend the Act so that we include those people in the equation?

Mr. LAUGHLIN. Well, first, Mr. Chairman, I think before you designate private property as critical habitat where the landowner cannot use the property, that you have adequate field hearings, and I must commend you for the one that you had in Boerne earlier this year. Unfortunately, I had a schedule conflict or I would have been there.

Jack Fields, a former member of the Merchant Marine and Fisheries Committee with me, conducted some hearings with me in San Marcos and San Antonio a year and a half ago on the very same issue. I think if you give the citizens an opportunity for input to the Federal agency with the responsibility of making decisions

what is habitat at the same time at the public hearing give the biological or other experts an opportunity to testify in a public forum, then you have addressed the concern of no information, and I would tell you it doesn't do any good to have those public forums in Washington, D.C., in this committee room or any committee room in Washington, D.C., because most people cannot afford the plane ticket to come here and present their case. I think that if you are going to have public forums on a habitat issue that there be a requirement that it be in the area.

In my own State, too often they want to have the hearings in the State capital. Well, for some people in my district that is a three-hour drive. For some people in my district it is only a 20-minute drive, but you could go to a lot of districts in Texas like the gentleman, Mr. Smith I see just came in, some of his people have a four or five-hour drive to get to the State capital. So I think a requirement should be that the public hearing on these issues for input be conducted in the area, in the site where either the endangered species or the critical habitat that is being discussed and not some long distance away that handicaps the person without great financial resources' ability to be heard.

Another absolute requirement is, I think, that if the Federal Government through any act is going to restrict a landowner from using his or her land, then they have to be compensated, much as we have done in the private property rights bill that we passed in the House earlier this year.

Mr. POMBO. I appreciate your comments a great deal, and look forward to any other suggestions or ideas that you have for possible changes. I know that this is an issue that you have been working on for a long time, and I appreciate the experience that you bring to this debate.

Mr. LAUGHLIN. Well, Mr. Chairman, I thank you for those kind remarks, but I would add one other thing. There are some of us that have been involved for a while that bring a diverse view because while Mr. Fields and Mr. Hayes and Mr. Tauzin of Louisiana and myself, Mr. Fields of Texas and myself introduced a bill about six years ago, we had less than 10 cosponsors to protect private property rights, and it shows the magnitude in your time being in Congress how public awareness of the problem has erupted, and I would volunteer to work with your task force for the reason in Texas while we have a long stretch of coastline, there is only three Members of Congress who represent that coastline, and I am one of them, and mine goes from the Gulf of Mexico to the hill country just north of where you conducted the hearing, and I know that what works in the gentleman from San Antonio's district, Mr. Smith, does not necessarily work in the coastal areas, so I would volunteer to be one of those that would be happy to work with your group.

Mr. POMBO. I also appreciate your comments about us taking the hearings out into the field, into the areas that were the most affected. I found it quite interesting that we were criticized for not holding the hearings in the big cities, for going out into the small towns in the areas that are affected to hold the hearings.

Mr. LAUGHLIN. Mr. Chairman, I can tell you that when Mr. Jack Fields and I had the hearings in San Marcos, which was one of the

counties impacted by the 33 county rumor, we had the hearing in the auditorium of Southwest Texas State University, and it was a packed room. When we went to San Antonio for the second portion of the hearing, again it was amazing the turnout, and while I wasn't present at the hearing you chaired in Boerne, I understand that you had a tremendous turnout. That demonstrates what is wrong with the Endangered Species Act.

If you conducted those same hearings in Washington, very few of those people that had the opportunity to tell your task force what was bothering them about their government action would not have been able to come to this room or any other room on Capitol Hill to testify. Many of them couldn't afford the meals, much less the airfare.

Mr. POMBO. We had over 800 people show up in Boerne, and I was amazed. It was quite a turnout.

Mr. LAUGHLIN. That points out what is wrong with the Act and why the Act has to be more responsive to the citizens that have to live under it, and I would only encourage you and the other task force members to keep taking those hearings to the small towns like Boerne. Most people in this room, unless they were on your task force, other than Mr. Smith and I, would not know where Boerne is. It is not spelled the way it is pronounced, as you found out, but, and don't ask me to spell it, but it points out why your hearing in Boerne and many others need to be conducted where the people are impacted, and they are impacted more in Boerne than they are in downtown Austin, my State capital or downtown Houston, the largest city in my State.

Mr. POMBO. Well, thank you very much.

Mr. LAUGHLIN. Thank you, Mr. Chairman.

Mr. POMBO. Do you have any questions, Mr. Doolittle?

Mr. DOOLITTLE. No.

Mr. POMBO. Thank you for your testimony.

Mr. POMBO. Frank, Mr. Riggs.

**STATEMENT OF THE HON. FRANK RIGGS, A U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. RIGGS. I appreciate this opportunity to appear before your task force today, Mr. Chairman, and I want to commend you for convening these hearings. I want to personally thank you and Mr. Doolittle for the outstanding work you are doing in this area. These are badly needed, long overdue reforms.

I am here today to emphasize the critical need for this Congress, hopefully in the First Session of this Congress, to take action to develop a more logical and balanced solution to curb the excesses that have occurred under broadly expanded interpretations of the ESA. Those of us who represent resource-dependent parts of rural America well understand and recognize the need to achieve a balance between economic development and environmental protection. All of us who represent those kind of congressional districts have seen first-hand the problems of judicial activism and the unintended consequences that have come from expanded interpretation and enforcement of the Endangered Species Act. I want to make it clear that my purpose here today is to preserve, but to reform this legislation.

We know that there have been successes with the legislation, such as the bald eagle and the California gray whale. However, in recent years there has been an emphasis, frankly, on the use of the Endangered Species Act as a political tool or a tool on the part of environmental activists who have used it to block growth and economic development and the use of our fundamental natural resources.

I want to go on record today as expressing my outrage over the current use of the Endangered Species Act and the effects it has had on my district and my constituents. There is a growing consensus—and I hope you have heard this in your field hearings around the country—for the need to rectify the excesses of this legislation. We must repair a statute that now suffers from a severe imbalance and a lack, frankly, of common sense. We must ensure that the fullest possible range of authoritative, scientific, economic and social information is not only available, but is actually considered in both the regulatory and nonregulatory decisionmaking processes.

Time and again I have heard from my constituents their personal concerns and nightmarish experiences in dealing with this Federal statute and about the bureaucracy, frankly, that enforces this statute having gone awry. As you know, Mr. Chairman, a major industry within my district is the forest products industry. In fact, the largest employer in the largest county of my congressional district is Pacific Lumber Company, which has been hard hit by recent interpretations of the Endangered Species Act.

Currently, northern California timber areas are experiencing stagnant, double-digit unemployment with no significant relief in sight. Since 1987, 51 lumber mills have closed in northern California, 12 of those located in my congressional district. Close to 5,000 workers have been laid off, with the resulting residual effects, of course, on their families and their dependents, as well as their home communities.

The current ban on logging, which has been instituted throughout the Pacific Northwest and northern California as a result of the designation of the California spotted owl and the northern spotted owl as endangered species, has devastated previously thriving communities. The unintended effect, in my view, has been to put more and more public land off limits from timber harvesting, therefore increasing the pressure on private lands for accelerated harvesting, and in some cases harvesting beyond the rate of reforestation.

Now we have the further problem of the marbled murrelet compounding an already egregious situation. So rather than being utilized as a tool to preserve species on a particular site, the ESA has evolved into a blanket that misguided environmental groups have used to shut down vast tracts of harvestable land. Endless litigation is used in the hopes that the defendants will simply become exhausted or their finances depleted. This is simply not a good way to do business.

I also want to point out to you, Mr. Chairman, before going to specific recommendations, that Simpson Timber Company, which operates in Humboldt and Mendocino Counties, recently released a report compiling five years of research on its privately owned timberlands, stating that California spotted owls not only survive but thrive outside old growth timber if other conditions are right.

This refutes years of claims by self-styled environmental activists that owls can only survive in old growth habitat. With your permission I would like to introduce for the record correspondence from the company and a newspaper article that says the owl study showed surprising result; birds may be thriving in second growth trees. In fact, I would like to note the comment in the letter of Simpson wildlife biologist, Lowell Diller, who states, "The apparent stability of this owl population in a managed forest further confirms our belief that wildlife protection and forest management can successfully coexist."

Let me give you some quick recommendations for where I think we ought to go. Number one, we should encourage greater reliance upon market incentives instead of costly regulation. Number two, we should attempt to induce industry and local residents—our constituents—to work together to develop and implement reasonable species and habitat conservation goals. I certainly second the concerns that Mr. Laughlin expressed that we need within the context of the ESA reauthorization a clear definition of what constitutes "taking" as it relates to private property. I would add, Mr. Chairman, I hope you will consider a bond requirement for those people who constantly litigate under the Endangered Species Act and again, frankly, use it as a political tool to stop development and resource use. Lastly, Mr. Chairman, I believe it is necessary to eliminate the costly and wasteful biological studies that have a negligible relevance to the ultimate determination of a species.

If we truly desire a healthy and viable environment, we must balance the needs of all parties in order to achieve a fair and just ESA that seeks to preserve our natural resources while not destroying our communities whose economies are dependent upon those same natural resources.

I thank you again for your attention to this issue because it is one of utmost importance to my district and to our country.

Mr. POMBO. Thank you very much.

[The statement of Mr. Riggs and attachments may be found at end of hearing.]

Mr. POMBO. I know that this is an issue that is extremely important to you and your district and that you have had a number of impacts. I think there are few counties in California that have had a greater impact than your district. I appreciate a great deal the suggestions for change in the Act, the possible reforms in the Act. I have a question about one thing that you read out of that letter. Would you mind restating the one line that you read?

Mr. RIGGS. Yes, I was quoting wildlife biologist Lowell Diller, who joined with spotted owl researchers. This also points up the importance of peer review because Simpson Timber Company called in two noted spotted owl researchers, Barry Noon and Eric Forsman, who reviewed the data that they had developed on their own lands for a five-year period from 1990 through 1994. During that time period Simpson's biologist identified 749 northern spotted owls on the company's 383,000 acres of managed forest property in northern California. In 1994 alone, 24 adults, 16 subadults, and 103 juvenile spotted owls were banded for identification. Significantly, at least 117 owlets were fledged this year—actually this

would be 1995—from the total owl population on Simpson's lands amidst the company's ongoing forest activities.

Then I read the statement of Lowell Diller who said, "The apparent stability of this owl population over this five-year period in a managed forest further confirms our belief that wildlife protection and forest management can successfully coexist."

Mr. POMBO. That is a biologist that you are quoting?

Mr. RIGGS. That is right. He added that no direct harm or injury, directly or inadvertently, occurred to spotted owls as a result of timber harvest.

Mr. POMBO. Let me ask you a question, then, Frank. If we had done a better job of adopting a recovery plan on the spotted owl in looking at what the biological data was and determining what the critical habitat really was for the spotted owl, could we have saved the spotted owl without having the social and economic upheaval that we have had in your district as well as the rest of the Pacific Northwest?

Mr. RIGGS. There is no doubt whatsoever that that is, in fact, the case, based on empirical evidence, Mr. Chairman. I would extrapolate from there and say that, frankly, that applies to all private and public lands. It points up the need to do a better job of recovering candidate species or listed species. This begs the question of whether, based on the Simpson evidence, we now downlist or delist altogether the California spotted owl, or the northern spotted owl. It also points up the need to do a better job of peer review and to have a more reasonably balanced protocol up front before enforcing the requirements of the Act on private landowners.

Mr. POMBO. Do you believe that if we had had a provision in the act which required us to use better science, that this could have been avoided?

Mr. RIGGS. Absolutely. The Simpson Timber people spent well over \$1 million of their own funds devising this habitat conservation plan for the owl. I would suggest that perhaps that money could have been better spent in a number of other ways, with the same results of a balanced approach to the habitat and species management, as well as resource management, on their own private lands.

Mr. POMBO. Thank you.

Mr. Doolittle, do you have any questions?

Mr. DOOLITTLE. Yes.

Mr. Chairman, I think it is important to note that, as I understand it, the Congress had a big hand in this fiasco of the northern spotted owl. Because as I recall it, and I hope maybe the committee can dig up the exact language, just for our own record, but in the charge to the so-called "big four," the biologists who performed the owl study, they had, I believe, to guarantee in their recommendations, they had to guarantee, quote-unquote, "the driving of the northern spotted owl." So it biased their study incredibly, in the recommendations that came out, because "guarantee" is as strong a word as can be used. And so instead of a balancing going on, applying reason or anything else, they erred on the side of caution, and that cost approximately—or will have cost, by the time this is all done, I think it is nearly 80,000 jobs in the Pacific Northwest

and Northern California, all for something that is totally unnecessary, as this very excellent testimony of Mr. Riggs has brought out.

And Mr. Riggs, in that conjunction, I wonder if you could—I don't notice a date or actually the name of the paper in this article. Could you provide that for us, or at least for the record, if you don't have it with you today?

Mr. RIGGS. I would be—my staff—we will definitely get you that date.

Mr. DOOLITTLE. Just get it for the record.

Also, are you going to submit for the record the actual Simpson study itself on which this newspaper article is based?

Mr. RIGGS. Yes. I am prepared to do that today; I believe I have a copy of the study with me.

Mr. DOOLITTLE. But this whole spotted owl case is one of the clearest examples of the recklessness of the extreme environmental movement and of the government agencies which have complicity in this, and of the Congress, which has complicity in this, the old Congress. The new Congress, I trust, will not indulge in the same kind of behavior.

And I thank you for your testimony.

Mr. RIGGS. Mr. Doolittle, I appreciate that very much, and I would like to—I am told the date of this article is April 10th.

Mr. DOOLITTLE. April 10th?

Mr. RIGGS. That date is questionable.

Mr. DOOLITTLE. Just so I can get it, because it will be useful to have the actual date and the paper.

[The article may be found at end of hearing.]

Mr. RIGGS. If I may just point out one other thing: I stated in my specific recommendations that the Act ought to foster and rely more upon market incentives, rather than costly regulation. I hope we can hold up the Simpson Timber Company, which spent well over \$1 million of its own funds on this habitat conservation plan, as a model for other privately owned companies. The plan has won awards as the first of its kind on private lands, and the plan accomplished four very specific goals:

One, was to enhance the regrowth of habitat; two was to maintain ongoing spotted owl surveys and studies; three was to set aside areas where no harvesting will occur, as mitigation for the loss of any critical habitat; and four was to maintain employee and contractor training programs.

I hope we can find a way that will frankly encourage and reward companies like Simpson Timber for their very enlightened resource management and good stewardship.

Mr. DOOLITTLE. You are absolutely right. Simpson is to be commended.

However, unless and until we alter the present Endangered Species Act, Simpson Timber and other companies will be threatened with new and as yet unadvertised endangered species, so that we can lose thousands more jobs while they spend years to conduct the studies, spend the money and document the results in the future. And that is why I think it is so vital that this Act be reformed now.

Mr. RIGGS. Thank you, Mr. Doolittle.

And again, I thank you, Mr. Chairman.

Mr. POMBO. Thank you.

Mr. Smith.

**STATEMENT OF THE HON. LAMAR S. SMITH, A U.S.
REPRESENTATIVE FROM TEXAS**

Mr. SMITH OF TEXAS. Mr. Chairman, thank you and Congressman Doolittle, thank you both for your interest in heading this hearing on needed reforms to the Endangered Species Act. This hearing caps off a series of informative field hearings that this task force convened across this country to examine how the Endangered Species Act operates.

These hearings permitted the task force to learn firsthand about the real world problems of families, farmers, ranchers, small business owners, and conservationists whose plans, hopes, dreams and opportunities are impacted by the Endangered Species Act.

I know how useful these hearings have been in informing this task force about reforms that need to be made to the Endangered Species Act, because your second, as was noted earlier, was held in Boerne, Texas, in the heart of my district.

Our hearing, Mr. Chairman, as you said a minute ago, attracted 800 Texans who are fed up with an Endangered Species Act that denies their rights, takes their land, tramples upon their constitutionally guaranteed liberties and has the perverse effect of undermining the goals of conservation and environmental stewardship.

At the task force's hearing in Boerne, we heard from countless Texans who, like thousands of landowners from California's Central Valley, to Florida's Everglades, to the bayous of Louisiana, understand how to protect the natural resources found on their private property. It is in their interest to do so.

They do not need to be micromanaged through edicts issued by those working in tall, alabaster office towers in downtown Washington, D.C., who have never visited the property they are regulating. And too often these Americans have seen the bureaucratic decrees from Washington elites actually have the effect of undermining their conservation efforts.

The Endangered Species Act desperately needs to be reformed in three respects: First, the Endangered Species Act needs to be operated in a way that respects the basic civil rights of all Americans. The Fifth Amendment to the United States Constitution provides: "Private property shall not be taken for public use without compensation."

This Amendment guarantees a basic civil right: that no citizen in society can be forced to shoulder public burdens which, in all fairness, the public as a whole should share.

The Fifth Amendment does not stop the government from meeting important public objectives. It simply ensures that those who want certain public benefits do not obtain these benefits at the expense of particular individuals.

Usually, this simple, common-sense rule of fairness is followed. If the government wants to use private property for construction of a highway or to create a national park, the government simply condemns the land and uses the private property.

The requirement that we pay compensation to the property owners, rather than simply stealing their land, has not impeded the development of our system of highways or national parks. To the con-

trary, we have the best and most impressive highway and national park system the world has ever known. The requirement that we pay for private property that we use for these public endeavors simply ensures fundamental fairness and affirms the basic civil rights of the American people.

We must apply this same rule of fairness when we use private property for another public benefit, such as creation of a preserve for endangered species. It is simply unfair, and a violation of basic civil rights to obtain this kind of public benefit by forcing only a few Americans to shoulder the entire cost.

It is essential that any reforms we adopt to the Endangered Species Act include the requirement that the government compensate private landowners when it takes their land or a portion of their property for the public purpose of protecting and preserving endangered species.

Second, the Endangered Species Act needs to rely more on incentives and less on regulation. Thousands of private landowners manage their lands as responsible environmental stewards. Unfortunately, in a classic example of unintended consequences of governmental action, the Federal Government's war on private property rights has actually undermined protection of endangered species, the very goal in the Endangered Species Act.

How did this happen? By imposing confiscatory regulations on private lands that contain valuable resources, the Federal Government has created significant incentives for landowners to actively discourage development of resources such as wildlife habitat.

The story of Ben Cone is illustrative. Ben Cone is a North Carolina conservationist who carefully managed his 8,000 acres of timberland in North Carolina so as to develop natural resources and attract wildlife to his property. Mr. Cone was successful. So much so that Mr. Cone's property became the type of land that is habitat to the red-cockated woodpecker.

How did the government reward Mr. Cone for his successful environmental management? It forced him to bear a \$2 million loss for his hard work by prohibiting any development of his property. His lesson: accelerate the rate of clearing the land to discourage the costly woodpecker.

The story of Mr. Cone is by no means the only evidence of the anti-environmental effects of the Endangered Species Act, as it is currently enforced. Officials at the Texas Parks and Wildlife Department contend that adding the golden-cheeked warbler and black-capped vireo to the Endangered Species list has encouraged the rapid destruction of their habitat. It is my fervent hope that the government end its counterproductive and unfair reliance on heavy regulation and instead encourage private environmental stewardship.

Third, the Endangered Species Act should be used to protect species, not as a national land use planning device. When Congress enacted the Endangered Species Act, it did not intend to grant the Federal Government an easement over much of the private lands west of the Mississippi.

From the beginning, Congress realized the need to balance species protection with the rights and needs of people. Congress enacted this law to protect the Bald Eagle from poaching, to avoid di-

rect harm to species whose numbers were low or depleted so as to avoid extinction. This is a laudable and reasonable goal.

Unfortunately, too often what starts out as a reasonable and laudable government program does not remain that way. Government officials at the Department of Interior have interpreted this reasonable law in an overbroad and unreasonable way so as to restrict activities on private property, regardless of whether an endangered species is threatened by this activity.

The government has used the Endangered Species Act to impose ruinous restrictions on private lands, regardless of whether the endangered species on the land will be harmed by the imposed activity, or has ever visited the land. According to the Department of the Interior, as long as a land in question is the type of habitat that the endangered species tends to use, the Endangered Species Act applies. Most recently, Secretary Babbitt has discussed expanding this habitat to cover entire ecosystems.

It is time to return the Endangered Species Act to the original intent of its authors: to prevent harm to particular species. It is time to remind government officials that private property is privately owned, and that the families and individuals who purchased the land, not the Federal Government, have dominion over it.

Mr. Chairman, the Endangered Species Act is in critical need of reform. Our reform goals must be: protect civil rights, encourage private stewardship, and prevent Federal land control. Adoption of these simple, and common sense reforms, each of which was intended by Congress when it enacted the Endangered Species Act, will put some balance into the Endangered Species Act and should actually help preserve the environment.

I look forward to working together with you all toward this important goal.

Mr. Chairman, while I am happy to answer questions, I have to say that I am overdue to return to a markup in the Budget Committee, so I would like to expedite any further proceedings you have in mind.

Mr. POMBO. Well, I want to thank you very much for what you have contributed to this debate and to this task force already. I appreciate all the work that you have put into it. I realize that you are in the middle of a Budget markup, so I am not going to ask any further questions.

Just thank you for being here.

Mr. SMITH OF TEXAS. Thank you, Mr. Chairman, for all of your good work as well.

Mr. POMBO. Thank you.

Mr. Shadegg.

STATEMENT OF HON. JOHN B. SHADEGG, A U.S. REPRESENTATIVE FROM ARIZONA

Mr. SHADEGG. Thank you, Mr. Chairman.

I would like to commend you, sir, for the opportunity to testify here on the reauthorization of the Endangered Species Act, and to report to you that I have heard a number of good things about your field hearings, and I want to commend your task force and the Members of that task force for the work that you have been doing.

Few issues that will come before this committee this year, in my judgment, are as important to the people of my district and to the people of Arizona as the Endangered Species Act. Had you brought a field hearing to Arizona, you would have heard in my State heart-wrenching accounts of what the Fish and Wildlife Service and the Endangered Species Act is doing to the people of Arizona.

The district I have the honor of representing is largely urban, but people in that district and people all across Arizona have come to me to describe the troubles they are having with the enforcement of the current Act, and the damage it is causing in their communities. These aren't anecdotes, but real life stories of how the act works on the ground.

From ranchers in Arivaca Creek, along Arivaca Creek who are losing the use of their ranches and of their property, to school superintendents from rural Arizona who have come to see me about Federal school aid programs and who have wound up talking to me about the effects on their own communities of endangered species listings.

But I did not come here today to tell you or to provide for you anecdotal evidence of what I have learned. I rather want to talk about the conclusions I have come to and what we must do to reform the Act.

The conclusion I have reached is that the Endangered Species Act as implemented is a disaster for people. It is being used to violate property rights on a massive scale and to threaten our liberty. It is destroying jobs and causing enormous economic dislocation.

These tremendous human costs do not appear in the Federal budget. The line item for the Endangered Species program is a modest \$75 million a year or so. But the real costs of the act have been hidden by transferring them off-budget, to be borne by private individuals. No one knows these real costs, but they are undoubtedly into the billions of dollars.

That the Endangered Species Act forces landowners and working people to pay the costs of preserving America's endangered species is outrageous. But what is really pathetic is how little benefit the species intended to be benefited have derived from these huge human sacrifices. That the Act is failing to protect endangered species at great human cost is in fact no coincidence. There is, indeed, a causal connection. It is because the Act violates property rights and destroys jobs that it is failing to protect wildlife. As written and as enforced, it constitutes a massive system of disincentives for landowners to preserve habitat. Indeed, they have the exact opposite motivation. This fact, shocking as it is, is well-known in the environmental community, but seldom acknowledged.

However, Michael Bean, Senior Attorney at the Environmental Defense Fund and perhaps the leading authority on the ESA, recently had this to say at a Fish and Wildlife Service seminar. And I want to read his quote, because I think it has great import for the work of your committee:

"There is, however, increasing evidence," he said, "that at least some private landowners are actively managing their land so as to avoid potential endangered species problems. The problems they are trying to avoid are problems stemming from the act's prohibition against people taking endangered species by adverse modifica-

tion of that habitat, and they are trying to avoid these problems by avoiding having endangered species on their property.

"Now, it is important to recognize that all of these actions that landowners are either taking or threatening to take are not the result of malice toward the environment. Rather, they are fairly rational decisions motivated by a desire to avoid potentially significant economic constraints. In short, they are nothing more than a predictable response to the familiar perverse incentives that sometimes accompany regulatory programs, not just the endangered species program, but others."

And he went on to conclude: "What is clear to me after close to 20 years of trying to make the Endangered Species Act work is that...on private lands, at least, we don't have very much to show for our efforts other than a lot of political headaches."

"And so"—and this is Michael Bean of the Environmental Defense Fund speaking—"some new approaches I think are desperately needed to be tried, because they are not going to be much worse than the existing approaches."

That is, indeed, a remarkable admission. New approaches are desperately needed. Under the current Endangered Species Act, the last thing a landowner wants on his property is an endangered species. The interests of people and the interests of wildlife are in direct conflict.

In reforming the act we must figure out how to get people and wildlife on the same side of the issue. The Endangered Species Act, in my view, will never, ever achieve its stated purpose unless we can create an act in which the interests of humans and the interests of wildlife coincide.

There are a variety of proposals that have been suggested; one of them is the takings compensation concept. I believe in that deeply. I believe that if the government takes the value of someone's property by forbidding the accepted use of that property, then the government must, and by all legitimate rights under our Constitution, should pay for it.

But requiring the government to pay for it, what it has already taken, will have an important effect. It will encourage people to be forthcoming about what is on their property and about developing a strategy to protect them.

We ought to find more effective alternatives. The Congress has created a number of these. The conservation programs that have achieved their goals, because they have not harnessed the genius of the American people and because they have created free market incentives.

The old Soil and Conservation Service and the current conservation program are perhaps the two most relevant examples. These two programs have succeeded because they are voluntary and incentive-based, and they allow government employees and private individuals to work together to find creative solutions to mutual problems.

A voluntary incentive-based Endangered Species program will motivate the Fish and Wildlife biologists to find the lowest-cost methods of preserving the species, and a voluntary incentive-based species program will also bring landowners and environmentalists

together. If you doubt that, let me provide one last quote from Mollie Beattie, the Director of the Fish and Wildlife Service.

She said recently: "I think this really, really opened people's eyes to what could be achieved in a basically nonregulatory voluntary program. We can't help but begin to think what would happen if we aimed it a little better at wildlife. If there were incentives to make the best habitat, we would be miles ahead"—if there were incentives to make the best habitat.

Mr. Chairman, I know what I am proposing is bold, I urge you to consider it, and I would be happy to answer any questions you may have.

[The statement of Mr. Shadegg may be found at end of hearing.]

Mr. POMBO. Well, thank you very much, John.

You, like I, believe that one of the biggest faults in the Act right now is perverse incentives that exist, and that is one of the major changes that needs to happen.

How do you feel that the property owners in Arizona would respond if there wasn't a big negative behind them finding an endangered species on their property?

Mr. SHADEGG. Well, you know, I guess it is the admonition of, I think it is Edwin Berg who said: America is good because America is great—or America is great because America is good—if ever America stops to be good, it will cease to be great.

I think the American people very much want to see the environment protected, and they want to be a participant in that process, but they don't think that they ought to have to bear an unfair burden. They recognize that if they are allowed to participate in a process which leads to a good result, they would be happy to participate in it. And I think they would be voluntary and anxious to come forward, and to work with the environmental community and with the governmental interests involved in the issue, to develop strategies which will achieve the long-term goals, rather than to use their intellects to try to avoid the reach of government regulation, which is doing immense and irrational damage to them.

Mr. POMBO. And another topic that you brought up in your statement concerns the off-budget costs. And as you are aware, from the number of field hearings we had, that was one of the things that people talked about, was the cost to the economy, the cost to private property owners, at the same time that they claim that we spend very little money on the Endangered Species Act. At the hearing in Vancouver alone, they talked about over \$1 billion worth of economic impact in that area because of the salmon and that listing.

What have you seen in Arizona with respect to an economic impact?

Mr. SHADEGG. Well, I want to take this debate one step beyond, and I said I wasn't going to relate anecdotal evidence, but your question calls for it. Yesterday, I spoke to a group called Women in Timber. And one of the stories there truly moved me—and I would like to see the woman who related that story come before your task force and testify. Because the story she related was the story about a small town in Oregon where she lived for many, many years, that at one time had seven operating lumber mills.

Over time, one after another was closed until the town was threatening shut down.

This woman's job was as a social worker and she began to confront, as the economic dislocation occurred in the town, greater and greater family violence, greater and greater alcohol abuse amongst the kids, greater and greater drug abuse amongst the kids, greater and greater spousal abuse within families, disintegrating families, immense and ever-increasing social problems within these families, where one or both spouses had lost their jobs because of the economic dislocation.

She spent two years fighting that fight from the inside, trying to counsel kids and counsel families, and she said she ultimately gave up and concluded that there was never a hope of restoring that community until the people in that community had jobs again. And so she examined what she had understood from growing up there, what had caused the economic dislocation which then resulted in the immense social deterioration of the town, and of the families within the town, and of the community as a whole, and went to work and threw herself full-time in the cause of fighting to reform the Endangered Species Act and a series of other laws that have gone way too far.

I believe the unaccounted for costs are massive and beyond anybody's tabulation. And I think that has been shown and is beginning to be seen in the areas of Arizona where we are having the same kind of impact in northern and northeastern Arizona.

Mr. POMBO. Well, I thank you very much for your testimony. I appreciate all the work that you have put in already on this issue, and on the property rights issue, and I look forward to working with you as we get into drafting a bill on reforming the Endangered Species Act.

Thank you very much.

Mr. SHADEGG. Thank you, Mr. Chairman.

**STATEMENT OF HON. ED BRYANT, A U.S. REPRESENTATIVE
FROM TENNESSEE**

Mr. POMBO. Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman. I want to thank you for giving me the opportunity to express my views and the views of my constituents of Tennessee in regard to the Endangered Species Act. With all that the 104th Congress has set out to do this session, I am glad that one of the issues that we are going to take a serious look at will be the Endangered Species Act.

I don't think that anyone will disagree that we have a responsibility to be good stewards of our natural resources, and I believe that the original intentions of this Act were perhaps good. But while the well-being of plants and animals is important, it is also important that we strike a balance between the needs of the environment and the needs of the human race, whether those needs be economic or safety-related.

Mr. Chairman, I do not come before you today with a magic answer to the problems inherent in the Endangered Species Act. I wouldn't presume to call myself an expert on this issue either; rather, I am looking forward to hearing the recommendations of your task force after you have had a chance to review this Act.

What I would like to do, however, is ask that your task force as it continues its work, that you consider how the Endangered Species Act has affected the residents of one of the towns in my district in Tennessee, Columbia, Tennessee.

It is important to hear their story, Mr. Chairman, because while this government should take great care in protecting our environment, the primary mandate of this government is to adhere to the will of people. And the people of Columbia, Tennessee are rightfully upset.

In 1973, the Tennessee Valley—25 years ago—23 years ago, I guess, the Tennessee Valley Authority began construction of a 12,600-acre Columbia Dam. The need for this project was clear; yearly floods in the Duck River area have claimed at least four lives, and the completion of the dam would have given that community the ability to better manage these floods and thus the ability to prevent further loss of life and damage.

Furthermore, the local leaders and the general public both agreed that with the continued growth of this region, the current water supply would have to be expanded in order to maintain the population. Their Mayor, Larry Smithson, has stated that, "We are sensitive to the environmental issues surrounding the dam. We don't want to do any damage to the environment, but we also want to do what is best for the citizens of Columbia. This is not an issue to look at lightly. Columbia needs the water."

My concern and the concern of those in Columbia is that without this dam, not only will they not have the adequate water supply, but they may also be unable to attract further businesses into the area.

I am proud to say that the Columbia area is the home of the Saturn Corporation which decided that Tennessee was definitely a business-friendly State; however, without this dam, there is genuine concern that Columbia may well be passed over by other businesses. And I would seriously challenge anyone who says that the economic growth should be a secondary consideration. Keep in mind now, this dam, TVA decide on this construction back in 1973.

By 1983, 10 years later, TVA had spent \$84 million and had completed about 90 percent of the concrete portion of the dam and about 60 percent of the earth and rock fill portion of the dam. My constituents in Columbia also have a financial stake in this project in that since 1972, due to a 5-cent surcharge on their water, the citizens of Columbia have paid over \$4.5 million out of their own pockets for this dam.

It looked like things were right on schedule back in 1987, until construction had to be halted because the indications were that the reservoir could jeopardize two endangered species. And since 1983, two additional endangered mussel species and an endangered plant have been located in the project.

Mr. Chairman, the following mussels and plant have now successfully put the economic future of Columbia as well as the lives of some of my constituents in jeopardy: the birdwing pearly mussel, the Cumberland monkeyface pearly mussel, the tan riffelshell mussel, the pale lilliput pearly mussel and the leafy prairie-clover. I am told that TVA will not ask for an exemption, and that it will be

next to impossible for me to get an exemption in order to better serve the people of the Seventh District of Tennessee.

In coming before you and relating this story of the Columbia Dam, I am not asking for a license to kill these mussels or this prairie-leaf clover. Rather, I am asking that as your task force reassesses the ESA, that it recommend that a more common sense approach be taken in balancing the needs of the species with the needs of the people.

Perhaps the new Endangered Species Act should have within it provisions for an easier exemption process, or perhaps a cost/benefit analysis provision, but whatever the solution your task force endorses, I would strongly urge on behalf of my constituents that it be tempered with something that has been sorely missing in the ESA, namely a little common sense.

I thank the Chair and would be happy to entertain any questions.

Mr. POMBO. Thank you, Ed.

You said that the TVA would not ask for an exemption. Do you know why?

Mr. BRYANT. Well, I think there are some other factors. Of course, over the years, as we have waited since 1983, it has been 13 additional years, I think the chances of getting that exemption would be not good chances, and also the cost factors have increased dramatically to complete that dam over the last 13 years. And I think on balance, they just decided to back away, walk away from this \$84 million. It is a very sore issue right now back in Tennessee.

We faced this issue several years ago with the Tellico Dam and the snail darter. So I think you know we all want to be good stewards. I think the philosophy that should be, and any changes we make should be the fact that we are put on this earth as human beings to exist and live, and we are going to have to consume some things, some plants and animals.

There is no way we can conserve this in a pristine condition, but rather, we have to be good stewards of what we have, and I think there can be a more balanced approach, and I know you agree with me on this, to the use of our assets on this earth.

So I think the biggest thing I could simply recommend is some common sense, which I know you would join with me there. And anything that we can do to support you on the Judiciary Committee, certainly we supported the Takings Act, I agree with that totally and, unfortunately, I think it is time for Congress to have to act on this.

Mr. POMBO. You stated in your testimony that they had spent \$84 million on the dam, and apparently they are not going to complete it now? Is that your understanding?

Mr. BRYANT. That is correct. I met with the TVA people this afternoon, this very day, to get a more complete briefing, and it is not going to be completed.

Mr. POMBO. What are they going to do with the structure that has been built already?

Mr. BRYANT. Well, it is bad enough to see it just sitting there unfinished as a monument to this bureaucracy. But they have to take it down, or at least take down portions of it, and they estimate it

will cost about as much to tear it down, the dangerous portions, as it was to build it up to this point. A classic example.

Mr. POMBO. Well, I would appreciate you keeping me and the task force informed as to further developments with this particular case, and also any other ideas that you come up with or that your constituents come up with as ways that we can look at reforming the act, and hopefully make it work.

Mr. BRYANT. Thank you, Mr. Chairman.

Mr. POMBO. Thank you very much, Ed.

**STATEMENT OF HON. ANDREA H. SEASTRAND, A U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. POMBO. Ms. Seastrand.

Mrs. SEASTRAND. Chairman Pombo, distinguished Members of the committee, on behalf of the constituents of the 22nd District of California, allow me to begin by expressing my appreciation to you for the opportunity to testify and to solicit your support on what many feel is a blatant example of gross misapplication of the Endangered Species Act, and an injustice involving the Channel Islands National Park.

A few days ago, one of my constituents, Mr. Al Vail, was notified by the National Park Service that he would be required to construct a fence across the open grazing land, or range of Santa Rosa Island. I want to point out that Santa Rosa is one of the Channel Islands, and Mr. Vail's family has ranched on it since 1902.

The reason for this action, as represented by the Park Service, is premised on a decision by the U.S. Department of Fish and Wildlife that alleges the ranch cattle under management by Mr. Vail threaten a bird species known as the western snowy plover.

The threat alluded to by the Agency stems from a field study which suggests the possibility that over a two-year period of time, two nests were stepped on by cattle, now I say alleged, because there is no hard evidence that the nests were disturbed by the cattle. Based on this observation, the U.S. Department of Fish and Wildlife applied standards of the Endangered Species Act to assert that the cattle-ranching operation, which coexisted with the plover for nearly 100 years, was suddenly a threat to this bird species.

The Agency's decision was rendered and an order compelling the National Park Service to execute mitigation measures to eliminate the alleged threat were put into effect. The Park Service in turn gave Mr. Vail an ultimatum: build a three-mile fence to segregate his cattle from the plover habitat, or the Park Service would construct the barrier and bill him for their efforts.

Now, one week ago, Mr. Vail had a meeting scheduled with representatives of the Department of Fish and Wildlife for the purpose of introducing research and testimony from marine bird specialists which clearly demonstrates that the Agency's study may be flawed. Now, on the very day the hearing was to take place, officials of the Fish and Wildlife Office abruptly canceled the session.

Two days later, the notice to construct the fence under duress was issued by the Park Service to Mr. Vail. In fact, there is a strong body of independently gathered evidence which demonstrates that the plover's habitat on Santa Rosa Island has been complimented by the presence of free range cattle. Further, the

land management and animal husbandry scheme employed by Mr. Vail and his family have been the salient factors in providing one of the best environments possible for the plover. This factor is based on the successful population of the species on Santa Rosa Island compared to other populations of the species in locations along the West Coast.

I have provided to the committee materials which point to the excessively inappropriate actions by both the U.S. Department of Fish and Wildlife and the National Park Service in attempting to apply the reach of the Endangered Species Act in a manner which will surely result in damage to the island's environment and cause an event that will disrupt the symbiotic harmony between sound ranch management practice and the snowy plover.

It is my sincere appeal to the committee on behalf of decency, fairness and common sense—I underline common sense—to join me in ordering the National Park Service and the U.S. Department of Fish and Wildlife to halt the construction of the fence barrier.

Further, I am asking all Members to support my request for a 12-month moratorium that will prohibit any Agency or other public or private interest from engaging in any activity that will impact Santa Rosa Island or until such time as adequate and equitable hearings can be convened by Congress to establish what the purpose of the attention focused just recently on Santa Rosa Island is really all about.

Again, Mr. Chairman, and committee Members, thank you for allowing me this opportunity to testify.

[The attachments to statement of Ms. Seastrand may be found at end of hearing.]

Mr. POMBO. Thank you.

You said that Mr. Vail had been grazing cattle on Santa Rosa Island since 1902?

Mrs. SEASTRAND. 1902.

Mr. POMBO. It also says that it is a National Park Service.

Is this a national park?

Mrs. SEASTRAND. Yes. What has happened is the Vail family owned the property, and in I believe it was 1986 the property was purchased from the Vail family and was entered into the Park Service. So it is part of the Channel Island Park, National Park. He is now contracting with the Park Service to have his cattle operation on the island.

Mr. POMBO. You said that he sold it to the Park Service in 1986?

Mrs. SEASTRAND. Yes.

Mr. POMBO. What kind of an arrangement did he have to continue to run cattle on it?

Mrs. SEASTRAND. I believe it was—he received dollars for it and then had a 25-year contract to be able to graze the cattle. And I think now—I think he has 17 more years to go. You know, this has been a surprise to the Vail family, to Mr. Vail particularly, because he has been on this island for so long, things have gone very well, it is held as an example of what good land management is all about, and then to receive this type of situation with this fence is quite a surprise.

Mr. POMBO. You said he had a 25-year contract to continue to graze cattle?

Mrs. SEASTRAND. Yes.

Mr. POMBO. Was there opposition to cattle being on the island now that it had become a park?

Mrs. SEASTRAND. You know, I don't know if there is any outward opposition, and at the time that he sold the property, I will have to find that out, Mr. Chairman. But it seems like there might be an underlying situation that I am going to have to do more investigating that this may be a problem of just getting him off the property, and I am going to be looking into this.

Mr. POMBO. The reason I am asking, is one of the things that concerns me a great deal is when the Endangered Species Act is used to accomplish other goals, and I think that undermines the credibility of the Endangered Species Act when it is used to achieve other goals, other than saving endangered species. And one of the things that concerns me from this particular story that you outline is that maybe there was, there was another goal involved here, other than protecting the snowy plover's habitat.

Mrs. SEASTRAND. Well, it seems very odd, and as I said, I am going to be doing further investigation. I would just say that besides the ranching operation and this cattle operation of a family that have been good stewards of the land, and having this now in our National Park Service, I think there are several areas here. In conclusion, I think number one, the environment and the ecology of the island, to know that a three-mile fence is going to be built with a service road next to it, what is this going to do to the island? It is ridiculous.

And then further, to know that this family has gone into a contract with the Federal Government and to know that the operation is at risk, all of these things I think are issues of concern to this committee and to all of us.

Mr. POMBO. Well, it kind of reminds me of some farmers in the Central Valley that thought they had 25-year water contracts, too. So thank you.

Mr. Doolittle, did you have any questions?

Mr. DOOLITTLE. Yes.

Mrs. Seastrand, what is the cost of the three-mile fence?

Mrs. SEASTRAND. I have heard there are estimates of \$40,000 to \$50,000. So that is the estimate.

Mr. DOOLITTLE. And what is the cost of the three-mile road?

Mrs. SEASTRAND. Well, that I don't know. It is a service road, so I imagine it will be—it is not going to be paved, but it will be a road next to the fence. But I don't know what cost will be involved on bulldozing that away. I really don't know.

Mr. DOOLITTLE. We built a little road about five years ago, I think it was less than a half mile, and it was \$17,000. So I wonder if you could ask him and supply that for the record.

Mrs. SEASTRAND. All right. I will do that.

As I said, the guesstimate on the fence is \$40,000 to \$50,000, and then the road. We will be glad to do that.

[The information may be found at end of hearing.]

Mr. DOOLITTLE. All right.

And then lastly, how do visitors get to this national park?

Mrs. SEASTRAND. The visitors can go by boat; they can also—there is helicopter rides that fly over the area. There are airstrips,

but this is a ranch that is operated by the family. So you can get there by boat or by plane.

Mr. DOOLITTLE. Thank you.

Mr. POMBO. And along those lines, Andrea, if you could ask, and this is so I can figure out what costs are involved with this, how many head of cattle are run on that property?

Mrs. SEASTRAND. About 7,000 head.

Mr. POMBO. It is about 7,000 head right now?

Mrs. SEASTRAND. Yes. And they transport the cattle on an old wooden vessel.

Mr. POMBO. Oh, really?

Mrs. SEASTRAND. Yes. It might be—as I said, I would like to have some of the committee Members come out in the very near future to observe what this is.

Bottom line, again, we are trying to preserve a beautiful island for the future and for our children, and to have it as a park facility. We are going to be doing some additional things in the near future, and to think that this—it is just ridiculous. This is what I think my constituents and yours complain about using this Endangered Species Act to perpetrate something as ridiculous as this.

Mr. POMBO. Well, thank you very much for your testimony and for bringing this to our attention.

Mrs. SEASTRAND. I will get you the cost factors.

Mr. POMBO. I would appreciate that.

Mr. POMBO. I do have a couple of more people that requested time. I just want to make sure that I am not missing anybody if they are here.

Mr. Hayworth was here; he submitted his testimony for the record.

[The statement of Mr. Hayworth may be found at end of hearing.]

Mr. POMBO. Mr. Bilbray will submit his testimony for the record.

Mr. POMBO. I have not heard from Congresswoman Woolsey or Congressman Underwood.

Oh, OK. Apparently they are in a markup right now.

And Mr. Stump is submitting testimony for the record also.

I would like to say that the official record of this hearing will remain open for 10 days so that any Member who wishes to provide further testimony will have that opportunity.

[The submitted statement of Members may be found at end of hearing.]

Mr. POMBO. Mr. Doolittle, did you have a statement you wanted to make?

**STATEMENT OF HON. JOHN DOOLITTLE, A U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. DOOLITTLE. Yes, Mr. Chairman, I do.

There are many things I would like to say about the need for reform of the Endangered Species Act, but today I would like to focus on just one small area, but important nevertheless.

In the last several months as we have been reviewing Federal expenditures under the jurisdiction of the Water and Power Resources Subcommittee, it has become increasingly clear that the cost of the Endangered Species Act compliance is skyrocketing.

What is more important, such expenditures have been incurred without significant benefits to the environment and without sound scientific justification. Two areas needing reform within the Endangered Species Act are: one, the concept of protecting distinct population groups; and two, the need to establish which parties bear the burden of proof to demonstrate their case using existing scientific information.

Let me give a few examples. In the Columbia and Snake River Basin, the Bonneville Power Administration is spending over \$350 million this year in the name of salmon recovery. Next year, that figure is projected to increase to nearly \$500 million, and the year after that, the total cost for salmon recovery efforts may reach \$750 million.

Where do these expenditures stop? Under the current interpretation of the Act, there simply is no limit. What is worse, these expenses have paid for mandatory fish screens costing millions of dollars, which have subsequently been found to be ineffective and are presently lying on the banks of the rivers. They have gone—these expenditures have gone for increased river flows, even though there is sound evidence that the level of water flow being required does little to improve the numbers of fish we see in the system.

Ten years ago, the American public sent a very clear message that the Pentagon didn't need to spend \$270 per hammer to ensure a strong national defense. The message is equally strong today, that we do not need to spend hundreds of thousands of dollars per endangered salmon to protect the environment.

Several aspects of the Columbia River system program point to the badly-flawed approach that the government is taking. We have discussed the salmon, let us discuss the squawfish.

The Federal Government is presently paying people \$3 per fish to catch and destroy squawfish in that system, because squawfish are predators of the immature salmon that we are spending a great deal of money to preserve. At the same time, in the Colorado River system, we are being asked to fund a \$150 million program to recover squawfish, and if current trends are allowed to prevail, that sum of money, \$150 million, is likely to increase beyond that.

Twenty years ago, the government attempted to exterminate this very same squawfish within the Colorado River system. So at the same time we are spending truly obscene amounts of money in the Columbia River system to increase the number of salmon, there are bountiful salmon runs in the waters of Alaska.

It turns out that in recent years, water temperatures in the Pacific Ocean have shifted to more favorable conditions off Alaska than off the Pacific Northwest. Salmon spend the majority of their lives in the ocean.

Both of these examples serve to highlight the inappropriate policy of protecting distinct population groups as opposed to protecting endangered species. This issue is especially problematic when the species in question are fish which do not spend all of their adult life in the same location.

In the one case, namely salmon, we are spending enormous funds to increase fish stocks in one basin that are plentiful in another. In the other case, namely squawfish, we are trying to destroy them with tax dollars in one basin, while with tax dollars we are going

to extraordinary lengths to save them in another area, where, indeed, in that area, we tried to eliminate them just two decades ago.

With reference to the burden of proof, these examples further highlight the need to make sure that those who wish to list species or to spend money on recovery programs or to stop productive activities, must carry the burden of proof that existing high-quality scientific data demonstrates the validity of their position.

Too often in the past, the Endangered Species Act has been administered by individuals that have turned it on its head and required citizens to prove that they do not have an impact. This is an impossible and unwarranted position that has led to the type of abuse we now see.

In reviewing the various activities under our subcommittee, it may well be that nearly \$1 billion Federal dollars per year in wasteful and unnecessary expenditures, and many times that amount in non-Federal dollars could be eliminated if we correct existing abuses within the Endangered Species Act.

I look forward to working with you, Mr. Chairman, and our colleagues on the Resources Committee to bringing common sense back into the environmental equation.

Mr. POMBO. Thank you very much.

If there are no further comments, we will adjourn the hearing. Seeing none, the hearing is adjourned.

[Whereupon, at 5:20 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

**Statement by Congressman Norm Dicks
before the House Task Force on
the Endangered Species Act
May 10, 1995**

**Chairman Pombo and Members of the Task
Force on the Endangered Species Act,**

**I appreciate this opportunity to join you this
afternoon. I am pleased that you are providing
interested Members of the House with an
opportunity to discuss the critical concepts and
policies associated with the Endangered Species
Act, and what Congress needs to do through
legislation to reform the Act through the
legislative process.**

**My experience with the Endangered Species
Act (ESA) has given me a great deal of**

experience and insight into its strengths and weaknesses. I represent a region that has been greatly impacted by the listing of endangered species, and a region that continues to feel the impact of the Act. In 1989, the U.S. Fish & Wildlife Service first proposed listing the Northern Spotted Owl, and in 1990, the Service formally listed the bird as a "threatened" species.

This listing action quickly led to consultations and legal challenges to the Region's timber program, resulting in several court injunctions that caused drastic reductions in the timber base. A Region that a few years ago produced an annual timber program of 5 billion board feet, with 1.5 billion board feet of volume coming from Washington State, saw volumes suddenly cut in half.

The reductions were in large measure in response to arguments by scientists that the owl needed Old Growth habitat to survive and recovery, and most of this habitat was on the federal lands of the Forest Service and Bureau of Land Management (BLM). Private lands were caught up in these restrictions too, as it was argued that until a "credible" plan was in place on all federal lands, the greatest level of protection possible had to be imposed. In Washington State, this led to 10,000 acre owl circles on private lands.

The listing of the Spotted Owl had dramatic and immediate impacts on the lifestyles, economy, and expectations of traditionally timber-dependent communities. The psychological affect of the listings impact generated fear and despair among affected

workers and communities. However, while the Region was still grappling with the impacts of the Owl, another Old Growth-dependent species was listed separately, with new requirements for protection -- the Marbled Murrelet.

Today, in great part because of protections for the Owl and the Murrelet, today the Northwest Region's timber harvest level has been reduced by at least 90%. The Olympic National Forest in my own Congressional District, presently only has a timber program of 5 million board feet. It used to produce 230 million board feet.

In our case, we were overcutting in the Region to an extent, and the timber targets were not sustainable. However, going to the other extreme -- of a response of complete preservation and restriction, one species at a

time, has failed our Region as well. Even as I speak today, we are again in the middle of a large and critical endangered species controversy. This time it is the recovery of the salmon population on the Columbia River.

The salmon are a magnificent species that are at the core of Northwest culture and heritage. They are a symbol for our Region in much the way that the lion symbolizes Africa, or the Kangaroo is identified with Australia. Yet the salmon is impacted by our hydropower system, which is a foundation for our economy.

I give you this synopsis of my experience with the Endangered Species Act (ESA), because it has caused me to think long and hard about what's wrong and what's right about this law.

I do believe that there is a better way to

approach the protection of threatened or endangered species, than what is currently being implemented. We should not continue to approach this subject on a species-by-species basis. It is impractical. It is disruptive. It does not work.

On the other hand, those who wish to deal with their frustrations with the Endangered Species Act (ESA) by advocating its complete overturn, should be very, very careful. We should remember that there were sound reasons for the passage of this legislation in the first place, back in 1973. Species were in trouble then, and many are in trouble now. We should make the Act work, and make it meaningful and practical. The Endangered Species Act needs "perestroika," not elimination. We have to engage in new thinking and be creative in our reform efforts.

I remind everyone that the Endangered Species Act was proposed and supported by President Nixon -- not known then or since as a liberal radical. We must also remember that the Act has had its successes too. Our own national symbol, the Bald Eagle, was a listed species that has experienced rapid decline from exposure to DDT and other toxics. It has recovered, and was delisted not long ago. Are there any Americans out there who would not have wanted us to take action to save the magnificent Bald Eagle? I don't believe there are many.

Multi-Species Approach to Management

So the question becomes: how to we find the balance? How do we reform the Act so that it's intent is maintained but its impact on people are less onerous and more balanced? I believe

that one way to accomplish these goals is to get away from the outdated species-by-species listing approach. This has not worked and it is not rational.

The species-by-species approach has established a worst case scenario for all affected parties. Under the current way of doing business, a species doesn't get protection unless its in trouble. Then the protection comes in a manner in which it is too harsh for impacted human beings to live with. The help comes too late and in too drastic a form. What's more, other species are ignored who share the same habitat as the proposed singularly listed species, even though they may later end up in the same situation.

If species are going to be listed, this ought to be habitat-based, rather than individual species

based. This would make it possible to have multi-species listings and multi-species management. This would be "prospective" rather than "re-active" as is the present situation. We should have the flexibility to move on a multi-species basis to help species ahead of time, before they get too far down the slippery slope.

The logic to this would be that the sooner a species can be helped the less likely that the recovery effort will require drastic impacts on people. Plus there would be a better protection benefit to the species itself. It would be like the difference between helping someone take preventive medicine before that got sick rather than waiting until the patient was in critical condition.

Multi-species HCP's

Along this vein, I would propose making it easier for private landowners to propose and develop multi-species Habitat Conservation Plans (HCP's). All too often in the past, private landowners have been blindsided by endangered species listings, and have felt -- rightfully so in many cases -- that they have been imposed upon rather than reached out to. This has to change. One of the major reasons that so much anger exists in the heartland with the way the Endangered Species Act has worked in the past, is its onerous impact on private landowners.

Yet, the reality is that a great deal of significant habitat for many species lies on private lands. I believe that the option of allowing for multi-species Habitat Conservation Plans (HCP's) on private lands is a way to address the issue that allows for the private land owner to be in a more cooperative partnership

type of relationship with the Fish & Wildlife Service rather than confrontational. The multi-species HCP would give the landowner a level of certainty on the activities that they would be conducting on their land base, and relief from listing restrictions.

There is a similar program to this concept already working in my state called the Washington State Ecosystems Program, which has restored over 400,000 acres of upland and riparian habitat in the eastern part of Washington State through cooperative interaction with private landowners. This restoration project has led to the recovery of several bird populations in the state with the support of private landowners, all of whom participated voluntarily and all of whom are proud of their contributions to ecosystems management.

I also believe that changes in the law should be made to allow for options such as management by bio-region, or management on the basis of a statewide Habitat Conservation Plan (HCP). In the case of the bioregion concept, I am referring to the designation of a specific geographic area as an area which can be specially managed under a multi-species plan.

This could be, for example, the Everglades in Florida, or an area of the Southwestern desert, or the Olympic Peninsula in Washington State. Within the designated bioregion, all land ownerships would be managed under a plan that would address species conservation within. However, private land participation would be voluntary through the vehicle of HCP's. In some cases, small landowners would even be dropped out of the equation completely. Once the plan is in place for managing the area of the bioregion,

the plan would govern species. No new listings could occur on an individual species which could change the management scheme for the designated bioregion.

Similarly, a statewide Habitat Conservation Plan (HCP), which could be initiated by the Governor of a given state, would serve as a means of effectively managing species for their protection. If federal lands, state lands, and private lands through voluntary HCP initiatives were to come together and manage for species under one plan on a statewide basis, I believe that there would be a new and greater opportunity to get ahead of the curve, and manage for species before they are in trouble if they are managed under a plan such as a statewide HCP or a Bioregion. Species would benefit, and we would get away from this one species at a time approach that has been

economically disruptive and ineffective in its objective. Again, the bioregion plan or the statewide HCP is a one shot management deal. When operating under one of these schemes, there is more certainty for everyone.

I also believe that legislation should provide incentives for private landowners to participate in the conservation of species. I believe that grants should be provided for technical assistance in aiding their participation in HCP's, and assistance should be provided to do land acquisitions that can help with species conservation efforts.

I will introduce legislation to make these concepts doable under the Endangered Species Act (ESA), and I hope the Task Force will give favorable consideration to my recommendations in reforming the law. We ought to be looking for a win-win scenario where both species, private

landowners, and those dependent on federal land resources can all benefit. I believe that either eliminating the present Act or continuing down a path where its application is too stringent to work are both flawed scenarios. I propose that there are ways to reform the Act to make it work for people and species.

I thank the Task Force for providing me this opportunity to present my views.

STATEMENT BY BRUCE F. VENTO
MAY 10, 1995
ENDANGERED SPECIES TASK FORCE

As we consider the modifications and legislation to reauthorize the Endangered Species Act (ESA), the debate becomes more and more polarized. But up to this point, the sound and the fury have only left us with empty rhetoric. The fundamental point is that the Endangered Species Act works. Is the law without problems? Not necessarily. Some changes are needed but the core of the law and its purpose should remain intact.

From the statements made by some Members of Congress it seems they feel that saving endangered species is a luxury, a good idea when we can afford the ESA, but one to be dispensed with when associated costs reduce the profits of business and industry. They appear ready to abolish or drastically weaken the act and illustrate the necessity to do so with partial information and anecdotes detailing the adverse impact to economic activities and private property with the management of endangered species.

One could, if time permitted, spend some time countering these anecdotes with the full presentation of the incidents. For now I will simply submit these for the record. Unfortunately, the review efforts of Congress to date have in my experience not provided such objective evaluation.

Unfortunately, significant issues are too often lost in the rhetoric- the truth may not always be as exciting as the "stories". Perhaps more importantly, we seem to forget the basic reason for having a law that protects threatened and endangered species: preserving biodiversity benefits everyone -- biologically, economically and morally. The ESA has the effect of preserving biodiversity and therefore enhances our ability to survive on this planet.

Before mankind dominated the environment, "...a bird or mammal species went extinct every 100 to 1000 years; today we lose at least one bird or mammal each year. Some observers calculate that we lose three species of all kinds each hour, 74 each day, 27,000 each year. Why? In the next 15 minutes, human population will increase by 2000 people. Each week we add the equivalent of another Detroit; each year, another Germany. By the year 2000, more than six billion people will be alive, demanding food, clothing, shelter and more to fulfill their 'quality of life.' More than 40% of the Earth's surface has been substantially altered by humans, and each year, more land, water and air are extracted for the sole use of this one species among the Earth's many species." (Larry Nielsen, director of Pennsylvania State University School of Forestry) We need the ESA to save us from ourselves!

Candidly, the species declining phenomena that continues to adversely affect the fauna and flora, the biological diversity around the globe, speaks to a reinforcement and strengthening of the American commitment to the ESA. Many proposals being advanced to change the ESA have the impact of undercutting international law and treaty agreements. Certainly, adverse actions by the U.S. government to weaken the ESA would at the very least shred the moral authenticity of the U.S. internationally. The ESA makes economic, environmental and ethical common sense. Losing species is the equivalent of throwing away unopened gifts.

The ESA safeguards many of the species that we rely on for life-saving medicines to fight cancer and other threatening diseases. While only a tiny fraction of all species have been studied for beneficial uses, about twenty-five percent of the medicines found in your local pharmacy are derived from fauna and flora or micro-organisms which naturally occur. With each lost species, our genetic library, the pool of biodiverse life forms, suffers just a little bit more, reducing the potential for further discoveries.

Elaine Forman of Potomac Maryland is an ovarian cancer survivor thanks to the medicinal benefits of taxol, found in the bark of the Pacific Yew tree. This Pacific Yew was considered a waste tree, burned or left to rot during the clearcutting of the ancient temperate rain forests of the Northwest until its medicinal value was discovered in the 1980's.

Economically, opponents will argue that the Act "isn't working," it "puts the needs of wildlife ahead of those of humans" and "unfairly burdens private landowners." The importance of slowing down the unprecedented extinction of fauna and flora is sometimes a difficult point to make, especially to someone whose livelihood has been adversely affected by important conservation areas.

One of our mentors, Chairman Mo Udall said that there were two types of Members of Congress-- those that don't know and those that don't know they don't know. We need to improve the ESA by considering incentives that encourage and help landowners protect species. However, the fifth amendment is the wrong place to start.

People do not have and never have had, the right to extinguish species. Contrary to the horror stories you may hear, most private property owners want and need protection from damage that others may cause to the value and safety of their land.

John Chaconas, for example, now the celebrated citizen from St. Amant, LA illustrates this in his comments on the impact of federal wetlands policy, similar to endangered species legislation because of the supposed "takings issues." Chaconas was invited by the Resources Committee to testify at an ESA Task Force hearing in Belle Chasse, LA. Mr. Chaconas never did get to testify at the hearing so I will submit his statement into the record at this time.

Let me quote briefly from his statement, "I believe wetlands regulations can and do work well with over 99% of the permits applied for being approved. As with any policy though, there are people who abuse it, and use their land in ways that harm neighboring property...Property rights are essential. Like most Americans I believe my property rights do not extend to harming the property of my neighbors. What is wrong here is not wetland policy gone awry, but the arrogant belief that some can do whatever they want with their property and all others be damned." He knows well, his property was dramatically devalued by a landowner who abused current law.

My colleagues, every action has a consequence-- activities on parcels of land affect lands elsewhere. Ecosystems ignore boundaries. Land use policies are indeed a double edged sword--but cooperative agreements can be found where the benefit of all is not sacrificed at the hands of a few. Ecosystem management after all is a cognitive construct.

In my home state of Minnesota, the bald eagle and the timber wolf both are now largely out of danger due to the cooperation between federal, state and local entities in managing the land to protect these species.

Lastly, as earth's dominant species, and the U.S., as a nation which by circumstance and history is the global leader in the advancement of science, knowledge and conservation -- this Congress has a special responsibility. We have an obligation to serve as responsible stewards by trying to reasonably limit our impact on the natural world. Humankind benefits directly from the rich diversity of life we inherited. Whether you contend that nature is a commodity for human use or you contend that humans do too much to disrupt our fundamental relationship with nature, this much is true: most Americans believe that we have an ethical responsibility to leave the world at least as good as we found it and to hand down to the next generation a healthy planet.

It is important to recall that the ESA is not the work of Democrats or Republicans alone-- rather it is derived from years of deliberation among folks who realized that it was integral to the survival of humankind to preserve the biodiversity of our planet.

Environmental laws such as the Endangered Species Act, are not the problem and eliminating such laws does not solve the problem.

Weakening or abolishing the ESA is a misguided notion, akin to killing the messenger. There is much room for improvement in how this act is administered, but drastically altering the law as in the current proposals, is misguided. Endangered species serve as our canary in the coal mine -- an alarm if you will, warning us that something is terribly wrong in the our ecosystem. Whether you think it's "worth" it or not to protect species, we really can't afford not to.

Mr. & Mrs. John J. Chaconas
45426 Tee Poe Lane
St. Amant, La 70774

March 13, 1995

House of Representatives

Committee on Resources
Mr. Don Young Chairman
Mr. Richard W. Pombo Chairman, ESA Task Force
Mr. John T Doolittle Chairman, Wetlands Task Force
Washington, D.C. 20515

Statement Of John Chaconas on impact of federal wetlands policy before Task Force Field Hearing, in Belle Chasse, LA.

To the Committee:

I offer my thanks, for the opportunity to speak today, to the Committee Chairman, Task Force Chairmen and distinguished gentlemen.

First of all, I am not affiliated with any environmental organization. However, I do have a deep and abiding faith in God which is the only thing that has sustained me throughout this ordeal.

I own a home and property in Ascension Parish which has come to symbolize the issues this committee is investigating. This home was built on wetlands in violation of the Clean Water Act. I have been portrayed as the victim of an unfair law and over zealous bureaucrats. I want to set the record straight.

The fact is my family and I have been played as pawns by politicians to justify their opposition to current wetlands law. I believe wetlands regulations can and do work well with over 99% of the permits applied for being approved. As with any policy though, there are people who abuse it, and use their land in ways that harms neighboring properties.

Let me briefly review the situation involving my land. Over a period of three years, about eight acres of wetlands were destroyed. Timber was cleared, a house and road were built, a pond was excavated, displacing almost 9,000 cubic yards of dirt over four acres.

For these actions, conducted without proper permits, the previous property owner has been charged as a "willful and flagrant" violator by the EPA and the Corps of Engineers. As the current owner, I am named as a co-violator.

The record is clear that nearly all of this property had always been a swamp, and that the previous owners had discussed wetlands regulations with the Soil Conservation Service even before they began developing it. (See attachments)

But they went ahead anyway. The land was drained. A pond was excavated. Fill was deposited to make what had been a low point in the swamp higher than adjacent land. The natural water drainage was disturbed, diverting water onto land never previously designated as wetlands..

And, what has happened to the neighbors? as one wrote, (See attached, Jerry Hanna, ltr dtd 02/20/95) "Each cubic yard of fill displaces a cubic yard of water on my and my neighbor's

properties." A second neighbor can't access his property when it rains, and another has water and wetland intrusion around his Pecan Trees. All of these neighbors have declared that their property is devalued as a result of the wetlands destruction where my home now stands.

I ask you then, "Who are the real victims here?". What has happened to our rights and those of the other property owners? Should a person who knowingly destroys wetlands be portrayed as an innocent victim and be held up as an example for compensation.

We didn't seek to buy wetlands. We wanted a home and property with a pasture for horses and 4-H livestock for our children. That's what we thought we bought in December of 1993. There appeared to be open pasture...solid, high, dry, flat land ...perfect for our plans all around our home. Today you can't walk ten feet out our front door without being ankle deep in water, and heavy clay mud. We've had frogs stream in through the door and water moccasins swimming by our bedroom.

A government hydrologist has told us our property has flooded in the past and will flood again in the future. We watch the approach of every weather system with dread.

We are pawns of EPA delay and indecision and see our plight used as a political football tossed about on the floor of Congress. For the past year the EPA has been the lead agency. To date, it hasn't issued any corrective actions, nor has it initiated any judicial proceedings and it hasn't responded to most correspondence. Sources within the agency cite political pressure favoring the previous owners as the cause for EPA's delay.

On the other hand, representatives from the Corps have been true gentlemen from the outset showing concern for us, the neighbors, and the environment. The same can be said for EPA scientists.

The fault here is not wetland policy, it is the abuse of that policy. I heard a Congressman describe this as government arrogance. He's wrong. The arrogance here is with those who misuse wetlands policy. It is also with those who use our situation to further their agenda. There is a need for clean water act wetlands protections. They should be enforced. If existing policy and regulations had been enforced I would not need to be here today.

Property rights are essential. Like most Americans I believe my property rights do not extend to harming the property of my neighbors. What is wrong here is not wetland policy gone awry, but the arrogant belief that some can do whatever they want with their property and all others be damned.

If enacted, the Private Property Protection Act will do to Louisiana and much of the south what General Sherman and the federal Army could not do. It would force the Government to buy it. Common sense tells us that government can't afford to buy all that has been devalued.

I believe the true target of pending legislation and political agendas is to torpedo a wetlands policy that has proven to be workable and flexible.

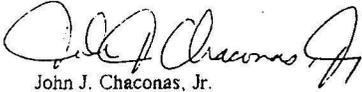
The day of reckoning is near for responsible government. Don't throw money at problems or offer false hope to homeowners when the true beneficiaries will be large land owners, speculators and developers.

People like me are being used as grist for the political mill, to spin a story, to gain support of a cause that is really meant as a time bomb... a death knell to federal policy on the Clean water act. Political groups are clearing a pathway whereby large interests are able to do as they wish regardless

of the consequences for the rest of us. The Constitution never guaranteed that what we do with our property is a right to harm others or infringe on their rights to quiet peaceful possession.

When I served on a nuclear ballistic missile submarine during the cold war we referenced the ever pending apocalypse on the "doomsday clock". The doomsday clock has started ticking again and your representative hasn't told you but the earth and it's resources, as you know it, may not be the same again.

Respectfully submitted,



John J. Chaconas, Jr.

Attachments:

Soil Conservation Service field Notes
 COE Wetland Determination
 John Breaux - Senator , Ltr dtd 09/16/94
 Robert Perciasepe - Asst. Administrator, EPA ltr dtd 08/31/94
 Kenneth H. Clow, Col. U.S. Army, COE ltr dtd 08/22/94
 J. Chaconas, ltr dtd 09/23/94
 Annette Sharp - Governor's Chief of Staff office, ltr dtd 9/27/94
 Edwin W. Edwards - Governor of LA, 2-ltrs dtd 7/12/94
 W. E. Tickner - Chief Eng. Div., COE Memo dtd 10/07/94
 Witness Statements (9) Addressed to EPA, 10/94
 J. Chaconas, ltr dtd 11/4/94
 J. Chaconas, ltr dtd 01/07/95
 Jerry Hanna, ltr dtd 02/20/95
 Paul Suir, ltr dtd 03/09/95

HORROR STORIES AND FAIRY TALES ABOUT THE ENDANGERED SPECIES ACT

We call on those who oppose the ESA to stop using the tactics of fear-mongering, and engage instead in an open debate on the merits of the law. These opponents apparently will go to almost any lengths of distortion, fabrication, and manipulation of the truth to gut America's most important conservation law. Following are a few of many such cases.

FAIRY TALE: IMMIGRANT LOSES AMERICAN DREAM TO FEDERAL ESA STORM TROOPERS!

CLAIM: Tuang Ming-Lin arrived in the United States three years ago and bought 720 acres of farmland near Bakersfield, CA, ready to fulfill his personal American dream. Mr. Lin, who cannot speak English, began cultivating his land to grow bamboo and other vegetables to cater to southern California's growing Asian population. He had purchased the land with the understanding that it could be farmed and there were no restrictions on what he could do. According to Tony Snow, an editorial columnist for the Detroit News, "(Mr. Lin) had no idea that his property was listed as natural habitat for the Tipton kangaroo rat, a member of the endangered species club. The feds keep such information secret and inform property owners of their legal liability only when they try to do something potentially criminal, like plowing a field..." Mr. Lin, who paid \$1 million for his land, a tractor, and an irrigation system, has been told he cannot farm his land until he gets state and federal permits. In addition, he has been charged with knowingly destroying the habitat of an endangered species and killing individuals of the species. If convicted, he faces one year in prison and \$300,000 fines. Mr. Lin has suffered a stroke as a result of the stress caused by these charges.

REALITY: Mr. Lin was fully informed of the situation but preferred to violate the law.

Mr. Lin was very well aware that his property included Tipton kangaroo rat habitat. He was informed of that fact by the U.S. Fish & Wildlife Service by letter dated November 24, 1992, almost two years before his employee was apprehended plowing a field containing endangered habitat. This letter stated "...the Department has identified this area [Mr. Lin's property] as native threatened and endangered species habitat that now contains significant populations of both state and federally listed threatened and endangered species..." He was advised that "unpermitted" development of the land would cause adverse impacts on endangered species and would constitute a violation of three environmental laws. He was also advised that "...development of threatened and endangered habitat through the incidental take permit process..." was provided for in all three laws. The letter signed by Scott Williams, USFWS game warden in Bakersfield, offered him assistance in obtaining a permit and gave him the names and phone numbers of agents with both the California Department of Fish & Game and the U.S. Fish & Wildlife Service whom he could contact. Mr. Lin did not request assistance or apply for an incidental take permit.

On February 12, 1994, a California game warden observed plowing activity on Mr. Lin's farm. She asked the employee doing the work, Mr. Robert Sanchez, if permits had been obtained. The answer was no. She advised Mr. Sanchez that the land being plowed was critical habitat for three endangered species, the San Joaquin kit fox, the Tipton kangaroo rat, and the blunt-nosed leopard lizard. Another employee stated that they (the workers) were aware of the existence of the kangaroo rats on the property. The warden then advised the employees, in the presence of Mr. Lin's son Yider "Joseph" Lin, of the necessity of obtaining an incidental take
(continued...)



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Washington, D.C. 20036-2266
202-797-6800

permit before doing any further plowing. On February 17th, an USFWS agent visited Mr. Lin's farm and observed that additional land had been plowed and vegetation destroyed since the California warden's visit on February 12. The same employee, Mr. Sanchez, confirmed that he had understood the warning given to him and that it had been passed on to the owner, Mr. Tuang Ming Lin. Contrary to the outraged accounts of various newspaper columnist, Mr. Lin was fully informed of the situation but preferred to violate the law rather than cooperate and apply for an incidental take permit. Even then, he was given a verbal warning through his employee and his son and had a second opportunity to comply with the law. He chose to ignore this warning and persisted in illegal destruction of endangered habitat. Under the circumstances, the USFWS had no alternative but enforce the law. All of this could have been avoided if Mr. Lin, in November 1992, had simply applied for an incidental take permit.

The allegation that Mr. Lin was ready to cultivate his 720 acres and grow profitable crops is also highly questionable. According to the Los Angeles Times, June 10, 1994, the land he had purchased was heavily polluted with salt and would require "years of irrigation" before anything could be grown. This fact, along with the fact that the land was designated as critical habitat, was apparently not communicated to Mr. Lin by the sellers of the property or their agent. Perhaps Mr. Lin is a victim, but he is of questionable real estate practices not of the Endangered Species Act or the Federal Government.

FAIRY TALE: ESA FORCES HOMEOWNERS TO WATCH HOMES GO UP IN SMOKE DURING CALIFORNIA WILDFIRES!

CLAIM: The Stephen's kangaroo rat was listed as endangered under the Endangered Species Act in 1988. After the listing, residents of Riverside County, California were prohibited from clearing firebreaks in the rat's habitat. The Fish & Wildlife Service admitted that disking is the most effective method of weed abatement for fire control purposes, yet the service barred property owners from disking based on habitat protections of the ESA. The Service also threatened to use sanctions against the fire department if it recommended the use of disking for weed abatement areas populated by the kangaroo rat. Many acres of land lay fallow from 1988 through 1993 as a result of the FWS restrictions. The Service barred property owners from removing brush, a known fire hazard, through methods of farming including disking. If these acres had been cleared, they would have created a firebreak. Instead, the fields of brush and high grass were fuel for the fire.

Twenty-nine homes and over 25,000 acres were lost in the October 1993 Riverside, California Wildfires. Many of these home owners believe that disking around their property would have prevented the fire from reaching their homes. "...One homeowner stated to the media after the fire that his last-minute disking about 120 feet beyond his property line was the only reason his home and property were saved." The bottom line here is that the habitat protection of the Stephen's kangaroo rat under the ESA put both property and human life at risk.

REALITY: The fire was unstoppable.

The Stephen's kangaroo rat is small nocturnal mammal within the rodent family. The species makes its home in burrows in the grasslands and coastal sage of southern California. The Stephen's kangaroo rat was listed as endangered in 1988. The Fish and Wildlife Services determined that disking posed a threat to individual species and applied the incidental take permit requirements of the ESA if disking was to be performed within the

kangaroo rat habitat. Based on the County counsel's concern that the ESA would be violated should disking occur, the Riverside County Fire Department issued a prohibition against disking as a form of weed abatement and fire prevention. The fire department, County Council and the Service all agreed that other forms of weed abatement that did not disturb the ground would provide adequate fire breaks and not harm individual species of the Stephen's kangaroo rat. The fire department recommended mowing with a low blade as an alternative fire prevention weed abatement procedure to disking. No one disagreed with the prohibition on disking until the wildfires of 1993.

The California wildfires of 1993 were a great tragedy. However, the loss of homes and private property was unavoidable. The wildfire could not be stopped. Winds of up to 80 miles an hour fanned the flames and 12,000 acres were burned in the first six hours, during which time most of the 29 homes were destroyed. The fire, characterized by walls of flame 100 to 150 feet high, jumped interstate highways, paved and gravel roads, cleared agricultural fields, and the San Diego canal.

A report by the General Accounting Office stated conclusively that the Endangered Species Act had nothing whatever to do with the destruction of 29 homes by the wildfire. Key findings of the report showed that "...the loss of homes during the California Fire was not related to the prohibition of disking in areas inhabited by the Stephen's kangaroo rat." They also noted that 18 of the 29 homes were mobile homes and as such were substantially more likely to fall prey to fire. Another key finding was that "...disking had been performed around some destroyed homes. For some of the homes that survived the fire, weed abatement by various methods including disking had been performed, while for others, no weed abatement had been performed." One homeowner who at first claimed disking would have saved her mobile home later stated that a rocky hillside behind her home could not be disked or mowed and the fire swept over the hill and destroyed her home in about five minutes. Also, the homeowner who claimed last minute disking saved his home later acknowledged that the wind direction changed as the fire approached his property, pushing the fire in a direction away from his home.

FAIRY TALE: BLACK-CAPPED VIREO DEPRIVES DEVELOPER OF HER LAND AND HER PROPERTY RIGHTS!!

CLAIM: Beth Morian, a lifelong environmentalist and member of the Board of Directors of the Houston Zoological Society, learned that 34 pairs of the Black-capped vireo had been found in and around her family's 1,300-acre Davenport Ranch, west of Austin, TX. The Morian family donated 62 acres, worth \$1.9 million, to the city of Austin for a nature preserve. Meanwhile, they started to sell 66 home sites on 89 of the remaining acres, investing at least \$2 million to develop the property. Then, the USFWS placed the Vireo on the endangered species list, freezing development activity. Now, half of the Morian's property and their investment remain in limbo. Morian says: "They have taken our land. We want to see species preserved, but people should have a place too."

REALITY: The Black-capped vireo was listed as endangered by the USFWS in 1987; the Morians decided they wanted to develop their land in 1991 – four years after the listing occurred. The Morians were very well aware of the status of the vireo, but attempted to develop vireo habitat without applying for an incidental take permit or otherwise complying with the law. They were caught. The USFWS advised them to stop development.

The Morians have received a 10(a) (incidental takings) permit which allows a proposed housing project to proceed on about half of their property. The second part of the project is still under review and the FWS is moving toward approving a permit.

FAIRY TALE: THE KANGAROO RAT CAUSES OVERCROWDING FOR INNOCENT FAMILY!

CLAIM: When Michael Rowe applied for a permit to add to his house, he was told that his acreage was in the middle of a study area for the endangered Stephen's kangaroo rat, forcing Rowe to hire a biologist to survey his property at a cost of as much as \$5,000 before building. If a single rat was found, he could not build. If none were found, then he could develop his property if he paid the government "mitigation fees" totalling nearly \$40,000 to buy land elsewhere for a rat preserve. He is therefore unable to expand his house and cannot properly accommodate his large family.

REALITY: Mr. Rowe's total cost would be \$1000, not \$45,000 to obtain the necessary permit to expand his house, as provided by section 6 of Riverside County, CA ordinance no. 663.5, adopted January 2, 1990. Dr. John Bradley of the Carlsbad, CA office of the USFWS estimates that Mr. Rowe would pay only \$500 to \$1000 maximum for a survey; however, Dr. Bradley, a fully-qualified biologist, offered to do the survey for Mr. Rowe at no charge. Mr. Rowe did not accept this offer. If a survey was conducted and rats were discovered within 100 feet of Mr. Rowe's house, construction could proceed upon application for and receipt of a section 10 permit.

FAIRY TALE: THE STEPHEN'S KANGAROO RAT CAUSES WATER POLLUTION!

CLAIM: Outside Beaumont, California, an abandoned rocket test site polluted with hazardous chemicals was threatening ground water supplies. Yet, cleanup efforts were delayed for two years because they, too, might disturb the Stephen's kangaroo rat.

REALITY: The Lockheed Corporation owns the 9,117 acre abandoned rocket test site. Fourteen acres are polluted with hazardous chemicals and there is evidence of ground water contamination. The delay in cleaning up the contamination was caused by Lockheed's failure to take action, not by any provision of the Endangered Species Act. In 1992, Lockheed ask the USFWS to consider the approval of a clean-up plan that would be covered under a section 10 "scientific collection permit." The USFWS gave its approval and facilitated this approach, and the cleanup effort is still underway.

FAIRY TALES: THE RED-COCKADED WOODPECKER DESTROYS PROPERTY VALUES!

CLAIMS: Benjamin Cone, Jr. owns 8,000 acres of timberland near Greensboro, NC. 1,600 acres of this property has been affected by the red-cockaded woodpecker. Cone's sound forestry practices attracted the woodpecker by inadvertently creating prime nesting areas for the birds. Cone now says "I cannot afford to let those birds take over the rest of my property. I'm going to start massively clearcutting."

REALITY: Mr. Cone was offered two practical alternatives for dealing with the woodpeckers on his property which would permit him full use of his land. He has refused to utilize these alternatives, yet he complains that the ESA prevents him from "using" his property. However, he continues to use his land to take pine straw to sell for profit; he thins and clearcuts the timber on his land and sells it; and he operates a hunting lease, charging hunters a fee for hunting on his property. Although he has been prevented from clearcutting that portion of the land currently occupied by red-cockaded woodpeckers (approximately 600 acres, not 1,600 acres) he has been legally thinning the RCW habitat for a number of years.

FAIRY TALE: AN INNOCENT FARMER'S LAND IS CONFISCATED BECAUSE OF THE BLUNT-NOSED LEOPARD LIZARD

CLAIM: Ted Off, a farmer in the California San Joaquin Valley, was accused of destroying the habitat of the endangered blunt-nosed leopard lizard when he plowed a field to plant barley. He says, "We had never seen any lizards on our land in the 50 years it was in our family. We had no idea we were doing anything wrong." To avoid an expensive legal fight, the Offs handed over 60 acres of their property to the USFWS, and the agency plans to purchase an additional 100 acres.

REALITY: Mr. Off's claim that "We had never seen any lizards on our land ... we had no idea we were doing anything wrong" is not supported by the facts. Twenty years prior, the Off family sold a portion of their land to the USFWS to be incorporated in the Pixley National Wildlife Refuge as valuable habitat for the blunt-nosed leopard lizard. Not only did the Offs know about the existence of the lizard on their land twenty years prior, they made money from the fact!

After the sale, the Offs were informed by the USFWS that an additional 160 acres of their property (which borders the refuge) is sensitive habitat area for the lizard. USFWS advised them that any activities, such as plowing, that would disturb the lizards would require an incidental take permit. In 1989, without seeking a permit, the Offs started plowing the 160-acre plot to prepare for the construction of three dairy buildings. This was done in full knowledge of and in direct violation of the law. In April 1992 a settlement resolving the charges against the Offs was entered between the Offs and the USFWS and the California Game and Fish Commission, a settlement was agreed which represented compromise and a favorable outcome for both the Offs and the USFWS.

FAIRY TALE: THE MOTHER OF ALL WOODPECKERS

CLAIM: According to the Timber Industry Labor-Management Committee's pop-up brochure, the red-cockaded woodpecker has done what Saddam Hussein could not do, defeating the US Army by closing or delaying construction of essential military facilities at Fort Bragg, NC.

REALITY: No areas of Fort Bragg are currently closed due to red-cockaded woodpeckers. In addition, construction of two buildings at Fort Bragg was delayed from November 1990 to July 1991 because of an Army construction moratorium, not because of the woodpecker. While the need for the Army to consult with FWS under the ESA has caused some temporary delays and area closures, no necessary training activities at Fort Bragg have been stopped due to endangered species issues.

FOR MORE INFORMATION ON THE PRECEDING STORIES, PLEASE CONTACT:

John Kostyack, Counsel: (202) 797-6879
 Suzanne Jones, Legislative Representative: (202) 797-6666
 Jim Irwin, Media Coordinator: (202) 797-6828

FAIRY TALE: THE NATIONAL BIOLOGICAL SURVEY – A GOVERNMENT PLOT TO DESTROY PRIVATE PROPERTY RIGHTS?

CLAIM: Wall Street Journal, November 2, 1993: "...Dr. Thomas Lovejoy, the Interior Department's scientific adviser, says the [National Biological] Survey's findings would "determine development for the whole country and regulate it all, because that is our obligation as set forth in the Endangered Species Act."

REALITY: This quotation, widely distributed and constantly repeated by anti-environment groups, is an outright fabrication. Dr. Lovejoy did not say this. Representative Bruce Vento, Minnesota, on October 26, 1993, stated during debate on the National Biological Survey: "...On October 20, Dr. Lovejoy submitted a transcribed copy of his remarks from which the quote was reportedly taken, with a letter indicating that attributing this quote to him was not simply a gross misstatement of what he said, but rather it turns out to be a fabrication."

The source of this false quotation was Dr. Lovejoy's speech during the "From Rio to the Capitols: State Strategies for Sustainable Development" Conference, held in Louisville, KY, May 25-28, 1993. Dr. Lovejoy spoke on May 26. The transcript of his entire speech was reprinted in the Congressional Record, October 26, 1993, pages H8478-79. The ESA does not issue regulations to determine and control development. Under the Act all regulatory responsibilities are assigned to the National Biological Survey.

FAIRY TALE: THE BUTTERFLY PROBLEM

CLAIM: In a widely-read cover story entitled "The Butterfly Problem" in the January 1992 issue of The Atlantic Monthly, the authors portray an Oregon developer whose lifelong dream of carving golf course fairways on a section of the Oregon coast was snuffed out in the morass of ESA protection of an endangered butterfly.

REALITY: According to people involved in the project, FWS officials bent over backwards to help the developer obtain an incidental take permit under the ESA, recognizing the development of a habitat conservation plan in connection with the golf course would assist the long-term survival of the butterfly. Unfortunately, the developer could not satisfy Oregon's land use planning laws on grounds unrelated to the ESA, and he abandoned his project.

FAIRY TALE: TEXAS WIDOW – A VICTIM OF THE ESA

CLAIM: In testimony before the Senate Environment and Public Works Committee in April, 1992, a representative of the National Cattlemen's Association told of a widow near Austin, Texas who wanted to clear her fencerow of brush, only to be threatened with prosecution by an unfeeling USFWS.

REALITY: On February 12, 1991, concerned citizens notified the USFWS that Martha Rodgers was clearing an area of their property along the road. The FWS notified Rodgers that clearing of a thirty-foot wide, one-mile long fencerow might harm endangered songbird nesting habitat in violation of the ESA. Within three weeks Ms. Rodgers cooperated fully and returned all requested information. After meeting with Ms. Rodgers and assessing the situation, on April 25, 1991, the FWS gave her the go-ahead to clear the fencerow.

BILL K. BREWSTER
30 DISTRICT
OKLAHOMA
COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
WASHINGTON OFFICE
1727 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3503
(202) 275-4565



Congress of the United States
House of Representatives
Washington, DC 20515-3603

DISTRICT OFFICES
232 POST OFFICE BUILDING
P.O. Box 1807
ADA, OK 74820
(405) 436-1890
101 WEST MAIN STREET*
ARDMORE, OK 73401
(405) 226-6300
118 CARL ALBERT FEDERAL BUILDING
MUSKOGEE, OK 74621
(918) 423-5551
173 W 7TH AVENUE, SUITE 206
STILLWATER, OK 74074
(405) 743-1400

STATEMENT OF
THE HONORABLE BILL K. BREWSTER
BEFORE THE
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

May 10, 1995

Mr. Chairman, thank you for allowing me the opportunity to testify today. It is my hope hearings such as this will allow us to move the Endangered Species Act and other conservation efforts toward a more workable legislative and regulatory framework.

During the last few years, we have experienced an explosion of government over-regulation. The public opinion backlash resulting from runaway regulation is threatening to nullify years of constructive environmental conservation efforts.

Without balancing environmental and economic costs and benefits, we will continue to alienate and lose public support for conservation efforts. Without public support, no program will be a practical success. In the case of endangered or threatened species, the effects of such a public backlash is even more critical.

Not surprisingly, much of the habitat critical to sensitive wildlife is impossible to police. Instead, the maintenance of the habitat and species is dependent upon the stewardship of the farmer, rancher and sportsman. Such stewardship cannot be promoted if the landowners and sportsmen find themselves at odds with the protected plant or animal. Therefore, we must develop systems which promote conservation among individuals who are in a position to have the greatest positive impact.

A popular conservation program may be achieved only with a combination of practical legislation and regulation and voluntary programs which provide incentives to practice environmentally responsible conservation. While there will always be a place for minimal amounts of mandatory legislation and regulation, those regulations must take the human costs into account.

In the 103rd Congress, as Chairman of the Congressional Sportsman's Caucus, I introduced H.R. 2207, the "Common Sense Amendments for All Endangered Species Act. The bill required the impact on fish and wildlife management practices, including fishing, hunting, and trapping, be taken into account when any action under Endangered Species Act was proposed.

Such consideration would have allowed for greater flexibility when the listing of any species or the designation of critical habitat was being considered. Such evaluation would have also included notification of the appropriate state or local agencies responsible for the conduct and oversight of fish and wildlife management practices.

Until similar flexibility is allowed, the regulation promulgated under the Endangered Species Act will continue to alienate the public, instead of promoting popular support of threatened and endangered species and their habitats. I anticipate a similar version of the bill will be introduced during the 104th Congress.

If we look at the most successful government programs, they inevitably involve incentives, not mandates. A perfect example is the Conservation Reserve Program or the CRP. CRP provides an excellent example to demonstrate how environmentally beneficial programs can be structured and administered.

Agricultural production, maintenance of viable populations of wildlife and environmental quality are not mutually exclusive objectives. CRP proves agricultural policies and environmentally oriented objectives can be compatible and result in public benefits on a national scale. Since the mid-80's, the CRP has demonstrated its high potential as a **proactive** management strategy.

CRP participation is voluntary. It is an incentive-based conservation program that helps landowners meet their land management and conservation objectives. CRP compensates private landowners for producing conservation benefits which the nation as a whole enjoys, but for which no private market incentives exist.

CRP has created 36.4 million acres of grassland and other wildlife habitat. This represents an area equivalent in size to Illinois or Iowa and twice the size of all National Wildlife Refuges and state wildlife management areas within the lower 48 states.

CRP is demonstrating that widespread wildlife population declines are reversible by extensive habitat restoration. In the long term, CRP could prevent many species from becoming threatened, endangered or extinct. The greater prairie chicken, formerly a state-listed endangered species in Colorado, was changed to threatened status

in late 1993, because of substantial population and range increases fostered in part by CRP habitats. In Idaho, the Columbian sharp-tailed grouse, a candidate species for federal listing, is making a dramatic recovery on CRP lands.

Some estimates report 3 million additional ducks were produced in 1994 in the Dakotas and Montana because of CRP. In addition, other reports show grasshopper sparrows, lark buntings and eastern meadowlarks are increasing in areas with high CRP enrollment. In Minnesota, North Dakota, Ohio and South Dakota, CRP has more than doubled ring-necked pheasant populations. In Montana, statewide pheasant harvest has tripled since CRP began. In Texas, CRP has provided lesser prairie chickens with increased feeding, nesting and brood habitat in counties where they have been absent for decades. However, birds are not the only beneficiaries of the CRP. In the panhandle region of Oklahoma, CRP is responsible for a three-fold increase of pronghorns. Apparently, the **voluntary CRP** is helping to prevent many species from becoming threatened, endangered or extinct.

The environmental and wildlife benefits stemming from CRP extend well beyond the boundaries of fields enrolled in the program and symbolize a public investment representing much more than the funds spent to establish and maintain the vegetative cover on the land. CRP has provided the integral foundation needed to support both nongame and game species by increasing habitat in sufficient quality and quantity to make a difference on both the local and regional scales.

A concern expressed during the early years of the program was that negative economic impacts on rural communities would be substantial as land was removed from production. Results of impact analyses show that is not the case. Quite to the contrary, studies involving the analysis of numerous sites show the impact is minimal and that the resulting negative impact may be offset, partially or completely, by gains from **wildlife activities**. As those of us from rural America know all too well, net farm income, though volatile, remains stagnant.

CRP is not only responsible for \$3.5 billion in air and water quality benefits. CRP is also responsible for several other incidental benefits, which is leading to build public support for conservation initiatives. In particular, CRP has stimulated rural economic activity across the country through increased expenditures associated with hunting and other wildlife-related recreational activities. For example, the program is responsible for generating \$4.5 billion in small game and waterfowl hunting and \$4.1 billion in **wildlife viewing** benefits. In particular, increased pheasant populations in South Dakota attracted almost 48,000 non-resident and 80,000 resident hunters in 1993. While engaged in this recreation, these hunters spent more than \$50 million in the state.

In closing, the key to biodiversity and threatened species protection is the establishment of high quality, well distributed habitat, free from severely toxic compounds. If proper incentive based options such as CRP are made available, rural america can provide these qualities at a relatively low cost. Therefore, in addition to practical, common sense changes to the Endangered Species Act, we must continue to support and expand pograms such as CRP.

Thank you, Mr. Chairman.

Statement
by
Congressman Gary A. Condit
before the
U.S. House of Representative Task Force on
the Endangered Species Act

May 10, 1995

The Endangered Species Act Task Force has done an outstanding job of bringing the legislative process directly to the people who are most impacted by the Endangered Species Act-- farmers, businessmen and women, local government, and environmentalists.

The Endangered Species Act is putting farmers out of business and driving business out of this country. We need to restore people's confidence in our government's ability to be reasonable and to act with common sense. We can do this by incorporating several general concepts into ESA reforms:

- Decisions should be based upon sound scientific data;
- We must consider the economic and social consequences of our actions;
- We must protect private property rights.

I understand and appreciate the value of protecting species that are truly in danger of becoming extinct. However, these decisions need to be based on sound scientific data and with consideration to the economic impact they will have on local communities. This is not happening under current law.

I would like to share with you two examples that I have witnessed first hand that demonstrate the need for ESA reform:

The recent floods in California illustrate the need to put some common sense into the process. The flood in the City of Newman was caused by the nearby rain-swollen, debris-filled Orestimba Creek. Similar circumstances along the Pajaro and Salinas Rivers caused extensive damage to Monterey and Santa Cruz Counties as well.

For years, officials in these communities have been consulting with officials from the Army Corps of Engineers and the U.S. Fish and Wildlife Service to receive authorization to remove the brush and debris from these waterways. It took over a year to receive permits for two portions of the Orestimba Creek, because of the cumbersome consultation process related for protection of the Elderberry bush, habitat for the Valley Elderberry Longhorn Beetle. It is expected to take as long to

clear the debris-filled section of Orestimba Creek that is responsible for the Newman flood, regardless of the need to avert future disasters of this kind.

Pajaro and Salinas River Flood Control District officials never reached agreement with the Fish and Wildlife Service regarding protection of an ivy plant, and, as a result suffered a fate much worse than the City of Newman.

Another case in point involves an application before the Bureau of Reclamation to allow for the delivery of water to a site currently being developed for a factory outlet center in Santa Nella. This application is required to satisfy a technical requirement under the law, and is fully supported by the Bureau of Reclamation, the County of Merced and other involved water districts.

Nonetheless the entire project in Santa Nella is being held up because the U.S. Fish and Wildlife Service has determined that development in the area, although outside the area of the endangered kit fox habitat, could eventually result in additional development, which in turn could eventually have an impact upon kit fox habitat!

While some people may not agree that the problems associated with these examples are a result of the Endangered Species Act, I can say first hand that they are a major contributor to the problems these communities and businesses in my district face every day with way the ESA law is currently administered.

I am confident that the task force's seven field hearings and today's hearings will help provide the essential information that is needed for the task force to come up with solutions which will ensure that sound science, consideration of economic impact and private property rights are all part of the process.

Thank you again for allowing me this time.

Examples for GAC

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**EDWARDS STATEMENT TO THE HOUSE RESOURCES COMMITTEE
TASK FORCE ON ENDANGERED SPECIES -- MAY 10, 1995**

"Mr. Chairman and members of the taskforce, I want to thank you for holding this important hearing on the Endangered Species Act.

This hearing, along with the others you have held across the country, is a good start towards an open, honest and what I believe will be a vigorous debate on environmental law.

Unfortunately -- as you and I and especially our constituents have learned the hard way -- the scope of the Endangered Species Act has been considerably enlarged and distorted from what was intended in the 1970s.

The list of abuses and absurd government pronouncements grows quicker than the population of any plant, animal or insect species listed under the Endangered Species Act.

Somewhere the spirit of the Endangered Species Act was lost in the morass of requirements, restrictions and recovery plans. Where once the Act was used to preserve our nation's natural resources, now it is being used to protect everything from flies to livestock killing predators.

Common-sense is sorely needed in the Endangered Species Act and how it is implemented and enforced. The rights of private property owners are now endangered by a whole host of environmental laws twisted to give more protection to birds and bugs than to people and private property rights.

I believe reform is necessary. The Endangered Species Act hit in my own backyard with a U.S. Fish and Wildlife Service proposal to designate portions of 33 Texas counties as critical habitat for the golden-cheeked warbler.

That proposal and countless others in force across the country are an indication that the Act and the federal agencies who enforce it are out of control.

For instance, Texas is home to 303 of the 3,900 species that are candidates for listing, according to the U.S. Fish and Wildlife Service. Included in the list are two Texas insects -- the Superb Grasshopper and the Texas Asaphomyian Tabarid Fly.

Most people in my Congressional District are not partial to flies and hoppers. In fact, I would bet most folks are trying to eradicate anything that eats crops or is a buzzing health hazard.

Now why, why would the federal government be spending taxpayer dollars to protect pests? We either need to give folks a good reason or put an immediate end to this type of foolishness.

You heard the people in Central Texas when the Task Force met in

Boerne. Central Texans have a well-founded fear of the Endangered Species Act.

They do not want to see their private property rights lost to protect a bird that spends most of its time south of the border. I agree, and that is one reason why I support reform of the Endangered Species Act.

It's time Washington learned what people already know. The Endangered Species Act long ago surpassed the intent of Congress.

We know this has gone too far when a fly has more pull with the federal government than a family farm.

The task during the next several months in this Congress should be the crafting of legislation that addresses the concerns of private property owners while protecting our natural heritage.

The work will not be easy, but the goal must be pursued.

To reach that goal I believe that provisions must be included for compensation, cost/benefit analysis, risk assessment and the use of sound science in the listing process.

An attempt should also be made to include landowner incentives to preserve and protect species. The Conservation Reserve Program is an example of government policy that has worked. Expanding this voluntary program to include the preservation of endangered species would be a win-win situation.

Environmental law also needs to be crafted to provide property owners with expanded rights. What would you say of a law that provides rights to one group while completely shutting out another? Unfair? Unwise? Unconstitutional?

I would call it the Endangered Species Act.

For example, under Section 11 of the Endangered Species Act, a person can go to court to force the Secretary of Interior to have a species listed or to enforce any other provision of the Act.

A property owner under the current Endangered Species Act has no recourse in the courts. They cannot appeal a listing and have very little on their side when opposing a recovery plan.

That type of unfairness has to be addressed and rectified. My constituents, rightly, are not happy when they cannot have their voices heard or their concerns addressed.

Reform of the Endangered Species Act and other environmental legislation must take their concerns into account.

Of equal importance is the critical need for any legislation to be as concise as possible. We need an Endangered Species Act

whose implementation leaves little to the imagination of the federal agencies who enforce it.

Before closing, I have one point I'd like to make with those who resist any reform. I suggest that they work with reformers to ensure that reasonable environmental law does not become extinct.

There will be reform of the Endangered Species Act and environmental law that is balanced, fair and effective. That will happen whether you work with us or against us.

Mr. Chairman, I thank you again for offering the opportunity for both sides to present their views.

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**Statement of Representative Elizabeth Furse
Resources Committee Task Force Hearing on
Reauthorization of the Endangered Species Act
May 10, 1995**

Thank you for allowing me to testify before you on reauthorization of the Endangered Species Act (ESA). I appreciate the Task Force's desire to hold hearings around the country to hear directly from the public on the issue. However, virtually all of these field hearings have been held in the handful of so-called "trouble spots" where there have been conflicts involving the implementation of the Act, and not in locations where the ESA has been implemented without problems or has fostered species "success stories."

As a result, I am concerned that Task Force members haven't heard what the majority of my constituents and most Americans feel -- that the ESA has largely been a successful statute and that reauthorization legislation should fine-tune and improve the Act, not undermine or weaken it. So I am grateful to have the opportunity to express these views to you today.

There are several major points I'd like to emphasize about the ESA. First, the ESA has enjoyed quite a few successes -- the bald eagle, sea otter, American alligator and brown pelican to name just a few.

One success story in my backyard -- and in that of Task Force member, Congresswoman Linda Smith -- is the Columbian White-tailed deer. This rare deer was once thought to be extinct. But, following the Fish and Wildlife Service's recovery plan, enough critical habitat has been acquired to allow the deer's population to rebound to more than 3000 animals. Moreover, protection of the deer has been widely supported by an extraordinary partnership of local residents, the Nature Conservancy, the Oregon Department of Fish and Wildlife, the Fish and Wildlife Service, Portland General Electric Company, and the James River Corporation, which owns the nearby pulp and paper mill. These habitat protection measures have been so successful that the Fish and Wildlife Service and the state of Oregon are now in the process of de-listing the species.

The Columbian White-tailed deer illustrates that it is indeed possible to work together cooperatively to take a species off of the endangered species list. This is how the ESA should -- and does -- work.

Second, to quote from the Act itself, species are of "aesthetic, ecological, educational, historical, recreational and scientific value" to our nation. Plant and animal species represent a biological treasure chest which holds the key to new medicinal cures and improved agricultural products. Indeed, nearly 40 percent of all pharmaceutical products are derived from natural compounds in different species, including cancer and heart disease drugs that have saved numerous lives. Species and the habitat in which they live also represent the "natural capital" which helps fuel our nation's economy. Species extinction is the signal that we are being poor stewards of this capital -- and our economy will suffer accordingly.

I have heard it said that the ESA doesn't take into account the "human factor." I ask you, which humans? There are many humans whose livelihoods depend on ESA protections.

A good illustration of this is the disastrous decline of the Pacific Northwest's world-famous salmon runs. Where once 16 million salmon fought their way up the Columbia River to spawn, only a few thousand now make it to the journey's end. These record-low salmon returns have had devastating impacts on the ecology, culture and economy of the region. As recently as 1988, salmon fishing contributed more than 62,000 jobs and \$1.25 billion to the regional economy. But since 1988, nearly 47,000 jobs have been lost, and fishing revenues have plummeted by 90 percent. The decline has taken an economic toll on fishermen and women, charter boat owners and guides, tackle suppliers, mom and pop gas stations, marinas, motels and restaurants dependent upon fishing tourists, and the coastal communities where these businesses are located. Hundreds of small businesses in the Northwest are dependent upon healthy fisheries for their revenues.

What has been the role of the ESA in all of this? The Act has been the messenger of the bad news that we are running out of fish. With the listing of three species in the Snake River, we have been legally forced to admit that something is indeed wrong, that our stewardship of our watersheds and our rivers is inadequate. The Act has required us to face the problem and not run from it; to roll up our sleeves and begin working to bring our salmon back.

Some people seem to have confused the messenger with the problem itself. Shooting the messenger won't change the message. If species like our Northwest salmon are heading for extinction, weakening or repealing the ESA won't bring them -- or the economically vital industry they provide -- back. It will only make the situation much worse.

I'd like to quote from the Pacific Coast Federation of Fishermen's Associations, the largest organization of commercial fishermen and women on the West Coast, from San Diego to Alaska. Here's what they have to say about the ESA:

"There is... no industry more regulated under the ESA presently, nor more likely to be regulated in the 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... Without a strong ESA, there will never be salmon recovery in the Northwest..." They add, "The fishing industry would be devastated if this last barrier to extinction of the species it depends upon were removed."

Recovering endangered salmon is not an environment versus jobs issue; it's a job versus jobs issues, or more accurately, it's an issue of short-term profits versus long-term, sustainable economic development which operates within ecological realities. And Pacific salmon represent just one example; our nation's fishing industry -- which contributes \$111 billion annually to our economy and provides jobs for more than 1.5 million Americans -- depends on numerous marine and freshwater fish species that are in trouble and in need of the ESA's protections.

Third, Americans care about endangered species. In poll after poll, a majority of citizens support maintaining the Act's provisions for recovering dwindling species. For example, in a recent statewide poll commissioned by Columbia River utilities, more than 60 percent of Washington residents believe salmon survival is a very serious problem and nearly 70 percent said they'd be willing to pay an extra \$5 per month in their electric bills to help bring the salmon back -- a price

tag higher than any recovery proposal suggested yet.

None of this is to say that the ESA is perfect. Implementation of the Act can certainly be improved. Modest amendments should be made to make the Act more proactive in protecting species before they reach the brink of extinction and require drastic, costly measures for recovery. More emphasis should be placed on protecting ecosystems and priority should be given to multi-species recovery plans rather than costly species-by-species plans. And reauthorization legislation should also include incentives for private landowners to voluntarily protect species on their property because I believe most property owners want to be good stewards of their land if they are given some encouragement and assistance to do so.

These changes, however, should not weaken the Act or undermine its fundamental commitment to the protection of our nation's natural heritage. I urge the Task Force and other Resource Committee members to support an ESA reauthorization bill that preserves and builds upon our country's leadership in the protection of its biodiversity.

NORTHWEST SPORTFISHING INDUSTRY ASSOCIATION
(Partial listing as of 1-1-95)

- AGENCY SERVICES GROUP
A LURE FLY CO
-GARCIA
A LUME TACKLE
ACTIVE MARKETING
AL'S LANDING
ALASKA F&G SPORT FISH DIV.
ALASKA PREMIER BAIT
ALL-SPORTS SUPPLY, INC.
ANCHOR RITE
ANDE MONOFILAMENT
ANGLERS GUIDE SERVICE
ASSN OF NW STEELHEADERS
AUBURN SPORTS & MARINE
B & E SALES COMPANY INC
BASS MENU
BAILEY, DUSKIN & DUFFLE
BATES & ASSOCIATES
BETTY KAY CHARTERS
BI MART
BROWN'S LANDING
BUFFALO BILL'S
CAMBO'S OUTDOORSMAN
CASNE ENGINEERING INC
CATCHER CO.
CC ANDERSON GUIDE SERVICE
TRAL WA FISH ADVISORY COMM.
CHENEY SPORTS
COAST TO COAST-LYNDEN
COGHLAN'S LTD
COMPLEAT ANGLER
COVE PARK GROCERY & TACKLE
CRAN-MAR TROUT FARM
CRANE PRAIRIE RESORT
CURRIER & ASSOCIATES
D & D DISTRIBUTING
DANIELSON CO.
DENNIS REPRESENTATIVE CO.
DEPOE BAY TRUE VALUE
DIANA SMITH LTD
DONALD P. HARRY INC
DORANS GUIDE SERVICE
DUFFLE BAG, THE
EMBARCADERO DOCK
ENGLUND MARINE SUPPLY
FARWEST SPORTS
FISHERMAN'S MARINE SUPPLY
FISHING WITH STAN
FLYING PENCIL PUBLICATIONS
FOLBE PRODUCTS
NK AMATO PUBLICATIONS
* FRED MEYER INC
* G I JOE'S INC
G. LOOMIS, INC
- GAMAKATSU USA
GAMBLER BOATS WEST
GUNARAMA WHOLESALE
H & H OUTDOOR
HANSEN'S FURNITURE CO.
HEIDI'S INN
HILDEBRANDT CORP
HOLIDAY MARKET
HOLTHE WALLS ASSOCIATES
HOOKER INVESTMENTS
HUNGRY WHALE
ILWACO CHARTER BOAT ASSN
J & K OUTFITTERS
JERRY'S SURPLUS
JOHN B. MERIFIELD, INC
JOHN'S SPORTING GOODS
JON B. CASH LTD
K T MORRIS & ASSOCIATES
KEENEY'S OFFICE PRODUCTS
KINGFISHER ENTERPRISES
KLIJEN HONDA
L.H. FRENCH CO
LAMIGLAS INC
LEISURE SALES, INC.
LEWIS RIVER SPORTS
LINDSEY & ASSOCIATES
LNU ASSOCIATES
LUCKY ONE
LUHR JENSEN & SONS
MACK'S LURE MFG CO
MASCHMEDT & ASSOCIATES
MAX MORTON COMPANY
NARROWS MARINA
NESTUCCA VALLEY SPTG GOODS
NEWPORT MARINA STORE
NEWPORT TRADEWINDS
NORTH WEST TACKLE SUPPLY CO
NORTHWEST EYE CLINIC
NORTHWEST OUTFITTERS SUPPLY
O'LOUGHLIN TRADE SHOWS
OLSON'S RESORT
OUSLEY SPORT SHOP/SHAMROCK
OUTDOOR FLYFISHING STORE
OWEN BROWN & ASSOCIATES
PACIFIC SALMON CHARTERS
PEAK SALES & MARKETING
PENN FISHING TACKLE MFG
PERKINS VARIETY APPLES
PHIL'S SPORTING GOODS
PORT GARDNER SPORTS SERVICE
POULSBO SPORTING CENTER
POULSEN CASCADE
PRICED LESS
PRO SPORT DISTRIBUTING
- PUGET SOUND ANGLERS
PSA, WHIDBEY ISL
REEL NEWS, THE
RICHLAND ROD & GUN
RITCHES CUSTOM TACKLE
RIVERS WEST GUIDE SERVICE
RON'S CUSTOM FISHING RODS
S & S GUIDES
SALTCHUCKER CHARTERS
SAMS RV PARK/FALLS BAY
SCOTTY DOWNRIGGERS
SEA-SPORT CHARTERS
SEAVIEW CHEVROLET
SECOMA TACKLE/ROD&REEL
SHADOW BAIT CO
SHELDONS', INC.
SIBERIAN SALMON EGG CO
SILVER HORDE FISHING SUPPLIES
SMOKER-CRAFT, INC.
SNAPPER TACKLE CO.
SPECIALTY ADVENTURES
SPORTS SERVICES INC
STORM MANUFACTURING
SUNBIRD SHOPPING CENTER
SUNRISE GUIDE SERVICE
SWAIN'S GENERAL STORE, INC.
TALL TAILS GUIDE SERVICE
TED'S SPORT CENTER
TEENY NYMPH CO.
TEN MILLION SALMON
T.H.E. TACKLE
THE TOM POSEY CO.
THOMPSON & ASSOCIATES
TILLAMOOK GUIDES ASSOCIATION
TIM BAILEY & ASSOCIATES
TIMSEN CO INC
T.M.L
UMPQUA RIVER GUIDE-T.JARMAIN
VMC, INC.
WASHINGTON HI-LAKERS
WESTPORT CHARTERS, INC.
WESTERN SPORTS & LEISURE
WESTERN STATES ASSOCIATES
WILDCAT STEELHEAD CLUB
WILLIE BOATS, INC
WILSON MARINE SERVICE
WINCHESTER BAY MARKET
WRIGHT & MCGILL CO
XTRACTOR ENTERPRISES
YAKIMA BAIT CO.
YAMAGUCHI DISTRIBUTING
ZAK TACKLE MFG CO
ZEBCO CORPORATION
ZOG'S BAIT HOUSE

NSIA has been awarded an Environmental Quality Grant from American Sportfishing Association

TESTIMONY FROM THE HONORABLE GREG LAUGHLIN
ESA MEMBERS HEARING

MR. CHAIRMAN, I APPRECIATE HAVING THE OPPORTUNITY TO BE PRESENT HERE TODAY ON BEHALF OF THE PRIVATE PROPERTY OWNERS IN THE 14TH CONGRESSIONAL DISTRICT OF TEXAS AS WELL FOR THOSE ACROSS OUR GREAT NATION.

THE FRAMERS OF OUR NATION CLEARLY RECOGNIZED THE NEED FOR THE PROTECTION OF PROPERTY RIGHTS AS THEY LAID OUT THE FOUNDATION OF AMERICAN DEMOCRACY. FURTHERMORE, THEY UNDERSTOOD THE VITAL RELATIONSHIP BETWEEN PRIVATE PROPERTY RIGHTS, INDIVIDUAL RIGHTS, AND ECONOMIC LIBERTY. DESPITE THIS, THE RIGHTS OF PROPERTY OWNERS HAVE PROGRESSIVELY BEEN ERODING AWAY BY ACTIONS OF THE FEDERAL GOVERNMENT.

THE MOST NOTABLE EXAMPLES OF THE "TAKINGS" OF LANDOWNERS PROPERTY VALUES CAN BE EXEMPLIFIED THROUGH RESTRICTIONS IMPOSED BY ENDANGERED SPECIES AND WETLAND REGULATIONS. MR. CHAIRMAN, CLOSE TO THIS TIME LAST YEAR, A RUMOR ERUPTED FROM THE FISH AND WILDLIFE SERVICE THAT 33 COUNTIES WOULD BE SUBJECT TO CRITICAL HABITAT FOR THE GOLDEN CHEEKED WARBLER WHICH HAPPENED TO ENCOMPASS COUNTIES IN MY DISTRICT. WHETHER IT BE THE GOLDEN CHEEKED WARBLER, THE ARKANSAS RIVER SHINER, OR THE BARTON SPRING SALAMANDER, THESE DESIGNATIONS WITH THE IMPACT OF THE ENDANGERED SPECIES ACT IMMEDIATELY THROW PRIVATE PROPERTY OWNERS, MEMBERS OF CONGRESS, AND OUR LEGAL SYSTEM INTO A TAIL SPIN.

MR. CHAIRMAN, I COMMEND THE MEMBERS OF THE HOUSE OF REPRESENTATIVES FOR PASSING THE PRIVATE PROPERTY PROTECTION ACT OF 1995. THIS ACTION PROVES TO BE PART OF THE ANSWER TO A STATEMENT FROM JUDGE LOREN SMITH FROM THE COURT OF FEDERAL CLAIMS IN THE COURT CASE BOWELS V UNITED STATES, 312 FED CT 37, 37 (1994): SHE SAIS, " THERE MUST BE A BETTER WAY TO BALANCE LEGITIMATE PUBLIC GOALS WITH FUNDAMENTAL INDIVIDUAL RIGHTS. COURTS, HOWEVER, CANNOT PRODUCE COMPREHENSIVE SOLUTIONS. THEY CAN ONLY INTERPRET THE RATHER PRECISE LANGUAGE OF THE FIFTH AMENDMENT TO OUR CONSTITUTION IN VERY SPECIFIC FACTUAL CIRCUMSTANCES. JUDICIAL DECISIONS ARE FAR LESS SENSITIVE TO SOCIETAL PROBLEMS THAN THE LAW AND POLICY MADE BY POLITICAL BRANCHES OF OUR GREAT CONSTITUTIONAL SYSTEM. AT BEST, OUR COURT SKETCH THE OUTLINES OF INDIVIDUAL RIGHTS, THEY CANNOT HOPE TO FILL IN THE PORTRAIT OF WISE AND JUST SOCIAL AND ECONOMIC POLICY."

I REMAIN HOPEFUL THAT WE CAN DEVELOP A SOUND POLICY WHICH WILL ENSURE INDIVIDUALS THE FREEDOM TO UTILIZE AND EMPLOY THEIR OWN LANDS, AND I COMMEND THIS COMMITTEE FOR ITS WORK IN TRYING TO ACHIEVE THAT GOAL.

STATEMENT OF REPRESENTATIVE FRANK RIGGS¹
BEFORE THE SPECIAL TASK FORCE ON THE
ENDANGERED SPECIES ACT.

MAY 10, 1995

Thank you, Chairman Young and Chairman Pombo and the members of the Endangered Species Act (ESA) Special Task Force for this opportunity to testify on the Endangered Species Act.

I commend this Task Force for its hard work and for understanding the urgency of this issue. You also recognize the necessity for careful and deliberate debate in upcoming process to reform the ESA.

I am here today to emphasize the critical need for Congress to develop a logical and balanced solution to curb past excesses that have occurred under expanded interpretations of the ESA.

All of us here have been able to view first hand the growing problem of judicial activism and unintended consequences that have resulted over the twenty years since the enactment of the ESA.

I would like to make it clear that my purpose here today is not to call for the complete eradication of the ESA. I, as well as my constituents in the First California Congressional District, recognize the landmark role of this legislation in protecting vital natural resources that were on the verge of extinction.

Species such as the Bald Eagle and the California Gray Whale are perfect examples of how this legislation has been able to correct excessive abuses that would have most assuredly resulted in the disappearance of animals that have come to symbolize our national heritage.

However, this is not why we are here today. I am here to express my outrage over the current use of the ESA and its unintended effects upon my District and many property owners across the United States.

There is a growing consensus around the country over the need to rectify the excesses of this legislation. We must repair a statute that now suffers from a severe imbalance. We must ensure the fullest possible range of authoritative scientific, economic and social information is not only available, but is considered in both regulatory and non-regulatory decision-making processes.

I applaud Representative Pombo and his Task Force on a series of successful field hearings. By seeking out the opinions and viewpoints of our constituents on how the ESA has singularly affected their lives, we can understand how best to revise the statute.

Time and time again, I have heard from my constituents the nightmarish stories of federal bureaucratic action gone awry.

As many of you know, a primary industry within the District I represent is timber products. Currently, Northern California timber areas are experiencing double-digit unemployment, with no significant relief in sight. Since 1987, 51 timber related facilities have closed in California, with 12 of those located within the First California District. Close to five thousand workers have been laid off, with residual effects on their families and the surrounding communities.

The current logging moratoria instituted throughout the Pacific Northwest as the result of the designation of the California Spotted Owl and the Northern Spotted Owl as endangered has devastated previously thriving communities.

Rather than being utilized as a tool to preserve species on a site, the ESA has evolved into a blanket that misguided environmental groups have perverted to shut down vast tracts of harvestable timber land. Endless litigation is used in the hopes that the defendants will simply become exhausted or their finances depleted and walk away.

It is simply not fair to keep an entire community hostage through rounds of lawsuits and a bureaucratized process that rests upon dubious scientific foundations.

Recently, the Simpson Timber Company, which operates in Humboldt and Mendocino Counties, released a report compiling five years of research on its timber lands stating that California Spotted Owls can apparently thrive outside old-growth timber, if other conditions are right. This refutes years of claims by parts of the environmental community that professes the Owls can only survive in old-growth habitat. (I would like to submit the accompanying report and a newspaper article describing the Simpson study for the record.)

We must better understand the environment that we are affecting before applying strict moratoria on practices between industry and the environment that are not harmful and possibly beneficial.

Finally, we should amend the ESA to authorize better ways of achieving its objectives. As you proceed into the process of actually amending the ESA, I would be happy to offer any assistance in developing language to improve many provisions within the Act itself.

Among the areas where I particularly recommend modification to the ESA are the following:

1. We should encourage greater reliance upon incentives instead of costly regulation.

2. We should induce industry and constituents alike to develop and implement reasonable species and habitat conservation goals.

3. There must be a clear definition of "taking" as it relates to private property. And finally,

4. it is necessary to eliminate costly and wasteful biological studies that have negligible relevance to the ultimate determination of a species.

If we truly desire a healthy and viable environment, we must balance the needs of all parties - economic, environmental and social - in order to achieve a fair and just ESA that seeks to preserve our natural resources while not destroying our communities.

Thank you again for your attention to an issue of utmost importance to my District and the entire Nation.

Simpson

Inter-Office Communications

From: Lowell Diller

Place: Korbek

To: All Interested Parties

Date: March 8, 1995

Subject: Annual HCP Report

After many delays we finally got the final calculation of lambda with the blessing of Barry Noon and Eric Forsman. This is what was sent to the service. We will also incorporate this into the HCP Annual Report. If you have questions about putting this into "English" for the general public give me a call.

Calculation of Lambda

No survey techniques exist to estimate the size of spotted owl populations directly from field surveys but a method has been used to estimate the rate of population change based on estimates of mean vital rates. These vital rates are age-specific survival probabilities and age-specific fecundity. We followed the methodology described by Burnham et al. (1994) to estimate these parameters and to calculate an estimate of the finite rate of population change (λ). The initial estimates of the vital rates and λ were done under the direction and supervision of Eric Forsman and Janice Reid (USDA Forest Service, Corvallis, OR) and the results were reviewed and verified by Barry Noon (USDA Forest Service, Redwood Science Lab, Arcata, CA). This was the first estimate of λ for this population of owls because it requires five years of continuous banding and resighting data (four recapture intervals) to obtain a reliable estimate of age-specific survival.

Our demographic studies from 1990-1994 allowed for estimates of mean age-specific survival based on capture-recapture histories on 417 subadult and adult owls, and 224 juveniles. Mean age-specific fecundity was estimated from 540 determinations of female fledging success.

Following Burnham et al. (1994), the first step was to compute a chi-squared goodness-of-fit test using program RELEASE to test the global model $\{\phi_{a=t}, p_{a=t}\}$ of age * time effects on survival and capture probability for adult males and females (ϕ = time specific survival and p = capture probabilities). If the goodness-of-fit test rejects ($P < 0.05$), then some assumption associated with the model is violated. The following summarizes the results of the goodness-of-fit test for adults.

	χ^2	<u>Test 2 + 3</u>		<u>Test 2</u>	<u>Test 3</u>
		df	P	P	P
males	3.96	7	0.7843	1.0000	0.5555
females	12.23	7	0.0932	0.0075	0.7845

Although the model was rejected on one test for females, this was considered to be within the acceptable range as established by Burnham et al. (1994), and the global model was applied to our data set.

The next step, following establishment of the global model, involved fitting a specific model to our data set using Akaike's Information Criterion (AIC) developed from maximum likelihood theory. Using adults only, all 64 possible specific models of the global model were ranked according to their associated AICs, with the best model being the one with the lowest AIC. Based on the best adult models, we developed 25 two-age models (juveniles and nonjuveniles) that

also included sex effects and linear and random time effects. Once again, the AICs were used to rank the models. The top five, adult only and two-age models with their associated AICs are listed below.

Rank	Adults only model	AIC	Two -age model	AIC
1	$\phi_t P_{s+t}$	927.3	$\phi_{a2+t} P_{a2+s}$	1567.1
2	ϕP_{s+t}	928.9	$\phi_{a2+t} P_{a2+s}$	1570.9
3	ϕP_s	929.2	$\phi_{a2} P_{a2+s}$	1574.6
4	$\phi_t P_{s+t}$	929.9	$\phi_{a2+T} P_{a2+s}$	1575.6
5	$\phi_{s+t} P_{s+t}$	930.0	$\phi_{a3'} P_{a2+s}$	1576.4

The best model ($\phi_{a2+t} P_{a2+s}$) with the lowest AIC was used to calculate mean estimates of juvenile survival (S_J) and nonjuvenile (subadult and adult) survival (S_{NJ}) of 0.348 and 0.875, respectively. Standard errors of S_J and S_{NJ} (se = 0.034 and 0.014 respectively) were derived as an approximation based on the nearest model in AIC ($\phi_{a2} P_{a2+s}$) with no time effects on survival probability as described in Burnham et al. (1994).

Fledging success averaged over all years of the study was used to calculate age-specific fecundity. A 50:50 sex ratio was assumed at fledging so that number of young fledged per territorial female was divided by two to obtain the recruitment rate (b). We calculated one set of fecundities based on the fledging history of females meeting standard field protocols and a more conservative estimate of fecundities based on a relaxed field protocol. Standard field protocol excludes determinations of fledging success on pairs that cannot be moused. In our relaxed protocol, we assigned zero fledged to pairs that were consistently located in different localities during the nesting season even though they could not be moused. The standard protocol and relaxed protocol b s are listed below. Only the more conservative estimate of b based on the relaxed protocol was used in calculating λ .

	Standard Protocol b			Relaxed Protocol b		
	N	\bar{x}	SE	N	\bar{x}	SE
subadults	77	0.136	0.018	99	0.106	0.014
adults	374	0.410	0.011	441	0.353	0.010

The estimates of age-specific survival and fecundity allowed us to calculate an estimate of λ . SAS code was used to find $\hat{\lambda}$ and to compute the $se(\hat{\lambda})$ from the following equation:

$$1 = \hat{b}_1 + \left[\frac{S_j}{\lambda} \right] + \hat{b}_2 \left[\frac{\hat{S}_j \hat{S}_{SA}}{\lambda^2} \right] + \hat{b}_A \left[\frac{\hat{S}_j \hat{S}_{SA} \hat{S}_A}{\lambda^3} \right] \left[\frac{1}{1 - \hat{S}_A / \lambda} \right]$$

$$\hat{b}_1 = \hat{b}_2 = 0.106 \quad se(\hat{b}_1) = se(\hat{b}_2) = 0.014$$

$$\hat{b}_A = 0.353 \quad se(\hat{b}_A) = 0.010$$

$$\hat{S}_j = 0.348 \quad se(\hat{S}_j) = 0.034$$

$$\hat{S}_{SA} = \hat{S}_A = 0.875 \quad se(\hat{S}_{SA}) = se(\hat{S}_A) = 0.014$$

The calculations yielded $\hat{\lambda} = 0.9803$ with $se(\hat{\lambda}) = 0.0167$. We then tested $H_0: \lambda \geq 1$ versus $H_a: \lambda < 1$ with a one-sided Z-test, where $Z = \frac{1 - \hat{\lambda}}{se(\hat{\lambda})}$ (Burnham et al. 1994) and failed to reject H_0 ($Z = 1.179$, $P = 0.119$). The 95% confidence interval (two-sided, $Z_{\alpha} = 0.025 = 1.96$) was 0.948 to 1.013.

As noted in Burnham et al. (1994), the calculation of λ can be used to determine whether a resident territorial population of females replace themselves during a given study period. If females replace themselves on a one-to-one or greater basis, the population is assumed to be stable or increasing (i.e., $\lambda \geq 1.0$). The estimate of λ does not allow one to predict the rate of population change in the future unless it is assumed the vital rates remain constant.

Our estimate of λ was not significantly different from 1.0 (stable population), and is only the second of 12 populations studied that have not showed a significant decline (Burnham et al. 1994). However, the 95% confidence interval around the estimate indicated that the population may actually have been declining at a moderate rate, remaining stable, or slightly increasing. Two factors make us confident that the actual λ was ≥ 1.0 . As noted earlier, we used a conservative estimate of fecundity that included 89 pairs (16.5% of the total sample) which we concluded fledged no young even though they did not meet standard field protocol. We believe that the majority of pairs that were observed several times during the field season, but did not meet protocol because they could not be moused, did not nest. By eliminating these pairs from the sample, fecundity

would be overestimated. However, through fortuitous observations, we know that in some cases, observed pairs were incorrectly assumed to have not nested because we did not have the more definitive evaluation provided by mousing. We conclude that although our fecundity estimate was likely somewhat underestimated, it was more accurate than following the standard protocols adopted in other study areas.

Most importantly, we believe our estimate of λ is conservative because it does not include a correction for juveniles that disperse out of the study and survive but are not recaptured. Burnham et al. (1994) used the only available radio telemetry data from two study areas to calculate an adjustment to juvenile survival due to dispersal. Using the corrected estimate of juvenile survival, the average estimate of λ for all study areas increased from 0.9253 to 0.9548 (increase of 0.0295). It would be inappropriate to use the same correction factor of juvenile survival to adjust our estimate of λ because juvenile dispersal and survival are not constant throughout study areas. However, our study area is somewhat linear with a high edge to area relationship and is surrounded by good habitat in most areas. Therefore, we believe it is reasonable to expect that the proportion of juveniles dispersing out of our study area was at least as great as the average for other study areas and that had we been able to correct our λ estimate for juvenile dispersal, the corrected estimate would be greater than 1.0.

Another important consideration was the specific model, based on AICs, which best fit the mark-recapture data. The best model for most study areas contained a negative time trend in survival (i.e., ϕ_T) for adult or adult plus juvenile data (Burnham et al. 1994). The apparent declining survival rate of resident territorial females was considered the most important and disturbing finding of the meta analysis for all study areas (Burnham et al. 1994). Our data did not indicate a declining survival rate for resident territorial females because none of the top five adult models contained a linear time effect. Our best models had a random time effect (i.e. ϕ_j) in which survival probably fluctuated due to weather effects. None of these calculations allow us to predict future trends for the population of owls in our study area, but we believe it is reasonable to assume that this population has been stable or increasing over the past five years.

Literature Cited

- Burnham, K.P., D.R. Anderson, and G.C. White. 1994. Estimation of vital rates of the northern spotted owl. Unpublished report 44 pp.

Simpson

NEWS RELEASE

FYI

Contact: Jackie Deuschle
707/822-0371
Tharon O'Dell
707/688-4451

Simpson Timber Company Reports Success of Spotted Owls In Managed Forests

*High Reproductive and Survival Rates Signal Positive Trend for
Wildlife*

For Immediate Release

Monday, April 3, 1995

Arcata, CA; Simpson Timber Company today reported that spotted owl reproductive and survival rates measured over a five-year period on the company's timberlands indicate that the population is stable. The study, using data from 1990 through 1994, was peer reviewed by noted spotted owl researchers Barry Noon and Eric Forsman. Since 1990, Simpson biologists have individually identified 749 northern spotted owls on the company's 383,000 acres of managed forest property in northern California. In 1994 alone, 24 adults, 16 subadults and 103 juvenile spotted owls were banded for identification.

Significantly, at least 117 owlets were fledged this year from the total owl population on Simpson's lands amidst the company's ongoing forest management activities. According to wildlife biologist Lowell Diller, "The apparent stability of this owl population in a managed forest further confirms our belief that wildlife protection and forest management can successfully coexist." He added that no direct harm or injury directly or inadvertently occurred to spotted owls as a result of timber harvest.

Simpson's Timberlands Manager Neal Ewald noted that the spotted owl is often referred to as a "canary in a coal mine" or an indicator of the condition of the forest. "On that basis, the size and reproductive rates of the owl population suggest that we have a very healthy forest," said Ewald.

Simpson manages its California timberlands under a plan approved by the U.S. Fish & Wildlife Service which is designed to minimize and mitigate the effects of timber harvesting on the species. The award-winning plan, the first of its kind on private lands, requires the company to: (1) enhance the re-growth of habitat; (2) maintain ongoing spotted owl surveys and studies; (3) set aside areas where no harvesting will occur, and (4) maintain employee and contractor training programs.

Simpson is also conducting studies on Pacific fishers, stream amphibians, and anadromous fish species as part of its overall commitment to balancing wildlife protection and timber management. In keeping with the Company's desire to protect wildlife habitat, all fish bearing and primary tributaries to fish bearing streams are protected by leaving overstory shade along the stream banks after harvest. In 1994, more than three quarters of these streams were provided voluntary protections that exceeded the canopy retention requirements contained in California's forest practice regulations.

*** END ***

JOHN SHADEGG
6TH DISTRICT, ARIZONA
REPUBLICAN POLICY COMMITTEE
FRESHMAN CLASS REPRESENTATIVE

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(202) 225-3361
DISTRICT OFFICE:
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SUITE 100
PHOENIX, AZ 85014
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AND CRIMINAL JUSTICE

**STATEMENT OF THE HONORABLE JOHN SHADEGG
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
ENDANGERED SPECIES ACT TASK FORCE
HONORABLE RICHARD POMBO, CHAIRMAN
MAY 10, 1995**

Chairman Pombo, thank you for the opportunity to testify here today on re-authorization of the Endangered Species Act. I have heard many good reports on your field hearings, and I want to commend you and your task force's members for the outstanding job you have done.

Few issues that will come before this Committee during the 104th Congress are, in my judgment, as important to the citizens of my State of Arizona as the Endangered Species Act. Your task force did not visit Arizona, but I can assure you that if you had held a hearing in my State you would have heard heart-wrenching accounts of what Fish and Wildlife Service actions are doing to people. The district I have the honor to represent is largely urban, but people from all across Arizona have come to me to describe the troubles that enforcement of the Act is causing them and their communities. These are not anecdotes, but real life experiences of how the Endangered Species Act works on the ground. And the people who have told me their experiences are by no means all landowners. School superintendents, to take only one of several examples, have come to see me about Federal aid issues and ended up talking about the effects in their communities of endangered species listings.

What I have learned from my fellow Arizonans is that the Endangered Species Act as implemented is a disaster for people. It is being used to violate property rights on a massive scale and thereby threaten our liberties. It is destroying jobs and causing enormous economic dislocations in one area after another.

These tremendous human costs do not appear in the Federal budget. The line item for the Endangered Species Program is a modest \$75 million or so a year. But the real costs of the Act have been hidden by transferring them off-budget, to be borne by private individuals. No one knows what the real costs of the Endangered Species Act are each year, but they are undoubtedly in the billions of dollars.

That the Endangered Species Act forces landowners and working people to pay the

costs of preserving America's endangered species is outrageous. What is pathetic is how little benefit these species derive from the huge sacrifices demanded by the Act from landowners and working people.

That the Act is failing to protect endangered species at great human cost is no coincidence. There is a causal connection. It is because the Act violates property rights and destroys jobs that it is failing to protect wildlife. As written and enforced, the Endangered Species Act constitutes a system of disincentives to landowners to preserve habitat.

This fact is well known to the environmental community, but is seldom acknowledged. However, Michael Bean, senior attorney at the Environmental Defense Fund and perhaps the leading authority on the Endangered Species Act, recently had this to say to a Fish and Wildlife Service seminar:

"There is, however, increasing evidence that at least some private landowners are actively managing their land so as to avoid potential endangered species problems. The problems they're trying to avoid are the problems stemming from the Act's prohibition against people taking endangered species by adverse modification of habitat. And they're trying to avoid those problems by avoiding having endangered species on their property.Now it's important to recognize that all of these actions that landowners are either taking or threatening to take are not the result of malice toward the environment. Rather, they're fairly rational decisions motivated by a desire to avoid potentially significant economic constraints. In short, they're nothing more than a predictable response to the familiar perverse incentives that sometimes accompany regulatory programs, not just the endangered species program but others."

Mr. Bean continued:

"What is clear to me after close to twenty years of trying to make the Endangered Species Act work is that...on private lands at least, we don't have very much to show for our efforts, other than a lot of political headaches. And so some new approaches I think desperately need to be tried because they're not going to do much worse than existing approaches."

This is a remarkable admission. I fully agree with his conclusion: some new approaches desperately do need to be tried, for the benefit of both endangered species and human beings. That is really the crux of this whole debate. Under the current Endangered Species Act, the last thing a landowner wants on his property is an endangered species. The interests of people and the interests of wildlife are in direct conflict.

In reforming the Act, we must figure out how to get people and wildlife on the same side. The Endangered Species Act in my view will never achieve its stated purpose unless the interests of human beings can be made to coincide with the interests of wildlife.

Various reform proposals have been suggested that go some way towards doing that. One of them, the takings compensation bill, was passed by the House as part of the Contract

with America. I support takings compensation. If the government takes the value of someone's property by forbidding accepted uses of that property, then the government ought to pay for it.

Requiring the government to pay for what it has already taken will lessen the fear and opposition the Endangered Species Act has engendered across America, but I don't think that it is enough for two reasons. First, it might cause landowners to tolerate begrudgingly having endangered species on their property, but I don't think it will turn them into enthusiastic protectors of endangered species. Second, it isn't a very efficient use of resources to destroy the value of property and then compensate for the loss. We need a program that will protect the value of property, while at the same time protect species.

Takings compensation, in short, is a band-aid. It stops the bleeding, but to heal the wound we must get to the source of the problem--the regulatory nature of the Act. I believe that as long as we rely on command-and-control we cannot succeed in preserving America's precious natural heritage. The first, essential step, therefore, must be to repeal the current Endangered Species Act.

We will not have to look far to find infinitely more effective alternatives. The Congress has created several conservation programs that have achieved their goals because they have harnessed the genius of the American people, namely our commitment to limited government and private property. The old Soil Conservation Service and the current Conservation Reserve Program are perhaps the most relevant examples. These two programs have succeeded because they are voluntary, incentive-based, and allow government employees and private individuals to work together to find creative answers to their mutual problems.

A voluntary, incentive-based endangered species program will motivate Fish and Wildlife Service biologists to find the lowest-cost methods of preserving species, and it will activate the goodwill and strong conservation ethic of America's landowners. A voluntary, incentive-based endangered species program will also bring landowners and environmentalists together. If you doubt that this is possible, let me quote from a recent interview in a Farm Journal publication, *Beef Today*, with the director of the Fish and Wildlife Service, Mollie Beattie. Commenting on the Agriculture Department's Conservation Reserve Program, Director Beattie said:

"I think this really, really opened people's eyes to what could be achieved in a basically nonregulatory, voluntary program.... We can't help but begin to think what would happen if we aimed it a little better at wildlife.... If there were incentives to make the best habitat, we'd be miles ahead."

Mr. Chairman, I have been told that what I am proposing is a bold approach. I gladly accept that characterization. I believe that to find bold solutions to difficult problems is why I and many other members of the 104th Congress were elected. This concludes my testimony. I would be happy to answer any questions you or members of the task force may have.

ANDREA H. SEASTRAND
 223 DISTRICT, CALIFORNIA
 COMMITTEES
 SCIENCE
 TRANSPORTATION AND
 INFRASTRUCTURE

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House of Representatives
 Washington, DC 20515-0522

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 1216 LONGWORTH BUILDING
 WASHINGTON, DC 20515
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 DISTRICT OFFICES:
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 (805) 899-3578
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 (805) 541-0170

May 9, 1995

Mr. Roger G. Kennedy, Director
 National Park Service
 1849 C Street, N.C.
 Room 3104
 Washington, D.C. 20240

Dear Mr. Kennedy:

This communication requests your immediate support and assistance with respect to a matter of national interest involving an adverse and arguably improper application of the Endangered Species Act (ESA).

The following information is extremely time sensitive. It is my view that the intention of the Channel Islands National Park to construct a three mile long fence and service road on Santa Rosa Island will have a serious negative impact on the habitat and environment of this pristine area. I request a moratorium to stop the construction of this fence barrier on the Island. Action must be taken within the next 48 hours in order to prevent the Park Service from proceeding with this mitigation plan.

The facts of the case are that the Vail-Vickers Company (V-V), a family owned, 125-year old ranching operation in California, is being threatened by the National Park Service and the US Department of Fish and Wildlife. Upon completion of a fact finding exercise, it is apparent to me that the controversy arises from unnecessary and economically harmful mitigation activity mandated by the Department of Fish and Wildlife and executed by the Park Service relative to a population of a bird species known as the Western Snowy Plover on Santa Rosa Island, Channel Islands National Park.

The mitigation measure in question involves the construction of a three mile long fence and attendant service road on the southeast end of the Island for the purpose of segregating free ranging cattle stock from the Plover nesting habitat. The National Park Service is being compelled to construct the fence barrier under the authority of the US Department of Fish and Wildlife administration of the ESA.

Mr. Roger G. Kennedy
Page 2

Both agencies have predicated their mitigation order on the results of a two year field study which alleges that Island cattle are responsible for the "Taking" of two Plover nests. There is no apparent hard evidence to substantiate the alleged "Taking" as attributable to the presence of cattle, according to independent and highly respected biological studies conducted by marine bird specialists.

It should be noted that the Vail-Vickers Company has successfully performed ranching activities on Santa Rosa Island for over 90 years and during this time frame the population of Plovers has prospered. Unfortunately, Department of Fish and Wildlife representatives have cancelled meetings scheduled over the past few weeks wherein this alternative data could have been presented. Strong evidence, independently obtained, does suggest that the Plover does now and will continue to benefit from the current scheme involving cohabitation with range cattle.

A great concern to me and to other members of Congress is the grossly inappropriate application of the ESA by the National Park Service and the US department of Fish and Wildlife. Their actions not only display an unfortunate disregard for the environment we all wish to protect, but also demonstrate a total disregard for the negative impact on the local economy should this situation proceed. Without the luxury of Due Process, the Vail-Vickers Company is being forced to comply with a mitigation measure which will seriously cause a negative impact on an otherwise well managed marine-land resource.

Again, we urge you to take immediate action in preventing construction of this fence. The implementation of this project would have a futile result, yet exacerbate the controversy surrounding the Endangered Species Act.

To reiterate my position on this matter, we are looking to you to direct your staff at the regional and local offices to stop the construction of the fence on Santa Rosa Island on or before May 11, 1995. Further, I am requesting that you advise me upon receipt of this communication relative to your intention to comply or to not comply with my directive on or before the close of business on Wednesday, May 10, 1995.

Sincerely,



Andrea Seastrand
Member of Congress

cc: Interested Parties
Members of Congress



United States Department of the Interior

NATIONAL PARK SERVICE
 Channel Islands National Park
 1901 Spinnaker Drive
 Ventura, California 93001

IN REPLY REFER TO:
 L3015 (CHIS)

May 4, 1995

Al and Russ Vail
 123 W. Padre, Suite D
 Santa Barbara, California 93105

Dear Al and Russ:

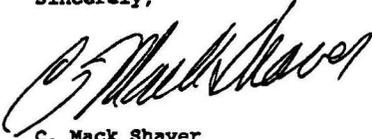
We regret that you object to removing all livestock from the Old Ranch Pasture during the snowy plover breeding season. Regardless, both Vail and Vickers and the National Park Service are obligated to comply with the Biological Opinion issued by the U. S. Fish and Wildlife Service. Since all livestock will not be moved out of Old Ranch Pasture, fencing the Skunk Point snowy plover nesting habitat is the preferred alternative. Long-term daily monitoring of the birds is expensive and ineffective. A barbed wire fence is least expensive, requires the least maintenance and is the most effective in the long run.

Since this action is only necessary to continue your livestock operations in Old Ranch Pasture, it is Vail and Vickers' responsibility, as the permittee, to install this fence. Construction of the fence must begin within seven calendar days of your receipt of this letter. The park has sufficient fencing materials on the island to complete the fence following the route shown on the enclosed map. You may use that material, and we will bill you for it at our cost, or you may provide your own fencing. If you will not build the fence, we will build it and bill you for labor and materials once the project is complete.

In the meantime, the park has completed the initial monitoring survey of snowy plover in the nesting areas and we are now attempting to keep all ranch animals out of the area to ensure no nests are trampled. Park employees are checking the Skunk Point area twice daily to ensure animals do not enter the area north or east of the proposed fence. When possible our employees will move animals from the area to be fenced. If assistance is necessary, the island ranger will contact Bill Wallace and ask for immediate help in herding animals away from the area. If animals do get onto the Skunk Point breeding area and a nest is trampled, the entire pasture will be closed to use by horses and cattle, these animals will be removed immediately and the park will have to reinitiate consultation with the U. S. Fish and Wildlife Service.

We appreciate your continued reduction of cattle in the Old Ranch Pasture as this makes keeping animals out of the nesting areas easier. We would be pleased to meet with you at your convenience to discuss the details of the proposed fence. Please feel free to call if you have questions or would like to discuss this.

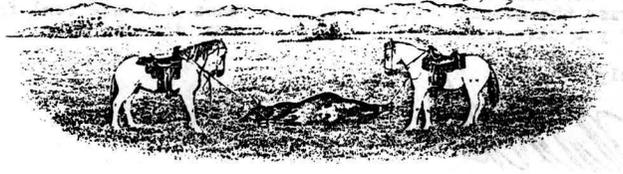
Sincerely,

A handwritten signature in cursive script, appearing to read "C. Mack Shaver".

C. Mack Shaver
Superintendent

cc: Regional Director, Western Region
Regional Solicitor

VAIL & VICKERS



May 5, 1995

Honorable Andrea Seastrand
U.S. House of Representatives
1216 Longworth
Washington, D.C. 20515

Re: Santa Rosa Island, Channel Islands National Park, California

Dear Congresswoman Seastrand,

The purpose of this letter is to let you know of a situation which is threatening our ranching operation on Santa Rosa Island, Channel Islands National Park, California.

Vail & Vickers (V & V) has successfully operated a cattle ranching operation on Santa Rosa Island since 1902. During this time we have employed environmental and land management programs that have allowed the preservation of various native animal and plant species.

During the Carter Administration the Channel Islands National Park (CINP) was created. CINP included privately held property represented by Santa Rosa and Santa Cruz Islands.

In 1986 the Federal Government acquired Santa Rosa Island for \$30 million. V & V retained a 25 year residential right and a grazing lease renewable every 5 years through a Special Use Permit up to 25 years. An essential element of the transaction was to provide for V & V's continued and uninterrupted operation for the period of the 25 year agreement.

Since the inception of the Agreement, various public and private groups dedicated to environmental and species protection have attempted to encumber the ranching operation in an attempt to establish a basis to revoke the current Special Use Permit for grazing.

The most recent episode regarding this effort by various parties involves a bird species known as the Snowy Plover. The Department of Fish and Wildlife states that range cattle now pose a threat to this bird species. They believe there has been destruction caused to two Plover nests by cattle during a two year, intermittent field study and observation program. As a result of this finding the Department of Fish and Wildlife is requesting the National Park Service to construct a three mile fence as a protective measure to segregate the Plover's nesting area from the cattle. The two agencies have established that the fence barrier will be constructed by CINP personnel at the expense of V & V.

According to field study by reputable scientists, the Plover is not endangered by the presence of free range cattle (see enclosed letters from ornithologists Paul Collins and William Everett). In fact evidence indicates that the population of the Plover is healthy and stable. The construction and maintenance of this fence barrier is totally unnecessary.

VAIL & VICKERS

Honorable Andrea Seastrand
May 5, 1995
Page two

Time is of the essence. The Department of Fish and Wildlife has been unwilling to meet with us or entertain public input in a process which is proceeding. The national interest, the public's island resource and the successful operation of V & V's 90 year ranching operation will not be served if the integrity of the agreement between the parties is allowed to fail because of lack of good science and over-regulation.

We ask you to provide relief as to the pending circumstances on behalf of V & V until adequate and reasonable solutions can be established, such as a possible 12 month moratorium placed on any action by a Federal agency or other interest groups that would result in the loss of grazing rights by V & V.

Sincerely,



Al Vail
General Manager

AV/ljk
Enclosures (2)



1010 ANACAPA STREET SANTA BARBARA, CALIFORNIA 93101 (505) 963-4949

May 4, 1995

FAX (202) 225-3426

Honorable Andrea Seastrand
1216 Longworth
Washington, D.C. 20515

RE: Santa Rosa Island, Santa Barbara County

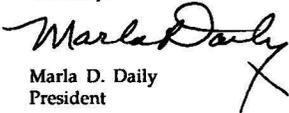
Dear Congresswoman Seastrand,

The Santa Cruz Island Foundation is a non-profit public benefit corporation established in 1985 to protect and preserve the cultural histories of all eight California Channel Islands. We are writing about a matter of grave concern involving the historic cattle operation on Santa Rosa Island. It is the last of the eight islands where historic ranching continues to exist today. This activity is currently being threatened by the United States Fish & Wildlife Service and the National Parks and Conservation Association, agencies which do not recognize the importance of historic landscape preservation.

The cattle operation on Santa Rosa Island has been managed by Vail & Vickers since 1902. There is an operation well known for its attention to good range management practices which have allowed both rare plants and animals to coexist with cattle for almost a century. During this time not one species is known to have gone extinct as a result of their operation. It is, in fact, due to Santa Rosa Island's biota that the federal government was interested in acquiring the island for inclusion within Channel Islands National Park in the first place.

On a cultural level, Vail & Vickers has now become the threatened and endangered species. This cattle ranch in the sea is a national treasure to be preserved. Their cattle boat, *Vaquero II*, is the last operational cattle ferry on the west coast of North America. We have an obligation to sustain our country's western culture and heritage and to recognize the nationally significant values of the Vail & Vickers operation for the benefit and inspiration of future generations.

Sincerely,


Marla D. Daily
President

MDD/ljk
Enclosure

cc: Vail & Vickers
Congressman Robert Lagomarsino

MARLA D. DAILY
President

ERIC P. HYOLBOLL
Vice-President/Treasurer

DAVID D. WATTS
Secretary



WESTERN FOUNDATION
OF VERTEBRATE ZOOLOGY

430 CALLE SAN PABLO, SAN MARINO, CALIFORNIA 91102
TEL: (909) 386-9944 FAX: (909) 386-8663

8 April 1995

Russ & Al Vail
Vail & Vickers
123 West Padre Street, Suite D
Santa Barbara, California 93105

Re: Biological Opinion on Snowy Plovers (1-8-94-F-32)

Dear Russ and Al:

Thanks for sending me a copy of the Final Biological Opinion issued by the U.S. Fish and Wildlife Service (FWS) to the National Park Service (NPS) regarding Effects of Park Activities on Western Snowy Plovers and Brown Pelicans at Channel Islands National Park.

Considering that Vail & Vickers could potentially experience significant financial loss as a result of certain of the measures considered in the Opinion, I am amazed that your involvement in the process was not requested by both parties much earlier, rather than just delivering the Final Opinion for your edification. I am further amazed that the agencies, particularly the Ventura Field Office of the FWS, failed to request comment and assistance in the process from biologists with decades more experience in the Channel Islands and with Snowy Plovers than they have. Unfortunately, it is just this kind of governmental isolationism that will probably lead to a weakening of the Endangered Species Act in the near future.

Regarding the Opinion itself, I have several comments. It seems that in at least one case, the FWS cannot even read pertinent reports correctly. Page nine, paragraph three of the Opinion refers to loss of Snowy Plover nests from high winds, saying it resulted in losses of from 28 to 34 % of nests at Skunk Point during 1992 and 1993, respectively. The report they cited (Stein 1993) gives the actual figures as ranging from 22 to 36 %. I believe the difference is partly a result of adding in mortality from tidal flooding. The

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The Vail & Vickers, Page two
8 April 1995

point is, I do not have time to re-check all the numbers cited in the Opinion, but I wonder how accurate they are.

More importantly, I am troubled by two general themes I see in the Opinion. One is the extensive treatment given to losses of Plover nests due to livestock, the other has to do with the general level of concern and effort directed towards the Skunk Point Snowy Plover breeding colony.

It is clear that any nest losses resulting from livestock on Skunk Point are minor. Indeed, Stein (1993), in the introduction to his comprehensive report, did not even deem it important enough to provide precise loss numbers, compared to losses from wind and predation. He also went on to say that "the likelihood that cattle are a significant factor in increasing clutch loss to wind (by causing Plovers to temporarily abandon their nests on wind days) appeared to be small."

Although my nearly 20 years experience on San Clemente Island suggests that Raven populations (i.e., Plover predators) do not significantly increase with the presence of livestock, or after livestock removal, controlling their numbers receives a disproportionately smaller level of concern when compared to the actions proposed to limit livestock.

My second point is that from a population or species perspective, Skunk Point is a loser as a nesting site entirely from natural causes having nothing to do with livestock. Most of the leading Snowy Plover biologists I know regard Skunk Point as a natural population "sink". In layman's terms, that means that because of the high winds and natural predation, the species would actually be better off if fewer birds chose to nest there. Then why put all this time, effort, and money into making it possible for more pairs to nest there? Perhaps the agency biologists are making the same mistake that the birds do, namely, assuming that because it looks like a good place on a calm day, then it must be a great place to breed.

This said, there can be no doubt that Skunk Point and Santa Rosa Island in general are important as wintering locations for Snowy Plovers. This could be preserved with essentially no change in current management practice.

All of this is particularly interesting since the island was not included in the recent proposal by the FWS to designate Critical Habitat for Snowy Plovers throughout their range, for either breeding or wintering habitat.

I cannot shake the suspicion that this issue is simply being used as a "tool" by persons within the FWS or NPS who want Vail

Vail & Vickers, Page Three
8 April 1995

and Vickers off Santa Rosa Island. I suspect a knowledgeable, disinterested third party examining the Snowy Plover issue and this Biological Opinion would draw the same conclusion.

Thank you for keeping me informed when these things come up. I apparently cannot depend on the FWS to do so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Everett", with a long horizontal line extending to the right.

William T. Everett
Senior Conservation Biologist



Santa Barbara Museum of Natural History

2559 Puesta del Sol Road □ Santa Barbara, California 93105 □ (805) 682-4711

DATE: 15 October 1991

TO: Al Vail
123 W. Padre St.
Santa Barbara, CA 93105

FROM: Paul W. Collins
Santa Barbara Museum of Natural History
2559 Puesta Del Sol
Santa Barbara, CA 93105

RE: Evaluation of the need to restrict grazing from Snowy Plover nesting areas in the Old Ranch Field Pasture

As per your request, I have reviewed the status of Snowy Plovers on Santa Rosa Island to see if there is sufficient data to warrant altering grazing use in the Old Ranch Field pasture to protect Snowy Plover nesting areas as has been proposed in the draft Range Management Plan for Santa Rosa Island (Bartolome and Clawson 1991).

The Snowy Plover (*Charadrius alexandrinus nivosus*) is a Category 2 Candidate for Federal listing as threatened or endangered (USFWS, 1990) and is a California Department of Fish and Game "Species of Special Concern" (CDFG, 1990). It is known to breed along the Pacific Coast from southern Washington to southern Baja California and inland in Oregon, California, Nevada, Utah, Colorado, New Mexico, Kansas, Oklahoma and Texas (Page and Stenzel, 1981). The species has been reported nesting on islands off the coast of southern California including San Miguel, Santa Rosa, and San Nicolas Islands (Page and Stenzel, 1981) and recently on San Clemente Island (Winchell, 1990). Human encroachment on their sandy beach nesting habitat has resulted in Snowy Plovers abandoning many of their coastal breeding locations along the mainland in California (Page and Stenzel, 1981).

On Santa Rosa Island, Snowy Plovers are known to nest along a number of beaches around the island. Table 1 provides an overview of recent counts made of the number of Snowy Plovers nesting on Santa Rosa Island. It is evident from this table that Snowy Plovers nest along at least seven beaches on Santa Rosa Island. The majority of birds (21-34 pairs) nest in the Skunk Point to East Point area. The island wide population has ranged from 45 pairs in 1989 to 50-51 pairs in 1990 and 1991 (Table 1). The intensity of survey effort is the principal reason for differences obtained in the total number of Snowy Plovers nesting on Santa Rosa Island. This is especially true for the surveys run during 1980 and 1989 (Table 1).

Table 2 provides a summary of Snowy Plover counts made in the Skunk Point to East Point area from 1976 through 1991. It
Advancing Appreciation and Understanding of Natural Science □ Founded 1916

should be noted that only the counts made in 1980, and 1989-1991 actually censused the entire stretch of beach from the eastern end of Southeast Anchorage to East Point. The rest of the counts tended to focus on the area between the mouths of Old Ranch and Old Ranch House Canyons. As a result, differences obtained in the number of breeding pairs present along this stretch of coast were probably a result of the linear extent of beaches surveyed rather than to overall changes in the population of Snowy Plovers at the east end of the island. What is of interest is the fact that between 1980 and 1991 the number of pairs that nested along beaches at the eastern end of the island ranged from a low of 21 in June 1980 to a high of 32 in May 1990 (Table 2). Between 1989 and 1991 counts for this stretch of beach have ranged from 26 to 32 breeding pairs (Table 2) while counts made during the 1970's and early 1980's along the stretch of beach between the mouths of Old Ranch House Canyon and Old Ranch Canyon have ranged from 15 to 22 breeding pairs (Table 2). The data gathered during surveys conducted in the 1970's and early 1980's shows that the number of Snowy Plovers nesting near the mouths of ORC and ORHC has remained relatively constant. Data from the 1989-1991 surveys also points to a relatively stable nesting population of Snowy Plovers along the eastern shore of the island. Thus, it would appear that cattle grazing in the Old Ranch Field Pasture has not led to a steady decline in the number of Snowy Plovers nesting along beaches at the eastern end of the island. If this were the case then I would have expected to see a gradual decline in the number of nesting plovers in this area of the island. Since this is not the case, one would have to assume that Snowy Plovers are able to maintain a moderately sized nesting population despite continued grazing by horses and cattle.

It is difficult to show that grazing by cattle and horses is adversely affecting the nesting success of Snowy Plovers on Santa Rosa Island. There is no data in the literature on Snowy Plovers to suggest that herbivore grazing adversely affects Snowy Plover nesting habitat or nest success. Cattle may occasionally step on Snowy Plover eggs. The fact that Snowy Plover populations have remained relatively stable at the east end of the island for the last 15 years suggests that Snowy Plovers are able to tolerate a certain amount of disturbance by cattle. It is uncertain whether the Snowy Plover population on beaches in the Old Ranch Field Pasture will benefit from the removal of cattle grazing during the spring and summer. Data from San Miguel Island would seem to suggest that factors other than herbivore grazing (i. e. the density of potential predators) may be controlling the Snowy Plover population. Sheep were removed from San Miguel Island in July 1967 while Burrows were eradicated in December 1976. There does not appear to have been a dramatic increase in the number of Snowy Plovers nesting on San Miguel Island since feral herbivores were eradicated from the island. The island wide population has remained relatively constant with 35 pairs noted in 1980 and 42 pairs located in 1990. If feral herbivores had been adversely affecting the nesting success of Snowy Plovers on

San Miguel Island, then there should have been a dramatic increase in the number of plovers recorded nesting on San Miguel Island following the removal of feral herbivores. Since this did not occur, one must assume that Snowy Plover numbers are probably being regulated by factors other than disturbance from herbivore grazing.

Gulls, ravens, coyotes and skunks have been reported as important predators of the young, eggs and adult Snowy Plovers at Mono Lake. On Santa Rosa Island, one would assume that Island Fox and Spotted Skunk are probably the primary predators of Snowy Plover eggs and young. Other potential predators probably include Common Ravens and a variety of gulls including the Western Gull. At Mono Lake where predatory pressure was high Snowy Plovers nested at 1 nest/6 hectare (15 acres), while at Monterey Bay where predators were uncommon nesting density was 20 nests/6 ha. Given the high density of foxes (11 fox/mi²) on Santa Rosa Island, Snowy Plover nesting density is probably closer to that observed at Mono Lake. There has as yet been no attempt made to calculate Snowy Plover nesting density on Santa Rosa Island. I recommend that Snowy Plover nesting density on beaches in the Old Ranch Field Pasture be determined before a decision is made to restrict herbivore grazing in this pasture to the fall and winter. If predation from foxes and skunks is the primary factor controlling Snowy Plover numbers on Santa Rosa Island, then restricting cattle grazing from the Old Ranch Field during the spring and summer may not have as beneficial an impact on Snowy Plover nest success as the Park Service is expecting.

I hope that the information provided in this memorandum will be of some use to you in your negotiations with the National Park Service. If I can be of any further assistance feel free to give me a call (805) 682-4711 X 321 or 688-9712.

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Table 1. Island wide estimate of the number of Snowy Plovers that nest on Santa Rosa Island.

AREA SURVEYED	NUMBER OF BREEDING PAIRS			
	1980	1989	1990	1991
Carrington Pt. to SE Anchorage	0	----	----	----
Soledad Beach	----	----	2	2
Arlington Beach	----	----	0	1
Sandy Point	----	----	1	0
Mud Tank Beach	----	2	1	2
Bee Rock Beach	----	6	6	6
Whetstone Canyon Beach	----	0	0	2
Cluster Point Beach	----	11	7	6
Skunk Point to East Point	<u>21</u>	<u>26</u>	<u>34</u>	<u>30</u>
ISLAND TOTAL	21	46	50	51

Table 2. Summary of the number of Snowy Plovers neasting along beaches at the eastern end of Santa Rosa Island.

AREA SURVEYED	OBSERVER	DATE SURVEYED	NO. PAIRS
Mouth Old Ranch Cyn.(ORC)	Abbott & Collins	April 1976	20
Mouth Old Ranch House Cyn.(ORHC) to Skunk Point	Abbott & Collins	May 1978	15
Skunk Point to East Point	H. & N. Spear	June 1980	21
Mouth ORC to ORHC	G.Fellers	April 1983	20-22
Skunk Point to East Point	G. Page & L. Stenzel	May 1989	26
Skunk Point to East Point	G. Page & L. Stenzel	May 1990	32
Skunk Point to East Point	G. Page & L. Stenzel	May 1991	30

STATEMENT OF THE
HONORABLE J.D. HAYWORTH
ENDANGERED SPECIES TASK FORCE
U.S. HOUSE OF REPRESENTATIVES
MAY 10, 1995

Mr. Chairman, I appreciate the opportunity to come before the Endangered Species Task Force today to testify in support of sweeping revisions to the current Endangered Species Act (ESA).

When residents of Greenlee county, Arizona attempted to repair a dirt road after flooding wiped it out last November, heavy handed bureaucrats from the U.S. Fish and Wildlife Service threatened a daily fine of \$20,000 if the work wasn't halted.

The dirt road in question is near the Blue River designated as habitat for the loach minnow which the Fish and Wildlife Service has listed as threatened under the ESA.

Elsewhere on the Blue River, in Pinal County, Arizona, the county is seeking to replace a bridge which washed out during a flood in 1993. The county has two alternatives: spend \$4 million to replace the washed out bridge in the same high risk location, or build a bridge upstream out of harms way for half the cost.

Common sense would dictate building the cheaper, safer bridge. Unfortunately, Mr. Chairman, I've learned that nothing makes sense about the ESA and the only thing common is for the Fish and Wildlife Service to trample on the rights of people.

The ESA has allowed bureaucrats to make decisions having serious negative economic consequences throughout regions of the United States. These decisions are made without the benefit of comprehensive economic analysis or without public accountability.

Let me mention an example of one area of the ESA in desperate need of reform. The Fish and Wildlife service views state borders as a division of species habitat. For example, if you have a population of birds that crosses a state border, it could be considered as two different species. One could be listed, while a plentiful amount lived on the other side of the stateline. Again, common sense is lacking from the process.

By any objective analysis the ESA, in its current form, has been a failure. Of the 853 species placed on the endangered or threatened lists in the law's 22 year history, only 24 have come off. Of this 24, over half should not have been listed in the first place. In some cases the courts have forced the Fish and Wildlife Service to remove species from the list. With regard to recovery programs it is estimated that each species cost an average of \$3 million to recover.

Of greater consequence to people who live in my district is a proposal to designate nearly 4.8 million acres of land in Arizona, New Mexico, Colorado and Utah as critical habitat for the Mexican spotted owl. This proposed designation is another example of why the ESA must be modified.

Much criticism has been leveled against the ESA for listings being made without adequate data and without scientific peer review. It appears that the listing of the Mexican spotted owl and its proposed critical habitat will further call into question the credibility of this act and its implementation. Not only is the science on the Mexican spotted owl shaky and incomplete, but we must also question the narrow focus that this act has in solving environmental concerns.

Far from the myth that they are being slowly decimated by the

HONORABLE J.D. HAYWORTH
MAY 10, 1995
PAGE TWO

faller's axe, our forests are on the verge of literally growing themselves to death. Due to the total elimination of Indian caused fires and the control lightning generated fires, our forests have, over the last 150 years, been converted from the "open and parklike" conditions that John Muir described, to dense thicket-like states that are highly susceptible to uncontrollable wildfire. Last year over 2 million acres burned in wildfires.

Another problem is that the incidence of diseased trees is higher where trees grow close together and compete for a limited water supply. Those who take an objective look at the health of our forests will agree that we need to move to a timber policy which is scientifically based and not one which merely attempts to "preserve" our forests. The 5.5 million acres of National Forest lands in Arizona, in particular the 2 million being considered as critical habitat for the Mexican spotted owl, are at severe risk of wildfire. This places lives, homes, and the quality of our environment in serious danger.

The ESA also fails to properly consider the economic impact of a listing. Currently, listings are made without regard for the toll they can have on the quality of human life. In the case of the Mexican Spotted owl, the proposed critical habitat threatens the remainder of Arizona's diminishing timber industry. The survival of many rural communities in my district depends on having a reliable supply of timber. The available timber supply on Arizona's forests has fallen from 294 million board feet in 1989 to 56.3 million in 1994. Meanwhile, the forests continue to grow around 367 million board feet a year.

Finally, Mr. Chairman, when we consider reforming the current ESA we need to craft legislation which not only addresses the technical concerns I've noted, but also goes far enough to transform how the U.S. Fish and Wildlife Service implements the act. I favor a bill which fosters incentives for species protection, not fear of job and property loss.

Testimony of Congressman Bob Stump

before the

Committee on Resources

Hearing on the Endangered Species Act

May 10, 1995

Chairman Young, Vice-chairman Hansen, and distinguished members of the Resources Committee, you are to be commended for your bold initiative to hold comprehensive hearings on the Endangered Species Act. I am honored to be able to present testimony to you today and share the views of people in my District and State on this very important issue.

As residents of the Union's 48th State, Arizonans are an independent and proud people. They don't ask much from the federal government other than the opportunity to make an honest living without undue federal interference. Like generations of Arizonans before them, today many Arizonans depend on the State's natural resource in order to make a living. It is a proud legacy, and an essential component of Arizona's economy. It is a legacy that Arizonans would like to pass on to future generations, but this way of life is clearly threatened by the Endangered Species Act.

For too long now, the cries of those who have been adversely impacted by actions under the Endangered Species Act may well have been voices in the wilderness, for they have been ignored by bureaucrats more concerned about carrying out the provisions of an ill-written law than they are interested in making the law more responsive to the concerns of the very people who will be most impacted by the law.

Take for instance the plight of the people of the Town of Fredonia, Arizona. Located north of the Grand Canyon and just four miles south of the Utah border, the Town of Fredonia was founded in 1885 by Mormon settlers who were attracted to the abundant natural resources in the area. Then, as today, residents of Fredonia recognize the importance of natural resources for their survival. Timber and wood products manufacturing, agriculture and mining formed the basis for Fredonia's economy. It is these resources that have allowed the population to flourish and grow to more than 1,200 people. Sadly, today Fredonia is a town that is dying.

In April 1995, the last remaining saw mill in Fredonia was forced to close, a victim of stifling federal regulation. The Forest Service's management of the northern goshawk as a sensitive species in 1982, interim habitat management guidelines for the goshawk in June, 1991, and the management directives for the Mexican spotted owl as a threatened species with proposed critical habitat have made the timely release of timber sales next to impossible.

When the mill closed, more than 200 people were left without jobs. Two hundred people may not seem like a lot, but let me tell you, when a small community loses its major employer and 200 people are suddenly without jobs, the effect is devastating.

While it is too late to save Fredonia, other forest-dependent communities in Arizona are facing the same problems posed by the Endangered Species Act, Williams, Heber, Payson, Snowflake and Eager, to name but a few. The future of these communities hangs in the balance given the fact that close to 2 million acres of land in Arizona have been proposed as critical habitat for the Mexican spotted owl. I am deeply concerned that today it is the owl, tomorrow it could be any number of species until we reach the point that conceivably all lands could be set aside for the conservation of endangered and threatened species.

With the necessary Section 7 consultations prior to approval of land-use activities on federal lands, it may already be too late for some of Arizona's rural communities. Although the majority of activities that are brought into Section 7 consultations have been approved, the economic reality is that delays in approval of activities due to the Section 7 consultations are deadly to businesses.

Timber workers are not the only people oppressed by the Endangered Species Act. Off-road vehicle enthusiasts, ranchers, miners and even retirees who brought property in the hope of building their dream homes have been adversely impacted.

The fact that the Endangered Species Act puts the protection of plant and animal species above people is a national tragedy. It must be remedied. Listings must be based on scientific data and subjected to independent review. Humans must be part of the equation, and their activities must be considered equally, if not paramount to the conservation of species. Frivolous appeals and lawsuits that are designed to tie up approval of land use activities in the legal system must be stopped. Common sense must be restored to the Act to allow emergency measures, such as fire suppression, timber salvage and flood control activities, that are designed to protect life, resources and property.

I am confident that this year we will be able to pass a responsible Endangered Species Act reauthorization, and I pledge to you my colleagues that I stand ready to assist you in achieving this goal.

testimony by
NORMAN Y. MINETA, M.C.
before
Endangered Species Task Force
House Committee on Resources
May 10, 1995

Mr. Chairman, thank you for the opportunity to testify before you today on this very important matter. On an issue such as the Endangered Species Act, which entails a variety of environmental and economic aspects, it is particularly important that your Task Force hear from as many points of view as possible.

I believe, Mr. Chairman, that the Endangered Species Act (ESA) is one of the most important environmental laws on the books. Established in 1973, the law is intended to protect species, and their habitats, from extinction.

In the more than twenty years since its enactment, the law has produced some notable successes. The most prominent example, of course, is that of the American bald eagle. According to the Department of the Interior, in 1974, one year after the enactment of the Endangered Species Act, just 791 pairs of adult bald eagles lived in the contiguous 48 states. In 1978, the bald eagle was listed as an endangered species, and by 1993 more than 4,000 pairs of bald eagles existed in the contiguous United States. Last year, the Clinton Administration reclassified the species from "endangered" to "threatened".

This is but one example of the positive role the Endangered Species Act has played in preserving our earth's fragile ecological balance. There are numerous other instances of threatened species that have been restored to sustainable levels and have had their categorization downgraded or have been de-listed entirely. It is these successes that make the continuing viability of the Act so important.

In spite of the successes of the Endangered Species Act, the time for re-examining the Act is long overdue. I believe that every law must undergo periodic review to ensure that it is accomplishing the goals for which it was intended, and the ESA is no exception. Clearly there is a great deal of controversy surrounding the Act, and it is appropriate that this Congress take a close look at the law and how it is being implemented.

I am aware, Mr. Chairman, that many people have raised legitimate concerns about the implementation of the Act. Like you, I have heard the horror stories of builders and farmers who have had projects suspended or delayed because of endangered species problems. I know that many of these concerns are real and need to be addressed, but I also know that many stories are overblown and present a skewed view of how the Act is working.

As we examine the Act, I believe it is essential that we do so in a manner that respects the benefits the Act has brought, and that we not simply dismantle it in the name of economic expedience. Already in this Congress, Mr. Chairman, the House has taken action that I fear will gut the Act and return many species to the crisis levels they were at when the Endangered Species Act was originally written in 1973.

For example, the Regulatory Moratorium bill that passed the House this year would freeze the listing of species, and of critical habitat, until December 31, 1996, or such time as the Endangered Species Act is reauthorized. Mr. Chairman, I believe that this action is a disingenuous and irresponsible manner in which to deal with the problems that have been raised with the Act.

Similarly, the Risk Assessment/Cost-Benefit Analysis legislation and the Private Property Protection Act, two other bills that have passed the House this year, are direct attacks on the Endangered Species Act. Both would make it nearly impossible to implement the Act in any meaningful way, and will wipe away any benefit provided by the Act.

Instead of taking such broad swipes at undercutting the ESA, I propose that we make reasonable changes to address legitimate concerns while maintaining the integrity of the Act. Let us make the listing process a more efficient and understandable one. Let us make it simpler for small landowners and farmers to comply with the Act. And let us coordinate federal agencies so they are not working at cross-purposes. But let us do all this, Mr. Chairman, while focusing on the ultimate goal of maintaining biodiversity and species sustainability.

I cannot stress to you how important it is, Mr. Chairman, that reauthorization of the Endangered Species Act be done in a balanced and responsible manner. Real gains have been made in the preservation of species since the Act was established in 1973, and changes made to the Act should not let those gains be wasted. I thank you again for the opportunity to testify before your Endangered Species Task Force, and I hope to work with you to reauthorize an Endangered Species Act that takes into account not only the problems with the Act, but the benefits as well.

STATEMENT OF THE HONORABLE LARRY COMBEST,
U.S. REPRESENTATIVE FOR THE 19TH DISTRICT OF TEXAS

ENDANGERED SPECIES ACT TASK FORCE HEARING ON
REAUTHORIZATION OF THE ENDANGERED SPECIES ACT
WASHINGTON, D.C. - MAY 10, 1995

Mr. Pombo and members of the Task Force, I appreciate your taking time to hold this hearing to hear from Members of Congress their views on the Endangered Species Act. I think we would all agree that protection of endangered species is vitally important and that such protection should be based on sound scientific principles. However, I feel as many other Members do that the current Endangered Species Act is flawed in several ways and that the Act should be rewritten to protect endangered species only where such protection is needed and in a manner that will still allow for business activity to be conducted in affected areas.

I believe that Congress should rewrite the Endangered Species Act to bring more accurate science and protections for private property owners into the endangered species listing process. I think we would all agree that we should do everything possible to ensure that species do not become extinct by human misdeeds. However, we should not allow ridiculous and unneeded restrictions to take away the use of private property and important natural resources under the guise of species protection.

In my West Texas congressional district we face the possible listing of the Arkansas River Shiner and the Swift Fox as endangered species. The listing of either one of these animals as endangered species could have a profound impact on numerous activities in West Texas.

Because these federal regulations have the potential to severely affect the resources and damage the economy of this area, I want several questions answered. First and foremost is whether the species in question is truly threatened with extinction. If the answer to that question is yes, based on verifiable science, then we must explore methods to balance the protection of the species with ensuring as little disruptions as possible to the folks who pay the bills: taxpayers. The human species should always be regarded as most important.

In the case of both the Arkansas River Shiner and the Swift Fox local experts from the Texas Parks and Wildlife Department, water districts, and others that say that scientific evidence proves that the answer to the first question is no. The Arkansas River Shiner and the Swift Fox are not threatened with extinction. Even if they were, residents of my congressional district have understandably developed a real distrust for big brother federal government to manage their local resources. They have seen the effect that prior federal actions have had on the livelihoods of many Americans.

Local authorities are more genuinely concerned and know better how to manage the resources that we and our grandchildren depend on. They are the ones who must live with the results of any decisions. But the federal government seems to have arrogantly overruled their local expertise on these issues.

Again, thank you Mr. Pombo for your hard work on this issue. I look forward to working with you and my other colleagues in Congress as work moves forward on the reauthorization of the Endangered Species Act.

THE HONORABLE ROBERT A. UNDERWOOD
STATEMENT BEFORE THE HOUSE COMMITTEE ON RESOURCES
May 10, 1995

Mr. Chairman, I appreciate the opportunity to testify before the committee on an issue that strikes a raw nerve with many people on Guam. My testimony is meant to show what happens when a wildlife refuge is imposed on an area and people without any scientific evidence, and how that causes support for the Endangered Species Act to erode.

I count myself as one of the strong supporters of most environmental causes, and I find that I am sympathetic to the intention of the Endangered Species Act. However, the actions of the Fish and Wildlife Service on Guam seems to be based on "weird science".

The Guam Wildlife Refuge, and the Wildlife Refuge overlay on military lands, established in 1993, does nothing to save the endangered and threatened species on Guam.

The chief biologist at the National Biological Survey who has been handling this issue acknowledges that establishing a refuge in Guam does nothing to solve the problem. He tells us that birds in the island are endangered or threatened not because of a loss of habitat, but because they are being killed off by the brown tree snake. It has now become an indisputable fact in the scientific community that the brown tree snake is the cause of the dwindling population of birds on the island. However, fencing off a refuge of land will neither keep the snake out, nor prevent it from attacking birds; instead the fences keep our people out.

A more pragmatic approach would be to put the resources now being devoted to the refuge toward the eradication of the non-indigenous snake. However, the U.S. Fish and Wildlife has ignored this strategy and neglected to come up with their own comprehensive plan to slow the growth of the snake. In the meantime, the snake population continues to proliferate and threaten other species.

Instead of even considering a pragmatic strategy, the Fish and Wildlife has resorted to scare tactics and the sledgehammer approach. They have stated unequivocally that if Guam chooses to challenge the refuge then they will impose a critical habitat. Consequently, the Fish and Wildlife has lost their ability to work with the people of Guam on a reasonable solution.

These scare tactics are perfect examples of why the ESA has lost support among the people of Guam and their representatives. The ESA was originally intended to protect endangered species based on clear scientific data. Without using that data, their analysis has no basis, as biologists have acknowledged is the case with the refuge in Guam.

Mr. Chairman, as this committee drafts legislation to correct

the excesses of the ESA and restore rationality to the process, I ask that the committee look at the case of Guam as an example of these excesses. Not only must past wrongs be corrected, but our responsibility is to ensure that the same bureaucratic and institutional minds that got us into this mess do not lead us into it again in the future.

It is essential that the Fish and Wildlife Service's actions be based on sound science, and that we establish a peer review of future actions. I would also recommend a process to dis-establish any wildlife refuge, such as Guam's refuge, which is not related in any significant way to sound science in species recovery. I would also urge the Committee to ensure that there is independent community involvement and oversight in the actions of the Fish and Wildlife Service--the model that works would be the way Restoration Advisory Boards function to oversee military base clean-ups. In Guam's case, the actions of the Fish and Wildlife Service seem to be in response to pressure from outside national environmental groups rather than in response to our community's desires.

Again, thank you for giving me this opportunity to testify on this important issue. I look forward to working with you and my colleagues on the committee in addressing this matter in the weeks ahead.

VIC FAZIO
THIRD DISTRICT
CALIFORNIA

DEMOCRATIC CAUCUS—CHAIRMAN
DEMOCRATIC STEERING
COMMITTEE
HOUSE OVERSIGHT
APPROPRIATIONS COMMITTEE
SUBCOMMITTEES
ENERGY AND WATER DEVELOPMENT
LEGISLATIVE



Congress of the United States
House of Representatives

Washington, DC 20515-0503

Testimony of the Honorable Vic Fazio
Regarding Reauthorization of the Endangered Species Act
before the House Endangered Species Task Force
The Honorable Richard Pombo, Chairman
May 10, 1995

PLEASE RESPOND TO:

1 2113 RAYBURN BUILDING
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Mr. Chairman, Members of the Task Force, thank you for the opportunity to appear before the Task Force today. As a Member whose district has been heavily impacted by the implementation of the Endangered Species Act, I appreciate this chance to share with you my views on the Act.

As you are aware, I have been active in the question of how to re-authorize the Act. I gave my first major speech on my six-point reauthorization plan in April of 1992 when I spoke to the California Farm Bureau Federation. In July of 1993, I hosted a field hearing of the House Merchant Marine and Fisheries Subcommittee in Woodland, California, in the heart of my Congressional District.

If people take a look at the transcripts of those hearings, I think you will see a commonality of themes. In short, the problems associated with the implementation of the ESA are well-known and well-documented. The task before us is, of course, to develop a reasonable plan that addresses those short-comings in a manner consistent with the needs of everyone affected by the ESA.

The stakes for California in the reauthorization of the Endangered Species Act could not be higher. California has more listed species and candidate species than any other state. Each county has at least one species listed.

Reasonable implementation of the Endangered Species Act (ESA) calls for balancing of environmental quality with the economic livelihood and cultural identity of many California communities. Over the last few years, I have spoken repeatedly about the need for significant improvements in the ESA. As Congress prepares to debate the reauthorization, I have suggested six specific changes to the Act that I believe are vital to California's interests.

First, the implementation of the Act must provide an opportunity for greater public input. Currently, the public has no role in the petition process to list a candidate species endangered until after the agency has decided to list a candidate species as threatened or endangered.

Second, we need to speed up the process of developing and implementing species recovery plans. Right now, recovery plans have been prepared for barely forty percent of all listed domestic species. I believe the preferred time for the development of recovery plans should be in no less than one year after the listing occurs. Delays only serve to disrupt local economies and put the listed species in continued, and sometimes increased, jeopardy.

Third, the Act should include a thorough peer review of the data and analysis considered in decisions to list. Currently, the Act requires agencies to use "the best scientific and commercial data available" in making listing decisions. Unfortunately, "the best scientific and commercial data available" is not defined in the Act or the accompanying regulations. Unbiased peer review is the best way to ensure that the information used will support a listing decision without any subjective interpretation and ensure that it is both clear and convincing.

Fourth, Section 10 of the Act should be expanded to encourage the development of multi-species habitat conservation plans which address more than one listed or candidate species. The Act currently does not permit the development of habitat conservation plans for candidate species nor does the Act clearly encourage multiple species plans. Careful habitat planning can preclude the need to list a candidate species and speed the recovery of species already listed.

Fifth, the Act should be amended to provide equal access to the courts for those who challenge the listing of a species. Currently, the Act provides for judicial review for only those individuals or parties that oppose an agency's decision denying a petition to list a species. No similar access to the courts is provided to those who challenge the listing.

Sixth, and finally, the Act should be amended to require the development of an economic impact report concurrently with the listing of a species. The public has a right to know the best estimate of the total cost of implementing the Act for a given species. The report should detail the various direct and indirect economic factors that will be implicated by a listing and provide a reasonable estimate of the larger economic picture in light of the listing.

There are a whole list of common sense revisions to the Act, some of which are being implemented administratively. For example, the HCP process should facilitate landowner participation in recovery efforts. The terms "critical habitat" and "potential habitat" need to be clarified. The Act should include specific criteria for listing and de-listing of species. The considerations related to "take" need to be made more flexible. We also need to streamline the permitting process and provide a workable administrative appeals process.

Balance is the key to reauthorizing the Endangered Species Act. The stakes in California are high, but we can protect our environment without destroying our economic prosperity by providing for greater public input into the decisions that affect us all.

BILL OF MATERIALS FOR 3.3 MILES OF PLOVER FENCE

ITEM

1.	T FENCE POST, 6 FOOT, GALVANIZED, MEDIUM 125 WEIGHT, 750 EACH, COST \$ 5.75 EA	\$ 4,312.50
2.	BARBED WIRE, 4 POINT, 1,320 FOOT ROLL 1 EACH, COST \$ 64.50 EA	\$ 64.50
3.	4"X 4"X 7 FOOT WOOD POST, DOUGLAS FIR, PRESSURE TREATED 15 EACH, COST \$ 6.00 EACH	\$ 90.00
4.	POLYTAPE WHITE 3/8", 400 METER ROLL 28 EACH, COST \$ 47.00 EACH	\$ 1,316.00
5.	T POST INSULATOR CLIPS 1,500 EACH, COST \$.25 EACH	\$ 375.00
6.	CHARGER UNIT 1 EACH, COST \$ 215.46	\$ 215.46
7.	DIGITAL MULTIMETER 1 EACH, COST \$ 49.90	\$ 49.90
8.	GATE SPRING HANDLES 12 EACH, COST \$ 3.50	\$ 42.00
9.	DEEP CYCLE BATTERY 1 EACH, COST \$ 72.00	\$ 72.00
10.	GROUND ROD AND CLAMPS 3 EACH, COST 27.00	\$ 81.00
11.	WARNING SIGNS 50 EACH, COST \$ 2.50	\$ 125.00
12.	CUTOUT SWITCHES 2 EACH, COST \$ 9.50	\$ 19.00
13.	SHIPPING/FREIGHT	\$ 400.00
	MATERIAL TOTAL	<u>\$ 7,162.36</u>
	LABOR, 3 MEN @ \$180.00 DAY EACH X 6 DAYS	\$ 3,240.00
	TOTAL FENCE COST	\$10,402.36

NOTE MATERIALS MAY BE SEPARATE ITEM ORDERED

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