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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20500

Michael R. Deland
Chairman

December 12, 1990

(202) 395-5080

MEMORANDUM TO THE PRESIDENT

FROM: Michael R. Deland

SUBJECT: Quarterly Review -- The Bush Administration and the Environment

THE CHIEF of STAFF
has seen

Attached for your quick perusal is the latest edition of "The Bush Administration and the Environment: A Quarterly Review of Initiatives and Accomplishments."

In my judgment, you are building a very commendable environmental record, which we need to more effectively disseminate for you. The Review is intended to assist Executive Branch colleagues as they prepare speeches, respond to inquiries, and otherwise spread the word of the Administration's positive environmental accomplishments.



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The Bush Administration and the Environment:

A Quarterly Summary of Initiatives and Accomplishments

November 1990

President George Bush, continuing a life-long record of concern for the environment, has demonstrated a commitment to environmental protection, conservation, and wise management of our natural resources. This memorandum, updated on a quarterly basis by the President's Council on Environmental Quality (CEQ), presents the Bush Administration's philosophy, initiatives and accomplishments in these areas.

By its very nature, the environmental issue is difficult to segment into neat categories. Highlights of the Administration's record could be organized in any number of ways. We have chosen to present this information in two sections. Section A identifies themes of the President's agenda with key supporting examples; Section B provides a more thorough and detailed catalog of key activities by subject.

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"An Entirely New Way of Thinking..."

"Now we know: we can establish a new kind of environmentalism, one in which a sound ecology and a strong economy go hand-in-hand."

-- President George Bush,
Signing clean air legislation
November 15, 1990

"To those who suggest we're only trying to balance economic growth and environmental protection, I say they miss the point. We are calling for an entirely new way of thinking to achieve both while compromising neither."

-- President George Bush
April 18, 1990

A. **"A Whole New Way of Thinking"**

1. **"Harnessing the Power of the Marketplace"**

"True global stewardship will be achieved not by seeking limits to growth, which are contrary to human nature, but by achieving environmental protection through more informed, more efficient and cleaner growth. Those who value environmental quality the most should be the most ardent supporters of strategies that tap the power of free wills and free markets; strategies that turn human nature to environmental advantage."

-- President George Bush
April 18, 1990

Examples of this principle in action include:

- **The Clean Air Act:** a key provision of the President's original clean air proposal which was incorporated in the final legislation creates marketable permits for acid rain emissions. An active market in these permits will tend to encourage larger emission cuts in a more cost-effective manner than traditional "command-and-control" regulations.
- **Protecting the ozone layer:** the Administration's program for phasing out ozone-depleting substances employs fees and marketable permits to achieve these reductions in a cost-effective manner.
- **Environmental Investment Fund:** The Overseas Private Investment Corporation (OPIC) facilitated and contributed to the creation of a privately-owned and -managed investment fund for new or expanding enterprises in developing countries which practice sound environmental management.
- **Climate change:** The Administration supports a comprehensive approach to potential climate change which considers all sources and sinks of greenhouse gases. This approach would ultimately allow more flexible, efficient and market-oriented policy responses.

2. **"Recovery, Restoration and Renewal"**

"Behind all the studies, the figures, and the debates, the environment is a moral issue....For it is unjust to allow the natural splendor bestowed to us to be compromised.... Recovery, restoration and renewal -- that is our moral imperative."

-- President George Bush
June 8, 1989

Examples under this category are quite numerous; here are just a few:

- **"America the Beautiful" (ATB):** a three-pronged effort by the Departments of the Interior and Agriculture (U.S. Forest Service) to renew American natural resources by acquiring federal lands with high environmental or recreation value (up to \$1 billion over four years); restoring run-down natural resource and recreation areas ("Legacy '99"); and...
- **Forestry:** The ATB initiative establishes a long-term private-public reforestation program to plant and maintain one billion new trees annually for at least ten years. At the Houston summit of "G-7" leaders, the President proposed the negotiation of a global forestry agreement -- a plan to address world deforestation and reforestation; mapping and monitoring; research, training and technical assistance; and related issues.
- **Wetlands:** In response to the President's oft-stated concern for protecting wetland habitats, the Department of the Interior supported legislation to purchase wetlands to implement the North American Waterfowl Management Plan, and added over 106,000 acres to Everglades National Park. The President directed an interagency task force to hold public meetings and report on ways to implement his goal of "no net loss" of wetlands. The President's FY91 budget sought a 24% boost for existing programs, including acceleration of the national wetlands inventory and the bay/estuary program. This followed a 32% increase in 1990.
- **Offshore Development Moratoria:** Pending further studies concerning relevant environmental issues, the President postponed for at least ten years offshore oil and gas lease sales in tracts comprising: 99 percent of the California coast; the coasts of Oregon and Washington state; the southwest coast of Florida; and the Georges Bank area off New England.

3. **"Promote Creative Local Initiatives"**

"The tradition of purely federal, 'top-down' directives will never again be enough. So we're working to promote more creative state and local initiatives, drawing the energy of local communities and the private sector into the cause -- pulling them into the cause of conservation."

-- President George Bush
June 8, 1989

Examples of this principle in action include:

- **Tree Planting Partnerships:** In response to the President's America the Beautiful initiative (ATB), Congress established a quasi-public foundation to leverage non-federal funds and activities to plant up to one billion trees per year. The title also authorizes the Forest Service to work with state and local governments, universities, and the private sector to improve natural resources on private forest lands and in urban communities. The Forest Service has already implemented numerous partnerships with individuals and non-government organizations to protect and improve the National Forests, and has assisted with many inquiries from the public concerning how they can get involved in ATB.
- **President's Commission on Environmental Quality (PCEQ):** The President established by Executive Order a commission comprised of outstanding leaders from business, academia, and the environmental community who are on the cutting edge of innovative solutions to the nation's environmental challenges. The PCEQ will take a results-oriented approach to opportunities in the areas of industrial pollution prevention, conservation partnerships and international cooperation.
- **Partnerships with Conservation Groups:** In response to the initiative of the Trout Unlimited organization, conservation partnership projects are being implemented by the USDA's Forest Service, the Interior Department's Bureau of Land Management and Bureau of Reclamation, and the Department of Defense. This is only one example of a growing trend of active partnership between conservation/environmental groups and federal agencies, exemplifying the President's call for creative leadership at the local level.

4. **"Cooperative, International Solutions"**

"Climate change is one of many challenges in the call to global stewardship. Ozone depletion, water supply, ocean pollution, wetlands, deforestation, biological diversity, population change, hunger, energy demand -- in short, all the interrelated issues of the global environment. Each demands our attention."

"For all of these reasons, I sincerely believe we must do everything in our power to promote global cooperation... for sustainable and environmentally-sensitive development -- around the world."

-- President George Bush
February 5 and April 18, 1990

Examples of this principle in action include:

- **Enterprise for the Americas:** As part of this package of economic initiatives involving Latin America, the Administration proposed an innovative plan to spur "debt-for-nature swaps," and create trust funds from certain debt payments that would support long-term environmental programs in those nations.
- **Protecting the ozone layer:** To prevent deterioration of the Earth's stratospheric ozone layer and eliminate one category of greenhouse gases, the U.S. led efforts to strengthen the Montreal Protocol of 1987. The 1990 London amendments to that protocol will phase-out most uses of ozone-depleting substances by 2000, and assist developing countries with the transition.
- **Global climate change:** The U.S. actively participates in the U.N.-sponsored Intergovernmental Panel on Climate Change (IPCC), the leading global forum for climate change policy analysis. U.S. policy substantially reflects the findings of the IPCC First Assessment Report (September 1990). In February 1991, the United States will host the opening session of negotiations toward a multilateral framework treaty in early 1991.
- **Hazardous waste shipments:** The Administration helped develop and then signed a multilateral convention which governs transboundary shipments of hazardous wastes in an environmentally sound manner.

- **G-7 Summits:** President Bush promoted numerous environmental initiatives during the "G-7 summits" of leaders in Paris (1989) and Houston (1990).
- **Bilateral projects:** The Administration has extended technical and financial assistance for bilateral efforts including: an East European environmental center in Budapest, Hungary (the Bush Center); air quality programs in Krakow, Poland and Mexico City; U.S.-Soviet efforts to create a park in the Bering Sea wilderness and joint efforts on nuclear waste cleanup; and agreements with Japan, Taiwan and South Korea to monitor the adverse effects of driftnet fishing.

5. **"Reduce or Prevent Pollution Before It Starts"**

"For too long, we've focused on clean-up and penalties after the damage is done. It's time to reorient ourselves using technologies and processes that reduce or prevent pollution -- to stop it before it starts."

-- President George Bush
June 8, 1989

Examples of this principle in action include:

- **Integrated approach:** in contrast to the piecemeal approach of the past which shifts pollution around instead of reducing it, the Administration has undertaken multimedia (land, air, water) policy and enforcement initiatives to protect, for example, the entire Chesapeake Bay watershed.
- **Clean Air Act:** An idea proposed by the Administration and enacted by Congress allows companies which voluntarily reduce hazardous air pollutants in advance of the legislated deadline to enjoy a deadline extension for the requirement that new technology be installed. Nine major companies have already agreed to prevent toxic air emissions at 40 sites in 14 states.
- **Oil spill prevention:** At home, the Administration helped break a deadlock over oil pollution legislation which includes important prevention measures. In Paris, the President proposed, and "G-7" leaders agreed, to develop cooperatively a plan for enhanced oil spill prevention and cleanup.

- **Municipal wastewater:** EPA has launched a national "early warning system" to prevent municipal wastewater treatment plants from violating clean water standards.
- **Outreach:** EPA Administrator Reilly and CEQ Chairman Deland are conducting vigorous outreach and technical assistance programs to numerous corporations, trade associations, major publications, and the public.

6. **"Vigorous and Firm Law Enforcement"**

"The final principle is that existing environmental laws will be vigorously and firmly enforced.... Our message about environmental law is simple: polluters will pay."

-- President George Bush
June 8, 1989

Examples of this principle in action include:

- **Enforcement resources:** Over 300 new enforcement staff have been added at EPA and the President signed legislation to hire at least 200 new investigators by 1995; the Justice Department's environmental enforcement budget is up 65% from FY89.
- **Real results:** The Bush administration has levied record-high numbers of civil and administrative penalties for violations of key statutes. Environmental indictments and convictions in FY90 were 33 percent higher than in FY89; FY89 figures were 70 percent higher than in FY88. Enhanced enforcement is proving to be an effective deterrent, especially as real jail time is being served by violators under the sentencing guidelines.
- **Superfund:** The Administration reoriented the "Superfund" hazardous waste site cleanup program to an "enforcement first" program to get more responsible parties to undertake cleanups.
- **Clean water:** The Administration brought civil and administrative actions against 61 cities (including Detroit, El Paso, Phoenix and San Antonio) for violations of the Clean Water Act.
- **Coordinated action:** The Administration took the first broad ecosystem approach to enforcement by charging 26 facilities in the Chesapeake Bay watershed for violations of the Clean Water Act.

B. Summary of initiatives and accomplishments

1) Air pollution:

Clean Air Act: President Bush's Clean Air Act proposal of July 1989 provided the impetus to break a decade-long legislative deadlock on clean air amendments. In particular, the President's innovative market-based proposals proved to be the key to overcoming regional disagreement and enacting a bill that balances environmental protection and economic growth. Thanks in large measure to the President's personal interest, this much-needed reform package passed the House and Senate and was signed into law on November 15, 1990.

The President's proposal and the resulting legislation included provisions to: reduce the pollutants from automobiles and other sources that contribute to urban smog; require increased use of cleaner motor vehicle fuels; reduce by 75-90 percent the emissions of hazardous air pollutants; and achieve a permanent reduction in acid rain precursors of roughly 50 percent. The dynamic, market-based acid rain program creates incentives to achieve larger pollution cuts through far less expensive means than traditional "command-and-control" approach.

The Clean Air Act of 1990 also authorizes measures to implement an international agreement to phase-out uses of ozone-depleting substances (see #10 for greater detail).

Administrative actions: Among other measures, EPA issued rules that lower gasoline volatility (which creates smog precursors) in summer months; rules to phase out 80 percent of the sulfur in diesel fuel by 1993; and rules to reduce industrial emissions of the hazardous pollutant benzene by 90 percent. EPA proposed standards for municipal waste combustors, including emission controls, source reduction and recycling of solid waste, which will reduce overall air emissions from such sources by 90 percent.

Asbestos: Asbestos is a carcinogen linked to lung and chest cancer. EPA announced a ban on almost all new uses of asbestos in the United States by 1997. The agency also released a guidebook on asbestos that suggests removal is not always the best way to reduce potential exposure and health risks.

Radon: EPA released data showing high levels of cancer-causing radon in housing throughout the country, and undertook public education campaigns to urge Americans to test and safeguard their homes, schools and businesses.

Other actions: The President decided air quality controls for oil and gas development offshore California should be substantially the same as those applied onshore.

Actions affecting global air pollution, automobile fuel efficiency, energy efficiency and renewables, and clean coal technology are listed elsewhere in Section B.

2) Agriculture

1990 Farm Bill: Legislation signed by the President in November 1990 includes important environmental provisions sought by the Administration. Upon the President's initiative, Congress for the first time ever included a forestry title in farm legislation, creating a quasi-public foundation to leverage non-federal funds and activities to plant up to one billion trees per year. The title also authorizes the Department of Agriculture's Forest Service to work with state and local governments, land grant universities, and the private sector to improve the management of natural resources on private forest lands and in urban communities.

Other key provisions of the Farm Bill sought by the Administration and passed by Congress will: strengthen the "swampbuster" program which protects the nation's wetlands by denying federal benefits to producers who grow crops on wetlands converted after 1985; extend the Conservation Reserve Program (CRP) which takes highly erodible cropland out of production for at least 10 years; create a Wetland Reserve with easements of at least 30 years within the CRP; and authorize "debt-for-nature" exchange programs for Latin America.

Low-input agriculture: A coordinated research initiative will provide the scientific basis for techniques to comprehensively reduce dependence on agricultural chemicals and enhance use of natural biological processes.

Resources Planning: The 1990 Resources Planning Act (RPA) program for the Forest Service seeks to achieve a balance among multiple uses of resources while delivering greater environmental sensitivity. Priorities include: enhancement of recreation, wildlife, and fisheries resources; better commodity production practices; and responses to global resource issues.

Pesticides: The Administration proposed legislation to improve food safety by streamlining regulations to allow faster removal of dangerous substances from the market and to speed approval of new, environmentally-safe pest control methods.

The Administration also commenced an interagency effort, bringing together EPA, USDA and the Food and Drug Administration (FDA), to improve the amount and quality of data available on pesticide use and levels of pesticide residues in fresh fruits and vegetables. At present, most risk assessments are based on very limited data and questionable assumptions.

EPA blocked all sales, distribution and use of "Alar" products labeled for use on food products, and stepped up its efforts against a wide range of other suspect pesticides. EPA blocked the sale of roughly 100 million apples that had been illegally treated with the fungicide "Botran."

3) **Budget:**

Funding increases: The Administration's FY91 budget request continued the trend of President Bush's first budget: substantial increases for most environmental programs, and greater sensitivity to the impact of federal actions on the environment. Notable areas include:

- Increases for EPA's operating budget, especially for enforcement (more than 335 new staff) and cleanup at Superfund and federal sites
- A 65 percent increase in the Justice Department's environmental enforcement budget over the FY89 level
- "America the Beautiful" (ATB): a three-pronged effort by the Department of the Interior and the U.S. Forest Service (USDA) to enhance federal resources by acquiring lands with high environmental or recreation value (up to \$1 billion over four years); restoring run-down natural resource and recreation areas ("Legacy '99"); and...
- As part of "America the Beautiful," establishing a long-term private-public reforestation program to plant and maintain one billion new trees annually for at least ten years, in both urban and non-urban settings. Trees provide numerous benefits, including air

cleansing, aesthetics, materials, food, recreation and an energy conservation effect by cooling buildings:

- Concerning global climate change, sharply higher funding for: the "Mission to Planet Earth" space-based Earth observation system; solar and renewable energy, energy conservation; and basic research (up 43 percent in 1990, up 57 percent to over \$1 billion in 1991)
- Termination or mitigation of water projects impinging on valued natural areas; research, protection and enhancement of the nation's wetlands
- proposed demonstration projects to terminate wasteful "below-cost" timber sales at nine national forests and provide improved recreational facilities in those areas
- an increase of almost \$800 million, or 21 percent above 1990 levels, for Federal facility cleanups
- full funding for the Clean Coal Technology program
- a significant boost in the staff and activities of the President's Council on Environmental Quality (CEQ)

Priorities report: In September 1990, EPA's Science Advisory Board released a major report which suggests ways to improve environmental policy-making. Entitled Reducing Risk: Setting Priorities and Strategies for Environmental Protection, the report compares disparate environmental problems according to the degree of risk they pose, and suggests principles to underlie a broader, more integrated, and more carefully targeted environmental policy.

4) Defense

"Defense & the Environment Initiative": In October 1989, Secretary Cheney challenged the services to make DOD the Federal leader in environmental compliance and protection. DOD's five-point initiative is forging long-term, problem-solving partnerships in defense-environmental matters. A September 1990 conference of public and private leaders discussed: a long-term strategy and near-term DOD environmental action plan; an enhanced DOD environmental decision-making structure; and how global strategic policy might encompass environmental challenges.

R&D: Defense legislation signed by the President in 1990 created a \$150 million Strategic Environmental Research and Development Program (SERDP), aimed at enhanced environmental data gathering and analysis, promotion of

compliance activities, and development of advanced energy and cleanup technologies.

Chesapeake Bay Agreement: In April 1990, DOD and EPA signed an agreement to combine efforts toward restoration of the Chesapeake Bay. The Department manages 65 major installations which comprise roughly 350,000 acres within the Bay watershed. A major feature of the agreement provides that DOD will achieve significant compliance with existing Clean Water Act discharge permits, or seek compliance agreements with EPA.

5) **Education**

New programs: Legislation signed by the President will lay the groundwork for greater environmental literacy across the nation. The bill stimulates creativity at the local level through grants, awards and training programs; and provides for leadership at the national level through the creation of an Office of Environmental Education at EPA and a broad-based advisory committee. While the bill enhances learning opportunities for all ages, it focuses especially on young students and their teachers by including the President's proposal for presidential awards to teachers for excellence in environmental education.

Earth Day: The CEQ coordinated actions by all federal departments and agencies to celebrate the 20th anniversary of Earth Day, including an exhibition on the Mall in Washington and various activities by major Federal agencies throughout the country. Some agencies used the opportunity to kick off awareness-raising special programs, including awards and recycling programs, that continue today.

6) **Energy**

National Energy Strategy: The Department of Energy is preparing a National Energy Strategy which emphasizes environmental and safety concerns, including responses to potential climate change, such as: energy conservation and efficiency; alternative and renewable energy sources; and nuclear power safety.

Persian Gulf crisis: In response to Iraq's invasion of Kuwait, the Administration developed a set of responses for both the short- and long-term. These actions involve equal emphasis on both supply measures and demand restraint, such as electricity and oil conservation, increased Federal energy efficiency, and accelerated conversion of the Federal vehicle fleet to alternative fuels. The benefits of demand-

side measures accrue both to our national energy security and the environment.

Energy efficiency: In January 1990, DOE announced 11 initiatives in energy efficiency and renewables. Implementation of these initiatives has included the award of contracts to retrofit federal buildings with more efficient lighting; the upcoming issuance of final national energy standards for washing machines, dryers and dishwashers; regulatory and legislative proposals to stimulate efficiency improvements in the utility, commercial and construction sectors; and use of the government-industry technology transfer process to speed more efficient technologies into widespread use.

Offshore development moratorium: In June 1990, the President postponed for at least ten years offshore oil and gas lease sales in tracts comprising: 99 percent of the California coast; the coasts of Oregon and Washington state; the southwest coast of Florida; and the Georges Bank area off New England. Lease sales near Santa Barbara, CA may proceed after January 1, 1996, but only after further studies as recommended by the National Academy of Sciences.

NEPA: In a reversal of previous policy, DOE is developing rules to centralize and strengthen significantly compliance with the Environmental Impact Statement process under the National Environmental Policy Act (NEPA).

Clean coal technology: The Administration has requested and secured all of the necessary funds to complete the \$2.5 billion Clean Coal Technology program.

7) Enforcement

Effective environmental enforcement is a cornerstone of the Bush administration's policy.

Resources: Over 300 new enforcement staff have been added at EPA and the President signed legislation to hire at least 200 new investigators by 1995; the Justice Department's (DOJ) environmental enforcement budget is up 65% from FY89.

Results: Aggressive enforcement activities have led to more environmental indictments and convictions: a 70% increase from FY89 to FY88. Felony indictments in FY90 alone climbed 33% over the previous year. In fact, since the criminal program began eight years ago, the Department has indicted 703 corporations and individuals, one-third of those obtained in the last two years. In FY90, the

Administration achieved a 95 percent conviction rate, and jail terms averaged a record 1.8 years. The longest jail term imposed was 12 years.

DOJ levied record-high numbers of civil and administrative penalties for violations of EPA-administered statutes, with fines totaling \$35 million in FY89. FY90 marks the second straight billion dollar recovery year for civil enforcement.

Largest settlement: Obtained the largest single settlement amount ever of a suit by the U.S. against one entity for violation of a federal environmental statute. Texas Eastern Transmission Corp. paid a \$15 million penalty and agreed to perform cleanup work estimated to cost \$400 million at 89 sites located in 14 states.

Clean Water Act: Achieved a record high civil penalty for violations of the Clean Water Act, by negotiating a settlement with Shell Oil Co. for \$19.7 million in fines and damages for a 400,000 gallon oil spill near San Francisco.

Brought civil and administrative actions against 61 cities (including Detroit, El Paso, Phoenix and San Antonio) for violations of the Clean Water Act.

Brought criminal enforcement actions against those who illegally destroy wetlands. A New York CEO pled guilty to negligently filling wetlands and was given \$2 million in fines and restitution. In Pennsylvania, a wetlands owner was given a 3-year prison sentence and a \$200,000 fine for systematically filling his wetlands in disregard of repeated warnings by federal officials and orders by the court.

Took the first broad ecosystem approach to enforcement by charging 26 facilities in the Chesapeake Bay watershed for violations of the Clean Water Act. Likewise, the Administration filed three civil enforcement cases focusing on pollution in the Grand Calumet River, Indiana, which flows into Lake Michigan.

Brought action against the South Florida Water Management District and the Florida Department of Environmental Regulations, seeking a judgment that the District and DER have failed to protect Everglades National Park and Loxahatchee National Wildlife Refuge from water pollution caused by the Everglades Agricultural Area.

Negotiated other major settlements for natural resource damages, including a \$66 million settlement for cleanup of PCB contamination and restoration in New Bedford Harbor.

Exxon Valdez: Obtained an indictment against the Exxon Corporation and Exxon Shipping on a total of 10 felony and misdemeanor counts arising from the largest oil spill in U.S. history in Prince William Sound, Alaska.

Hazardous substances: Successfully prosecuted intentional violators of hazardous waste laws. In one case, a waste hauler was convicted of unlawful disposal and sentenced to 3 1/2 years in jail. In another, a company owner was sentenced to three years jail time for unpermitted treatment, storage and disposal of hazardous wastes.

Brought civil lawsuits against 34 companies and individuals to halt violations concerning safe demolition and renovation of asbestos in buildings.

Proposed fines of \$1.65 million on 42 companies that failed to report toxic chemical discharges as required by law.

Ordered Syntex Corporation and others to cleanup dioxin contamination in Times Beach, Missouri.

Ozone-layer protection: Initiated cases to block illegal importation of CFCs and, in general, initiated new efforts to enforce compliance with international agreements phasing-out the production and use of ozone-depleting substances.

8) **Federal facilities**

For over forty years, the Federal government has failed to manage adequately and dispose properly the wastes it generates at various sites around the country. The Administration demonstrated its commitment to address these problems by requesting a 21% increase in Federal facility cleanup funds for FY91. FY91 appropriations bills signed by the President provide \$440 million for non-defense cleanups and \$2.7 billion for defense-related cleanups.

DOE released a five-year, site-by-site cleanup plan, and has dedicated 10% of cleanup funding for a five-year research and development plan to reduce outyear costs.

9) **Hazardous wastes:**

Superfund: The Administration fought Congressional attempts to cut the Superfund budget and in 1989, exceeded Congressionally-mandated targets for cleanup starts and site studies.

After an intensive management review, the Administration reoriented the "Superfund" hazardous waste site cleanup to an "enforcement first" program to get more responsible parties to undertake cleanups. EPA added 335 new enforcement staff to this program. In fiscal years 1989 and 1990, the enforcement program collected twice as much money in injunctive relief and cost recovery than in the entire previous history of the program (\$1 billion in 1989 alone); and filed more cleanup suits than in the first six years of the program.

Solid waste: The Administration undertook a similar management review of the hazardous waste program under the Resource Conservation and Recovery Act (RCRA) and issued a report setting priorities and directions to improve implementation of this complicated process.

International shipments of waste: The Bush administration helped to negotiate and then signed the Basel Convention controlling international hazardous waste shipments and is preparing enabling legislation.

10) **International**

African Elephants: In June 1989, the U.S. led the way by banning imports of African elephant ivory, an action which sparked other major nations to follow suit, and led to international action under the CITES regime to list the species as endangered. The President requested funds from Congress to assist African nations in the conservation of this species.

Antarctica: Legislation signed by the President in 1990 places an indefinite prohibition on any U.S. mineral resource exploration and development in Antarctica in a manner consistent with the Administration's position in advocating a stronger environmental protection agreement to supplement the Antarctic Treaty.

Biodiversity: The U.S. is participating in the international effort to assess existing programs to preserve global biological diversity, and to recommend further actions.

Driftnet fishing: The Administration persuaded Japan, Taiwan and Korea to enter into agreements to monitor driftnet fishing. This will allow the U.S. to monitor the incidental take of birds, seals, whales, dolphins and other marine mammals.

Eastern Europe: During his 1989 trip to Eastern Europe, the President offered financial and technical aid, help in drafting environmental laws and regulations, and access to pollution control technology. Specifically, the Administration is helping to develop programs to improve air and water quality in Krakow, Poland; and establish the East European Environmental Center in Budapest, Hungary, which opened in September 1990.

EPA-Cabinet legislation: Legislation supported by the President to elevate EPA to Cabinet status would give the U.S. Environment Secretary commensurate status with his counterparts from other nations. The plan would also enhance the new Department's authority to offer technical assistance to foreign environmental programs. In early 1989, EPA's International Activities Office was elevated to the assistant administrator level.

Extraterritorial impacts of U.S. activities: A task force chaired by CEQ is examining Executive Order 12114, related to assessment of extraterritorial impacts of U.S. government activities.

Global climate change: The Bush Administration has demonstrated its willingness to confront the complex and important question of global climate change. The Secretary of State's first major address in January 1989 expressed the President's intention to take action in this area.

In February 1990, the President became the first head of state to address the U.N.-sponsored Intergovernmental Panel on Climate Change (IPCC), the leading global forum for climate change policy analysis. The U.S. participates actively in the IPCC, has hosted two IPCC plenary sessions and two workshops, and chairs the IPCC Response Strategies Working Group. Indeed, U.S. policy largely reflects the findings of the IPCC First Assessment Report, released in September 1990.

At Malta, the President proposed two major global conferences on the issue in 1990. The White House Conference on Global Change, held April 17-18, 1990, addressed scientific and economic uncertainties and ways to reduce them. The second conference, scheduled for February 1991, will open negotiations toward a multilateral framework treaty based on the IPCC First Assessment Report of the

scientific evidence, potential impacts, and policy options. At the Houston summit, the U.S. urged completion of framework negotiations by 1992.

Several Administration initiatives are underway which will have the effect of limiting greenhouse gas emissions. The Administration's clean air bill, National Energy Strategy, increased CAFE standard, reforestation campaign, and CFC phase-out (see below) will have the effect of reducing projected greenhouse gas emissions by 15-25 percent by the year 2000. The U.S. supports a comprehensive approach to the issue which considers all sources and sinks of greenhouse gases, and which allows for the use of market-based, innovative, dynamic and cost-effective responses.

Global environmental research: The President's FY91 budget sought more than \$1 billion for the U.S. Global Change Research Program (USGCRP), up 57 percent from 1990 levels, which were themselves 43 percent over 1989. The Congress appropriated \$952 million. That research includes work on the "Mission to Planet Earth" orbiting observation system, Earth systems basic research, renewable and solar energy sources, and energy efficiency/conservation. Legislation signed by the President generally endorses the U.S. research program by codifying the Administration's interagency Committee on Earth and Environmental Sciences (CEES), which oversees the USGCRP.

Investment: President Bush supported and signed legislation to prohibit U.S. support for multilateral development bank projects unless environmental impacts are considered.

The Administration helped to negotiate, and then signed an international agreement to create the European Bank for Reconstruction and Development. Among the Bank's missions is the promotion of environmentally-sustainable development in Eastern Europe.

The Overseas Private Investment Corporation (OPIC) facilitated the creation of a \$100 million Environmental Investment Fund to support the new or expanding business enterprises in developing countries which practice sound environmental management. OPIC will contribute up to \$40 million to the privately-managed Fund, and the remaining \$60 million will be raised through the sale of limited partnership interests.

Latin America: As part of a major package of trade and investment initiatives to Latin American nations, the Administration proposed to spur "debt-for-nature swaps," and to direct interest payments on certain restructured loans

into trust funds that would support long-term environmental programs in those nations. Some of these proposals were enacted by Congress through the 1990 Farm Bill.

Mexico: The U.S. and Mexico are proceeding to design, under the auspices of a 1989 agreement, a three-year study of Mexico City air quality and measures for its improvement. The two nations focused on the environment in the 1989 U.S.-Mexico Bi-National Commission meeting.

Ozone layer protection: To prevent ozone layer depletion and eliminate one category of greenhouse gases, the Bush administration proposed to phase-out most uses of ozone-depleting substances by 2000, and led international efforts culminating in the 1990 London amendments to the Montreal protocol, which largely adopts the U.S. position. Financial and technical assistance to assist developing countries to make the transition to non-CFC technologies will be initiated this year, with appropriate guidelines to target administration of the funds. The Clean Air Act of 1990 provides domestic authority to implement the London agreement. Suits have already been filed by the Administration against illegal importation of CFCs.

Peace Corps: In 1990, for the first time, Peace Corps volunteers are being trained by EPA in water pollution prevention, waste disposal, reforestation and pesticide management.

Pesticides: The Administration supports adoption of international guidelines under which banned or severely restricted pesticides should not be exported without the prior informed consent of the importing country; and it acted to implement this approach for U.S. exports.

Summitry: President Bush supported efforts to make the environment a major focus of the "G-7" summits of industrial nations. In Houston, the President called for the negotiation, by 1992, of a global forestry agreement to address myriad issues of de- and re-forestation. In Tokyo, the President held meetings with leaders of Japan and Brazil to discuss the rapid depletion of rain forests. Presidents Bush and Gorbachev signed important new agreements (below).

United Nations 1992 Conference: The Administration is actively involved in planning the 1992 United Nations Conference on Environment and Development (UNCED), and has urged that global climate and forestry agreements be completed for signing, if possible, at that conference.

U.S.S.R. Senior U.S. and Soviet officials have met to expand cooperation in environmental matters, including:

plans for an international park in the Bering Sea wilderness; marine mammal and fisheries conservation; marine pollution; environmental law; wetlands; nuclear waste cleanup; and radiation monitoring.

Waste shipments: The Administration helped develop and then signed the Basel Convention, which governs transboundary shipments of hazardous wastes in an environmentally sound manner.

Whales: A U.S. representative to the International Whaling Commission blocked a proposal by Iceland to allow a catch of 200 minke whales in the Atlantic. Considered more broadly, the U.S. action averted a threat to the five-year-old moratorium on commercial whaling.

11) Pollution prevention and recycling:

The Administration seeks reforms to move beyond costly, piecemeal, end-of-the-process cleanups and make pollution prevention a priority, integrated in all elements of environmental policy. As opposed to pollution control, prevention is the only permanent ecological solution.

In contrast to the piecemeal approach (land, air, water) which often shifts pollution around instead of reducing it, the Administration has undertaken multimedia policy and enforcement initiatives to protect, for example, the entire Chesapeake Bay watershed from a wide array of pollution sources.

Clean air act: An Administration proposal, enacted by Congress, allows companies which voluntarily reduce hazardous air pollutants in advance of the legislated deadline to enjoy a deadline extension for the requirement that new technology be installed. Nine major companies have already agreed to prevent toxic air emissions from 40 facilities in 14 states, which is roughly 83% of overall emissions from these sites.

Outreach: At EPA and CEQ, aggressive outreach efforts have been established to work with industry and private groups to promote pollution prevention. Among the fora cosponsored by EPA was a June 1990 international conference which promoted technical approaches to reducing the volume of solid and hazardous waste.

Grants: Two percent of every EPA program's budget for FY91 has been set aside to fund pollution prevention demonstration projects. Also, in 1990, 25 grants worth a total of \$7 million have been awarded to 23 states to boost

development of pollution prevention projects. Fourteen grants were awarded in 1989, worth \$4 million.

Clean Water: EPA has launched a nationwide "early warning system" to prevent municipal sewage treatment plants from violating Clean Water Act standards.

Recycling: The Administration adopted a goal of reducing municipal solid waste nationally by 25 percent through a combination of source reduction and recycling measures. The Administration is also implementing federal procurement guidelines requiring government agencies and contractors to buy products made of recycled materials. The Recycling Advisory Council, a joint project of the National Recycling Coalition and EPA, is focusing on the development of markets for secondary materials.

12) **Transportation**

A National Transportation Policy was issued by the Department of Transportation (DOT) in March, 1990, which included protection of the environment and quality of life as one of six key themes.

Highway programs: Pursuant to a new environmental policy statement, the Federal Highway Administration (FHWA) held an environmental conference in November, 1990 for national and regional officials of FHWA, EPA, and the Army Corps of Engineers. The conference improved working relationships, reviewed wetlands law, and discussed better integration of transportation programs with the Environmental Impact Statement process.

Auto fuel efficiency: The Department of Transportation (DOT) raised the corporate average fuel economy (CAFE) standard for autos to 27.5 mpg.

Aviation noise: The Administration supported legislation, ultimately enacted and signed into law, which directs DOT to prepare a national aviation noise policy, including provisions to phase-out the noisiest aircraft currently in operation by the end of 1999.

Alternative fuels: For over a decade, George Bush has promoted alternative transportation fuels as a way to reduce dependence on unstable sources of oil, reduce gasoline emissions, and create new American jobs.

An innovative item in the President's clean air proposal proposed the production and marketing of significant numbers of alternative-fuel vehicles in the

1990s. The resulting bill creates a pilot program in California and requires the use of cleaner, reformulated gasoline in nine cities with the worst ozone pollution.

The National Highway Traffic Safety Administration (NHTSA) announced that beginning in model year 1993, automakers will be able to earn extra credits under the Corporate Average Fuel Economy (CAFE) program for those vehicles that are "dual-fuel"; in other words, vehicles which run on both petroleum fuels and alternatives.

13) **Water:**

Water quality: EPA issued proposals to regulate 17 pesticides and 21 other contaminants in drinking water, almost doubling the number of pollutants subject to federally enforceable standards. The proposals also call for monitoring 110 currently unregulated contaminants.

USDA initiated a national groundwater quality improvement program. Its central thrust is to deliver educational, technical and cost-share assistance to promote cost-effective crop production management systems that significantly reduce the risk of chemicals reaching and contaminating groundwater. Across the U.S. initial operations were begun in 1990 on over 85 watersheds with significant water quality problems.

The EPA, USDA, DOD and DOI are working with the Water Pollution Control Federation, a private group, on cooperative projects to improve the nation's water quality. EPA reinvigorated a task force charged with developing a national ground-water protection strategy, and initiated a dialogue with a full range of interested parties.

The Administration brought action against 61 cities (including San Antonio, Detroit, El Paso and Phoenix) for failure to control industrial discharges of toxic and hazardous wastewater into their sewage treatment systems.

As part of a coordinated, ecosystem strategy, the Administration charged 26 facilities in the Chesapeake Bay watershed for violations of the Clean Water Act; likewise, brought three civil enforcement cases against major polluters of the Grand Calumet River in northwest Indiana.

Water projects: President Bush seeks termination of uneconomic and destructive projects such as the Garrison Diversion Unit in North Dakota. In line with this policy, EPA launched a review of the permit action for construction of the Two Forks Dam in Colorado, and ultimately vetoed the

permit. EPA also rejected the proposed Big River reservoir project in Rhode Island, based on unacceptable potential effects on wetlands, wildlife and recreation.

The Bureau of Reclamation has been given new direction and proposed doubled funding to pursue mitigation of adverse impacts of certain large water projects already constructed. An Environmental Impact Statement is being prepared for operations at Glen Canyon Dam in Arizona.

Secretary Lujan announced a plan affecting the balance between water usage and environmental protection in the Central Valley of California, including preparation of an Environmental Impact Statement (EIS). Long-term water contracts are being renewed with the understanding that adjustments may be required when the EIS is completed.

Beach medical wastes: EPA implemented the first step of the President's commitment to prevent medical wastes from washing up on beaches: a pilot medical waste tracking system to serve as a model for further action. The program involves the states of Connecticut, Louisiana, New Jersey, New York and Rhode Island, as well as the District of Columbia and Puerto Rico.

Ocean dumping: The Administration secured consent agreements with local jurisdictions to phaseout ocean dumping of sewage sludge between March 1991 and June 1992. The President proposed legislation to require criminal felony penalties for illegal ocean dumping, and the Attorney General created a "SWAT Team on Ocean Pollution" to coordinate enforcement and share information with state and local officials.

Marine Sanctuaries: Legislation signed by the President in November 1990 designates 2,600 square nautical miles of coastal waters off the Florida Keys as the nation's ninth national marine sanctuary. In June, the President created a National Marine Sanctuary in California's wildlife-rich Monterey Bay.

Coastal barrier protection: Legislation signed by the President will almost triple the size of the Coastal Barrier Resource System, to over 1.25 million acres encompassing 1,211 miles of shoreline along the Atlantic, Gulf of Mexico and Great Lakes coasts. The bill limits federal spending and assistance for development within designated coastal barrier areas.

Wetlands: Wetlands protection has been a priority area of activity during the Bush administration, which supported legislation to purchase wetlands to implement the North

American Waterfowl Management Plan, and added over 106,000 acres to Everglades National Park. Secretary Lujan proposed a plan to repair environmental damage at Kesterson Reservoir in California, for a net tripling of wetlands acreage there.

Concerned by the rapid loss of American wetland habitats, the President directed an interagency task force to hold public meetings and report on ways to implement his goal of "no net loss" of wetlands.

EPA and Army Corps of Engineers signed an agreement to clarify wetlands protection policy. The Bureau of Reclamation and the U.S. Fish and Wildlife Service signed an agreement to cooperate in expanding the wetlands breeding habitat for numerous species.

The President's FY91 budget seeks a 24 percent boost (to \$460 million) for research, protection and enhancement of wetlands, including acceleration of the national wetlands inventory and enhancement of the bay/estuary program. This follows a 32 percent increase in 1990.

Enhanced criminal enforcement against those who illegally fill wetlands is proving to be an effective deterrent, especially as real jail time is being served by violators under the sentencing guidelines.

Oil spills: In a course of action similar to that which produced clean air legislation, the President's proposal of May 1989 to strengthen oil spill liability and compensation laws helped to break a Congressional deadlock that had continued for over a decade. In August 1990, the President signed the resulting legislation which adopted many of his proposals. The bill: creates a \$1 billion cleanup trust fund; improves establishes measures to improve prevention, response, containment and recovery; and increases Federal coordination, enforcement authority and penalties.

In a June 1990 package of decisions related to offshore oil and gas development, the President directed immediate steps be taken to: reduce the possibility of offshore oil spills by redirecting tanker traffic away from sensitive areas such as the Florida Keys and Everglades; and improve the ability of industry and government to respond to oil spills. The President proposed, and Paris Summit leaders accepted, a call for increased international cooperation on oil spill prevention and cleanup.

The Interior Department began a \$6 million, 3-year joint project with the American Petroleum Institute to research and develop new cleanup technology. The

Department's Minerals Management Service joined with the U.S. Navy to reactivate an oil spill research facility in Leonardo, New Jersey.

Exxon Valdez oil spill: The President sent Vice President Quayle and Cabinet-level teams on a number of missions to assess the Exxon Valdez spill, the largest oil spill in U.S. history. The Department of Transportation supervised cleanup by Exxon, while EPA is coordinating an interagency task force on long-range restoration of Prince William Sound. In addition, the natural resource trustees (representatives of DOI, NOAA, USDA and the State of Alaska) are conducting an assessment of natural resource damages in preparation for civil litigation against Exxon to recover those damages.

The Justice Department obtained an indictment against the Exxon Corporation and Exxon Shipping on a total of 10 felony and misdemeanor counts arising from the Valdez spill. A federal court has denied both defendants' motions to dismiss the indictment, and the case is set for trial in April 1991.

15) **Wildlife:**

Spotted owl: After an extensive public comment period, the U.S. Fish and Wildlife Service listed the northern spotted owl as a "threatened" species throughout its range in Washington, Oregon, California and British Columbia. In response, Secretaries Lujan and Yeutter announced a package of measures to set aside a significant amount of old-growth forest as protected owl habitat, and revise federal agency practices to balance the owls' protection and other forest management goals.

African elephants: In June 1989, the U.S. set a world precedent by banning imports of African elephant ivory, an action which sparked other major countries to follow suit, and which led to international action under the CITES regime to list the species as endangered. The President requested funds from Congress to assist African nations in the conservation of this species. The combined effect of these actions is already positive: falling ivory prices and stabilized elephant populations.

Other actions: The Department of Interior issued an emergency listing of the Desert Tortoise as an endangered species in Southern California, Utah and Nevada. DOI acquired additional habitat for endangered panthers in Florida. The Administration's enhanced wetlands programs benefit countless wildlife species around the nation.

Fisheries: The Administration blocked a Congressional proposal to cap the outlay of funds under the Wallop-Breaux Trust Fund used for fisheries protection and development.

U.S.-Soviet talks: Senior U.S. and Soviet officials have met to discuss, among other things: plans for an international park in the Bering Sea wilderness; marine mammal and fisheries conservation; and wetlands.

Enforcement: In line with the Administration's tough environmental enforcement policy, the Justice Department convicted almost 250 violators for illegal activity under the wildlife laws.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

* * * ADDENDUM * * *

On pages 8 and 26, please note the following change:

Oil spills: At the June 1989 summit in Paris of "G-7" leaders, the President proposed to negotiate an international agreement to enhance cooperative oil spill prevention, preparedness, response, and research. The leaders agreed, the U.S. followed through with a detailed proposal, and in November 1990, after months of talks involving persistent U.S. leadership, an International Convention on Oil Pollution Preparedness was agreed to by 80 countries.

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REMARKS OF THE HONORABLE MICHAEL R. DELAND, CHAIRMAN
WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

BEFORE THE

72ND ANNUAL CONVENTION

OF THE

AMERICAN GAS ASSOCIATION

BOSTON, MASSACHUSETTS

OCTOBER 29, 1990

IT IS A GREAT PLEASURE -- AND PRIVILEGE -- TO BE HERE WITH YOU TODAY.

THE PRESIDENT, AS YOU WOULD SUSPECT, IS INUNDATED WITH SPEAKING INVITATIONS... SO IT IS NOT UNCOMMON FOR ME TO PINCH HIT FOR HIM AT THE LAST MINUTE ON ENVIRONMENTAL AND ENERGY ISSUES.

THIS IS THE FIRST TIME, HOWEVER, THAT I HAVE BEEN TAPPED TO FILL IN FOR THE PRESIDENT'S CHIEF OF STAFF.

THOSE OF YOU WHO KNOW JOHN SUNUNU WILL RECOGNIZE THAT IT IS NEARLY AS DAUNTING A PROPOSITION FOR THIS LAYMAN LAWYER TO PINCH HIT FOR THE BRILLIANT ENGINEER, PARTICULARLY SINCE HE KNOWS YOUR INDUSTRY FAR BETTER THAN I.

THE TASK IS APPRECIABLY EASIER, HOWEVER, FOR WHEN IT COMES TO AMERICA'S GAS INDUSTRY THERE IS UNANIMITY THROUGHOUT THE ADMINISTRATION. WE APPLAUD YOUR STAUNCH EFFORTS ON OUR BEHALF ON THE CLEAN AIR ACT AND ON HELPING TO BRING FISCAL RESPONSIBILITY TO THIS COUNTRY.

I THANK YOU; JOHN SUNUNU THANKS YOU; AND PRESIDENT BUSH THANKS YOU.

ON THE CLEAN AIR ACT, WHICH JUST YESTERDAY WAS SENT TO THE PRESIDENT, WE THANK YOU FOR HANGING TOUGH WITH US THROUGH 9 COMMITTEES, 200 WITNESSES, 400 AMENDMENTS AND 700 PLUS PAGES.

THANK YOU FOR YOUR HELP IN GETTING THIS COUNTRY A NEW CLEAN AIR ACT THAT WILL STOP ACID RAIN, CLEAN UP URBAN SMOG BY THE YEAR 2000, AND REDUCE TOXIC AIR EMISSIONS BY 75 TO 90% ...AND THANKS TO AMERICA'S GAS INDUSTRY FOR ALLOWING US TO ACHIEVE THIS ENORMOUS ENVIRONMENTAL PROGRESS WHILE STRIKING A BALANCE WITH HEALTHY ECONOMIC GROWTH.

I AM PLEASED THAT MANY -- ALTHOUGH UNFORTUNATELY NOT ALL -- OF THE INNOVATIVE PROPOSALS THAT THE PRESIDENT SENT TO CONGRESS OVER 15 MONTHS AGO HAVE SURVIVED THE LABORIOUS AND CONTENTIOUS PROCESS ON CAPITOL HILL. AND WHAT A CRAZY PROCESS THAT HAS BEEN...

A 10 MILLION TON REDUCTION IN SO₂ EMISSIONS -- BUT NOT THROUGH THE COMMAND AND CONTROL SCHEMES WE HAVE USED FOR THE PAST 20 YEARS. INSTEAD: A MARKETABLE PERMIT TRADING SYSTEM THAT WILL REDUCE THE COST OF CONTROLLING ACID RAIN. IT IS THAT MARKETABLE TRADING SYSTEM WHICH IS THE HEART OF THE NEW CLEAN AIR ACT JUST AS MARKETING INCENTIVES ARE THE PHILOSOPHICAL UNDERPINNINGS OF THE BUSH ADMINISTRATION APPROACH TO OUR ENVIRONMENTAL AND ENERGY CHALLENGES. YES, THERE WILL BE AN ONGOING NEED FOR STATUTES AND REGULATIONS, BUT CLEARLY THOSE STATUTES AND REGULATIONS NEED TO BE STREAMLINED -- AND DRAMATICALLY SO. WE NEED TO CHANGE THIS COUNTRY'S MINDSET FROM SPENDING MILLIONS AND BILLIONS TO CLEAN UP POLLUTION AFTER THE FACT TO PREVENTING POLLUTION IN THE FIRST PLACE. POLLUTION PREVENTION WILL NOT HAPPEN BY FEDERAL -- OR ANY OTHER LEVEL OF GOVERNMENT-FIAT -- BUT ONLY BY HARNESSING THE

CREATIVITY AND COMMITMENT OF THE PRIVATE SECTOR. HAPPILY, POLLUTION PREVENTION -- AS BROADLY DEFINED -- IS INCREASINGLY DEMONSTRATED TO MAKE ECONOMIC AS WELL AS ENVIRONMENTAL SENSE.

A MARKET BASED SYSTEM WILL LIKELY GIVE GAS A FAR GREATER ROLE IN MEETING AMERICA'S ELECTRICAL GENERATING NEEDS. FOR EXAMPLE, IT IS ESTIMATED THAT BY 2010, NATURAL GAS CONSUMPTION IN THE ELECTRIC POWER INDUSTRY WILL INCREASE BY ONE QUAD. NEEDLESS TO SAY, IT IS ALSO EXPECTED THAT GAS PRICES WILL INCREASE DUE TO THIS INCREASED CONSUMPTION -- BY TEN-CENTS PER MILLION BTU'S PER QUAD. YES, THERE CAN BE A PROFIT AT PREVENTING POLLUTION.

...AND HERE IN MASSACHUSETTS, AND SOME OTHER STATES WHERE OIL CONSUMPTION IS THE GREATEST, CLEAN AIR ACT PROVISIONS WOULD PROVIDE GAS-FIRED UTILITIES AN OPPORTUNITY TO "BACK OUT" SOME OIL-FIRED BOILERS.

THERE IS ALSO A POTENTIAL ROLE FOR GAS IN CLEANING UP SOME COAL-FIRED POWER PLANTS THROUGH "GAS REBURNING" TECHNOLOGY. THE CHALLENGE IS TO LEARN IF IT IS COMPETITIVE WITH OTHER NOX CONTROL TECHNOLOGIES.

"COMPETITIVENESS", IN FACT, IS THE WATCHWORD FOR OUR EFFORTS AT CLEANING OUR NATION'S SKIES. IT HAS TO BE. THE COST OF THE NEW CLEAN AIR ACT IS ESTIMATED TO BE OVER \$20 BILLION PER YEAR.

THE PRESIDENT RECOGNIZED IN HIS ORIGINAL PROPOSAL THAT COMPETITIVENESS MEANT ENCOURAGING TECHNICAL INNOVATION. INNOVATION THAT WOULD COME FROM CHALLENGING THE NATION TO MAKE GREATER USE OF ALTERNATIVE, CLEANER FUELS.

NATURAL GAS IS ONE OF THOSE FUELS WITH POTENTIAL FOR INCREASED USE AS A COMPLIANCE TOOL UNDER THE NEW CLEAN AIR ACT. HOWEVER, TO TAKE FULL ADVANTAGE OF THIS WILL REQUIRE AGGRESSIVE RESEARCH AND DEVELOPMENT ON THE PART OF YOUR INDUSTRY.

FOR EXAMPLE, THE FIRST TITLE OF THE NEW ACT ESTABLISHES SCHEDULES FOR THOSE AREAS OF THE COUNTRY WHICH ARE CURRENTLY OUT OF COMPLIANCE WITH CARBON MONOXIDE AND OZONE -- THE POLLUTANTS NORMALLY ASSOCIATED WITH "URBAN SMOG." USING COMPRESSED NATURAL GAS (CNG) BOTH BUSES AND AUTOMOBILES COULD PLAY AN IMPORTANT ROLE IN CLEANING UP THIS PROBLEM. HOWEVER, WIDE SCALE USE OF ALTERNATIVE FUELS VEHICLES -- SUCH AS NATURAL GAS VEHICLES -- ARE NOT REQUIRED UNDER THE ACT. IT IS, THEREFORE, LARGELY UP TO YOU -- THE GAS INDUSTRY -- TO MAKE THEM COMPETITIVELY ATTRACTIVE.

BUT THERE ARE SOME TOE-HOLDS IN THE BILL TO HELP YOU BEGIN MAKING THAT CLIMB.

FOR EXAMPLE, IN THE MOBILE SOURCE TITLE, THERE IS AN OPPORTUNITY FOR CNG AUTOMOBILES TO MAKE INROADS ON GASOLINE...

FOR FLEETS OF VEHICLES, THERE IS A PROVISION THAT ESTABLISHES A PURCHASE REQUIREMENT FOR LOW-EMISSION-VEHICLES NO LATER THAN MODEL YEAR 2001. CNG CARS AND LIGHT-DUTY TRUCKS WOULD MEET THE REQUIREMENTS AND COULD COMPETE FOR THE IMPORTANT FLEET VEHICLE MARKET.

BUT AS IN EVERY DECISION, TIMING IS EVERYTHING. THE YEAR 2001 IS NOT THE REAL TARGET: THE NEW CLEAN AIR ACT WILL ACCELERATE THE FLEET PURCHASE REQUIREMENTS FOR LOW-EMISSION-VEHICLES TO MODEL YEAR 1998, IF THE VEHICLES ARE OFFERED FOR SALE IN CALIFORNIA THAT YEAR.

AND IF HISTORY IS ANY INDICATION, IT IS LIKELY THAT CALIFORNIA WILL SERVE AS THE PACE SETTER FOR THE REST OF THE COUNTRY.

A PROVISION IN THE CLEAN AIR ACT ALLOWS CALIFORNIA TO SET SPECIAL VEHICLE STANDARDS AND CNG VEHICLES WILL LIKELY PLAY AN IMPORTANT PART IN THE CALIFORNIA AIR QUALITY CONTROL PLAN. MOREOVER, OTHER STATES CAN OPT IN FOR THE MORE STRINGENT CALIFORNIA STANDARDS.

CNG IS ALREADY A BARGAIN FOR URBAN FLEETS. INDEED, FEDERAL EXPRESS AND UNITED PARCEL SERVICE HAVE ALREADY BEGUN CONVERTING THEIRS. ...AND AS THE CNG FLEETS GROW, SO TOO DOES THE NUMBER OF CNG FUELING STATIONS... ...AND IF THE FUEL IS READILY AVAILABLE TO FLEETS, THEN IT BECOMES AVAILABLE TO PRIVATE VEHICLES.

IT IS A QUESTION OF THE CHICKEN OR THE EGG; WHICH COMES FIRST, MAKING CNG EASILY AVAILABLE TO ALL VEHICLES, OR MAKING MORE VEHICLES THAT RUN ON CNG?

WHILE THE CURRENT ECONOMICS MAKE THE COST OF CONVERTING MOST PRIVATE GASOLINE AUTOMOBILES TO CNG PROHIBITIVE, MANUFACTURERS SEEM TO BE WILLING TO EQUIP NEW CARS TO OPERATE ON CNG. EVEN THE WHITE HOUSE HAS BEEN APPROACHED WITH AN OFFER TO OPERATE A PORTION OF ITS FLEET ON CNG.A PROPOSAL I AM PERSONALLY EVALUATING, BUT ONE THAT CLEARLY RAISES A HOST OF SECURITY AND LOGISTICAL CONCERNS.

SO, UNDER THE STATUTE OF THE DAY -- THE CLEAN AIR ACT -- THE OPPORTUNITIES FOR YOU ABOUND.

THE NATIONAL ENERGY STRATEGY PRESENTS SIMILAR CHALLENGES -- AND OPPORTUNITIES FOR YOU. AS YOU KNOW, THE NATIONAL ENERGY STRATEGY IS ON A FAST TRACK FOR THE PRESIDENT'S DESK IN DECEMBER. NATURAL GAS PRODUCTION, TRANSPORTATION AND USE IS A CENTRAL PART OF ANY ENERGY STRATEGY. WHILE IT WOULD BE PREMATURE TO SPECULATE ON THE EXACT WAY IN WHICH NATURAL GAS OPTIONS WILL ENTER THE NATIONAL ENERGY STRATEGY, THE PRESIDENT HAS A STRONG BASIC STRATEGY ON WHICH TO BUILD -- THE STRATEGY OF MARKET RELIANCE. THE DEREGULATION OF DEEP GAS PRICES IN 1978, OF NEW GAS PRICES IN 1985 AND THE LEGISLATED DEREGULATION OF ALL OLD GAS PRICES BY

1993 HAVE CREATED THE SPRING-BOARD FOR THE EMERGENCE OF NATURAL GAS AS A PREFERRED FUEL IN MANY APPLICATIONS. YOUR AGGRESSIVE COMPETITION FOR NEW MARKETS IN THE 80s, AND THE ROLE THAT ENVIRONMENTAL INCENTIVES WILL PLAY IN THE MARKETING OF NATURAL GAS IN THE 90s, MAKES NATURAL GAS AN IMPORTANT EXAMPLE OF THE INTEGRATION OF ECONOMIC, ENERGY AND ENVIRONMENTAL FORCES.

YOURS IS AN INDUSTRY THAT WELCOMES NEW CHALLENGES AND NEW OPPORTUNITIES. AND WE THANK YOU FOR THE HELP AND SUPPORT YOU HAVE GIVEN US IN THE DELIBERATIONS THAT ARE NOW CONCLUDING ON THE DEVELOPMENT OF THE NATIONAL ENERGY STRATEGY.

WHEN THE PRESIDENT GAVE HIS MARCHING ORDERS, HE SAID THAT THE U.S. MUST CONTINUE THE SUCCESSFUL STRATEGY OF RELYING ON MARKET FORCES WHILE BALANCING FOUR ESSENTIAL ELEMENTS:

1. OUR INCREASING NEED FOR ENERGY AT REASONABLE PRICES.
2. OUR COMMITMENT TO A SAFER AND HEALTHIER ENVIRONMENT.
3. OUR DETERMINATION TO MAINTAIN AN ECONOMY SECOND TO NONE.
4. AND OUR GOAL TO REDUCE DEPENDENCE BY OURSELVES AND BY OUR ALLIES ON POTENTIALLY UNRELIABLE ENERGY SUPPLIERS.

CLEARLY, GIVEN THE RECENT -- AND ONGOING -- EVENTS IN THE MIDDLE EAST, ONE OF THOSE "POTENTIALLY UNRELIABLE ENERGY SUPPLIERS" IS NO LONGER JUST "POTENTIALLY" UNRELIABLE. OUR EFFORTS TO CRAFT

OPTIONS FOR THE PRESIDENT BY DECEMBER HAS TAKEN ON A NEW SENSE OF IMPORTANCE AND IMMEDIACY. THE TIME HAS LONG SINCE COME TO REDUCE -- AND DRAMATICALLY SO -- OUR DEPENDENCE ON FOREIGN ENERGY SOURCES.

OUR EFFORT ON THE NATIONAL ENERGY STRATEGY INVOLVES NOT ONLY AN EXTRAORDINARY AMOUNT OF ANALYTICAL WORK BY THE BEST MINDS IN OUR NATIONAL LABORATORIES AND THROUGHOUT THE EXECUTIVE BRANCH, BUT AN UNMATCHED ATTEMPT TO REACH OUT TO THE PRIVATE SECTOR AND TO THE PUBLIC TO SOLICIT YOUR EXPERTISE AND ADVICE.

WHILE THE STRATEGY BEING DEVELOPED UNDER ADMIRAL WATKINS' GUIDANCE IS STILL BEING HONED FOR FINAL REVIEW, SOME OF THE RESULTS ARE ALREADY PATENTLY OBVIOUS, JUST AS WE HAD EXPECTED...

FOR ONE, THE GOALS OF ENVIRONMENT, ECONOMY, AND ENERGY INDEPENDENCE ARE TIED TOGETHER WITH A FOURTH "E": THE "E" OF EFFICIENCY. EVERY SET OF OPTION SCENARIOS DEMONSTRATES THAT ALL THREE OF OUR GOALS -- ENVIRONMENT, ECONOMY AND ENERGY INDEPENDENCE -- MOVE FAR AND FAST OFF BASELINE PROJECTIONS BY IMPROVING ENERGY EFFICIENCY. MOREOVER, EFFICIENCY IMPROVEMENTS ARE AMONG, IF NOT THE BEST RETURN ON OUR ENERGY INVESTMENTS BOTH IN TERMS OF COST AND TIME.

IT IS NO COINCIDENCE THAT WHEN WE LAUNCHED SPECIAL MEASURES IN RESPONSE TO IRAQ'S INVASION OF KUWAIT, THAT EQUAL EMPHASIS WAS GIVEN TO THE DEMAND AND SUPPLY SIDES OF AMERICA'S ENERGY BALANCE.

NO, WE ARE NOT ASKING PEOPLE TO GO WITHOUT -- TO "FREEZE IN THE DARK" AS IT WERE. INSTEAD, WE ARE CHALLENGING OURSELVES TO GROW FASTER AND FARTHER WHILE USING LESS ENERGY TO PERFORM A GIVEN TASK OR TO PRODUCE A GIVEN GOOD. TO IMPROVE OUR ECONOMIC AND ENERGY EFFICIENCY...

ANOTHER "EARLY RETURN" ON OUR ENERGY STRATEGY ANALYSIS THAT SURPRISED NO ONE: NATURAL GAS HAS GROWN AND WILL CONTINUE TO GROW IN IMPORTANCE, PARTICULARLY AS ISSUES OF ENERGY INDEPENDENCE AND ENVIRONMENTAL QUALITY BECOME MORE PRESSING. MANY OF THOSE WHO TESTIFIED OR COMMENTED ON THE NATIONAL ENERGY STRATEGY BELIEVE THAT NATURAL GAS IS CURRENTLY UNDERUTILIZED AND COULD MAKE A GREATER CONTRIBUTION TO AN ECONOMICALLY AND

ENVIRONMENTALLY SOUND ENERGY POLICY. WE ALSO KNOW THAT NATURAL GAS CAN DISPLACE OIL IN MANY APPLICATIONS AND THAT WE HAVE ENOUGH GAS RESERVES ON THIS CONTINENT ALONE TO SUPPLY OUR CURRENT NEEDS PAST THE MIDDLE OF THE NEXT CENTURY.

NOW, THE SITUATION IN THE MIDDLE EAST FINDS THIS NATION IN TRANSITION, SEEKING A VIABLE ENERGY STRATEGY TO ACHIEVE ENERGY INDEPENDENCE. YOU WILL BE EXPECTED TO PLAY A MAJOR ROLE IN

ACHIEVING THAT GOAL AND WE IN GOVERNMENT HAVE A RESPONSIBILITY TO ASSIST IN YOUR EFFORTS BY ASSURING THAT REMAINING REGULATION -- INCLUDING ENVIRONMENTAL REGULATION -- OF THE INDUSTRY IS PURPOSEFUL, FAIR, AND NOT REDUNDANT. IT IS IMPORTANT THAT WE ENSURE THAT THERE ARE NO UNNECESSARY BARRIERS PREVENTING GAS FROM QUICKLY AND FLEXIBLY SUBSTITUTING FOR OIL WHEREVER IT IS ECONOMIC.

WE ARE FAMILIAR, FOR EXAMPLE, WITH THE LAYERS OF REGULATION THAT APPLY TO YOUR INDUSTRY'S MAJOR ACTIVITIES. THE POINT ARGUELLO OFFSHORE PROJECT IN CALIFORNIA OFFERS A RECENT EXAMPLE -- BUT ONE I TRUST IS A WORST -- AND NOT TO BE REPEATED -- CASE. THE DISCRETIONARY REVIEW AND PERMITTING PROCESS FOR THE POINT ARGUELLO PROJECT, INVOLVING MORE THAN A DOZEN AGENCIES AT ALL LEVELS OF GOVERNMENT, BEGAN IN DECEMBER 1982 AND STILL HASN'T CONCLUDED. FACILITIES ARE IN PLACE AT THE PROJECT, WHICH IS CAPABLE OF PRODUCING 100,000 BARRELS OF OIL AND 60 MILLION CUBIC FEET OF GAS A DAY WITHIN ONE YEAR OF START-UP WHICH IT HAS BEEN PHYSICALLY-CAPABLE OF DOING SINCE 1987. WHY THE DELAY? MORE ENVIRONMENTAL REVIEW, THE DEMAND FOR WHICH UNDOUBTEDLY WAS PROMPTED BY RENEWED CONCERN OVER THE RISK OF OIL SPILLS FOLLOWING THE EXXON VALDEZ DISASTER.

BUT ENVIRONMENTAL REVIEW WILL NEVER ELIMINATE ALL RISK; NOR WAS IT DESIGNED TO DO SO. THE LEGISLATIVE HISTORY OF THE NATIONAL ENVIRONMENTAL POLICY ACT, THIS NATION'S ENVIRONMENTAL MAGNA CARTA

AND THE LAW WHICH MY OFFICE IS RESPONSIBLE FOR ADMINISTERING, IS INSTRUCTIVE IN THIS REGARD. THE SPONSORS OF NEPA WERE WELL AWARE THAT CIVILIZATION HAS ADVANCED AS FAR AS IT HAS BY TAKING RISKS WITH THE LIVING ENVIRONMENT -- RISKS WHICH MUST BE BALANCED AGAINST THE OBVIOUS BENEFITS. IN THIS HIGHLY TECHNICAL, WELL-POPULATED WORLD THIS BALANCING WILL NOT GET EASIER.

ENVIRONMENTAL REVIEW UNDER NEPA WAS DESIGNED TO SATISFY OUR NEED TO KNOW WHAT THE RISKS ARE AND TO KNOW WHAT OPTIONS AND ALTERNATIVES ARE AVAILABLE IN THE DEVELOPMENT OF OUR RESOURCES AND IN THE MANAGEMENT OF OUR ENVIRONMENT. IN SHORT, ENVIRONMENTAL REVIEW WAS INTENDED TO INFORM DECISIONMAKING, NOT PARALYZE IT.

I PLEDGE THAT UNDER MY GUIDANCE CEQ WILL PURSUE EVERY AVENUE TO MORE EFFECTIVELY IMPLEMENT OUR REGULATIONS ON TIMELINESS AND COORDINATION OF ENVIRONMENTAL REVIEWS. BUREAUCRATIC RED TAPE DOES NOT IMPROVE THE QUALITY OF DECISIONS, THE ENVIRONMENT, OR HELP THE CONSUMER OR INDUSTRY. WE WILL SLASH TO SHREDS THAT RED TAPE WHEREVER POSSIBLE WHILE REMAINING TRUE TO OUR RESPONSIBILITY TO PROTECT THE NEPA PROCESS.

FRANKLY, I AM OPTIMISTIC THAT, BY WORKING TOGETHER, WE WILL BE ABLE TO STREAMLINE ENVIRONMENTAL REVIEW OF GAS INDUSTRY ACTIVITIES WITHOUT SACRIFICING ENVIRONMENTAL QUALITY OBJECTIVES. ONE REASON FOR MY OPTIMISM IS THE SOLID ENVIRONMENTAL ETHIC THAT YOUR INDUSTRY HAS DEVELOPED OVER THE YEARS. EVIDENCE OF THAT

ETHIC IS SUPPLIED IN THE FACT THAT CONCERN FOR THE QUALITY OF THE HUMAN ENVIRONMENT IS BUILT RIGHT INTO YOUR EARLY PLANNING PROCESSES WHICH GENERALLY TAKE PLACE LONG BEFORE THE FIRST PERMIT APPLICATION IS FILED.

IT IS NOT THE PURPOSE OF THE NATIONAL ENERGY STRATEGY TO PICK FUEL WINNERS AND LOSERS. IT IS THE PURPOSE OF THE NES TO IDENTIFY OPTIONS THAT WILL PRESERVE THE BROADEST POSSIBLE ARRAY OF OPTIONS TO MEET THE NATION'S ENERGY NEEDS. FOR NATURAL GAS, THIS MEANS THAT WE MUST IDENTIFY AS ACCURATELY AS POSSIBLE WHAT IS THE POTENTIAL OF NATURAL GAS, DETERMINE WHAT BARRIERS INHIBIT ACHIEVING THAT POTENTIAL, AND DEVELOP STRATEGIES TO ELIMINATE THOSE BARRIERS. IF WE DO THIS RIGHT, WE WILL STRIKE THE KIND OF OVERALL BALANCE FOR THE LONGER TERM BETWEEN ENERGY, ENVIRONMENT AND ECONOMY THAT WILL ALLOW YOU IN THE GAS BUSINESS TO REALIZE THE FULL POTENTIAL OF NATURAL GAS AS A VITAL U.S. ENERGY SOURCE.

TWO OTHER MAJOR CHALLENGES AND OPPORTUNITIES AWAIT YOU.

FIRST IS THE ONGOING DEBATE OVER GLOBAL CLIMATE CHANGE. AS ENVIRONMENTAL CONCERNS ABOUT GLOBAL -- AND REGIONAL -- EMISSIONS CONTINUE, THE LOW EMISSIONS OF NATURAL GAS COMBUSTION MAKE GAS LOOK EVEN MORE ATTRACTIVE. FOR EXAMPLE, AS YOU WELL KNOW, COMPARED WITH COAL, COMBUSTION OF NATURAL GAS YIELDS ABOUT 70 PERCENT MORE ENERGY FOR EACH UNIT OF CARBON DIOXIDE PRODUCED. NATURAL GAS ALSO AVOIDS THE PRODUCTION OF ASH AND IT TYPICALLY

CONTAINS MUCH LESS SULFUR, THEREBY NEGATING THE NEED TO DIRECT ENERGY TO CLEAN-UP DEVICES. HOWEVER, THE VERY REAL COMPLICATIONS FOR GREENHOUSE GASES POSED BY METHANE LEAKS PROVIDES AN OPPORTUNITY FOR THE NATURAL GAS INDUSTRY TO BE PROACTIVE -- CONDUCT THE RESEARCH, DO THE SELLING AND THE CONSUMER OUTREACH. ALL OF US, THE ENVIRONMENT AND THE ECONOMY, CAN BENEFIT BY THE STRONGEST CASE YOU CAN TAKE TO THE CONSUMER AND TO THE WORLD ECONOMY.

SECONDLY, AS YOU ARE WELL AWARE, 25 PERCENT OF DOMESTIC NATURAL GAS PRODUCTION COMES FROM THE OUTER CONTINENTAL SHELF LANDS. THE GAS INDUSTRY HAS AN IMPORTANT CHALLENGE OVER THE NEXT 10 YEARS AS THE GOVERNMENT IMPLEMENTS THE PRESIDENT'S DECISION TO INTENSIVELY STUDY THE TRADE-OFF OF ENVIRONMENTAL SENSITIVITY AND RESOURCES POTENTIAL ON THE OCS. HERE AGAIN YOU HAVE A RESEARCH AND AN EDUCATIONAL CHALLENGE -- HOW TO EDUCATE THE PUBLIC ON THE DISTINGUISHING FACTORS OF NATURAL GAS PRODUCTION COMPARED WITH OIL PRODUCTION, AND THE DIFFERENCE BETWEEN PIPELINE AND TANKER TRANSPORTATION. WHEN WE LAY-PEOPLE SEE THE RESOURCES OF THE OCS SPECIFIED IN BARRELS OF OIL EQUIVALENT, WE TEND TO THINK OIL AND GAS ARE EQUIVALENT IN THEIR EFFECTS. YOU HAVE TO SELL NOT ONLY YOUR PRODUCT, BUT ALSO THE PERCEPTIONS OF YOUR PRODUCT.

AS YOU PUT YOUR IMAGINATION AND INGENUITY TO WORK TO SEIZE UPON THESE OPPORTUNITIES TO BUILD A NEW AND BETTER INDUSTRY, AND HENCE

A NEW AND BETTER AMERICA, YOU CAN COUNT ON THE SUPPORT OF THOSE
OF US IN THE WHITE HOUSE.

WE IN TURN THANK YOU FOR YOUR ONGOING SUPPORT AND WISH YOU ALL
THE BEST AND GODSPEED.

THANK YOU VERY MUCH.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20500

Michael R. Deland
Chairman

(202) 395-5080

July 5, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

ANDY CARD
EDE HOLIDAY
C. BOYDEN GRAY
ROGER PORTER
RICHARD DARMAN
BOB GRADY

FROM:

MICHAEL DELAND

SUBJECT:

FLEXIBILITY IN THE ENDANGERED SPECIES ACT

THE CHIEF of STAFF
has seen

Given current discussions over the Endangered Species Act, CEQ has prepared a legal analysis which summarizes the considerable administrative flexibility already existing in the statute. While identification of species threatened with extinction is a scientific process, the Act explicitly requires the Administration to include economic considerations in responding to that decision.

Two reviews of the Act are attached. The longer document fully describes, in a section by section format, the Act's procedures for listing and exemption, and provides a history of exemption requests to the Endangered Species Committee. The shorter memo provides a quick reference to provisions in the Act for exemptions and for consideration of economic factors.

Attachments



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Balance and Flexibility
in the Endangered Species Act

The Endangered Species Act (ESA)¹ is intended to:

"Provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions² set forth in subsection (a) of this section." 16 USC 1531(5)

The Endangered Species Act has, over the past seventeen years, stimulated both respect and even reverence, while provoking considerable controversy and hostility. While few would dispute in the abstract the desirability of preventing species extinction, real or perceived conflicts between the needs of human beings and other species has resulted in several amendments to ESA. The current focus on the perceived conflict between the needs of the spotted owl and the needs of people who rely on the timber industry for jobs - or, in a broader sense - the conflicts between protection of the remaining old growth forests and resource development in those forests - has stimulated numerous calls for further amendments to ESA, generally with the view of providing an avenue to balance economic considerations with ecological ones. The Secretaries of Interior and Agriculture have suggested broadening the discretion of the Endangered Species Committee (the so called "God Committee"), to expand that Committee's mandate to allow it to develop a long-term forest management plan for federal lands.

¹. 16 USC §1531 et seq.

². Those treaties and conventions are the migratory bird treaties with Canada and Mexico; the Migratory and Endangered Bird Treaty with Japan; the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; the International Convention for the Northwest Atlantic Fisheries; the International Convention for the High Seas Fisheries of the North Pacific Ocean; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and other international agreements. 16 USC 1631(a)(4).

The purpose of this memo is to briefly outline the current requirements of the ESA and highlight (literally - in bold type) provisions which allow for flexibility and for balancing economic, social and other concerns with the needs of a listed species.

LISTING, HABITAT, PLANS AND ADMINISTRATIVE STRUCTURES

I. THE LISTING PROCESS - HOW A CRITTER GETS TO BE OFFICIALLY RECOGNIZED AS THREATENED OR ENDANGERED.

A. Who qualifies to be a listed species? Any species or subspecies of fish, wildlife or plant, and any distinct population segment of any vertebrate species of fish and wildlife that interbreeds when mature. **Excluded is any species of the Class Insecta determined by the Secretary³ to constitute a pest whose protection under the provisions of ESA would present an overwhelming and overriding risk to man.** 16 USC §1532(6); 50 CFR §424.02(k).

B. A species may become threatened or endangered because of: present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms, or other natural or manmade factors. 16 USC §1533(1); 50 CFR 424.11(c).

1. A threatened species "means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 USC §1532(20).

2. An endangered species is a species which is in danger of extinction throughout all or a significant portion of its range. 16 USC §1532(6).

C. Basis for determination - The Secretary must make determinations regarding listing solely on the basis of the best scientific and commercial data available. 16 USC §1533(1)(A); 50 CFR §424.11(b).

1. In 1983, CEQ determined that proposed listings were exempt from NEPA analysis and documentation as a matter of law. Listings are the only ESA act which CEQ has

³. Depending upon the species at issue, "Secretary" refers to the Secretary of the Department of the Interior, Commerce, or Agriculture.

found to be exempt from NEPA.

D. The listing process in a nutshell:

1. Any person may submit a petition to list, delist, or reclassify a species. 50 CFR §424.14(a)

2. To the "maximum extent practicable, the Secretary must make a finding within 90 days "as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted." The Secretary publishes the finding in the Federal Register. 16 USC 1533(b)(3)(A); 50 CFR 424.14

3. If the answer to the above query is "yes", the Secretary commences a review of the status of the species and determines within 12 months whether:

- a. The petitioned action is not warranted;
- b. The petitioned action is warranted, in which case the Secretary commences action immediately, or,
- c. The petitioned action is warranted but that immediate action is precluded because of other pending ESA listing actions (in other words, we have a backlog). The Secretary is to "give consideration" to species which have been designated as requiring protection from commerce by any foreign nation or pursuant to any international agreement, or identified as in danger of extinction or likely to become so within the foreseeable future by a state or foreign fish, game or plant agency, but there are no statutory priorities for who goes first in the case of a substantial backlog. 16 USC §1533(b)

4. If the Secretary proposes a listing (or revision of a listing), the proposal must go through APA rulemaking procedures not less than 90 days and no more than one year before adoption of the final regulation. 16 USC §1533(5)(6).

5. If the Secretary finds that there is substantial disagreement regarding the sufficiency or accuracy of the available relevant data, the 1 year period may be extended for not more than 6 months to get additional data.

E. The ESA List: The Interior Secretary publishes the ESA list and is supposed to conduct, at least once every 5 years, a review of all species on that list to determine

any changes in status which should be made.

- F. Look alike: The Secretary may treat any species as endangered or threatened if it looks so much like a listed species that not protecting it would endanger the listed species.
- G. Emergency listings: There is a provision for emergency listing, which takes effect immediately and has a 240 day period in which the Secretary is undertake rulemaking activities. 16 USC §1533(C)(7); 50 CFR 424.20.

II. CRITICAL HABITAT

A. Critical habitat is to be designated for both endangered and threatened species to the maximum extent prudent (i.e., the designation won't increase the risk to the species), and determinable (i.e., we know where it is) at the time a species is proposed for listing. It is the geographical area found to be essential to the conservation of a species and unless so determined by the Secretary **shall not include the entire geographical area which could be occupied by the endangered or threatened species.** 16 USC §1532(5)(A)(B)(C)

- 1. If essential to the conservation of a species, a critical habitat regulation may be published on an expedited basis. 16 USC §1533(C)(i)
- 2. If there is a problem with determining the scope of the critical habitat, the designation period may be extended for not more than one year. 16 USC §1533(C)(ii)

B. The Secretary is to designate critical habitat on the basis of the best scientific data available **and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.** After identifying any significant activities which would either affect an area likely to be designated as critical habitat or to be affected by the designation, including **probable economic impacts**, the Secretary may **exclude** any area from critical habitat if he/she determines that the benefits of such exclusion **outweigh** the benefits of designation. 16 USC §1533(2); 50 CFR §§424.12, 424.19.

- 1. The only exception to this **weighing and balancing** process is if failure to designate critical habitat would result in extinction of the species.

III. RECOVERY PLANS

A. The principal goal of ESA is, of course, recovery of the

species to the point where it can be taken off the list (alligators; bald eagles).

B. The Secretary is to develop and implement recovery plans for both endangered and threatened species, unless he finds that such a plan will not promote the conservation of the species. To the maximum extent possible, the Secretary is to give priority to those species which are, or may be, in conflict with construction or other development projects or other forms of economic activity.

1. The recovery plan is to include **time and costs** and the process of developing the plan is to include an opportunity for **public review and comment**.

IV. LAND ACQUISITION UNDER ESA

A. ESA authorizes the appropriate Secretaries to acquire yb purchase through funds under the Land and Water Conservation Fund, donation, or otherwise, lands, waters or interest therein for the protection of listed species. 16 USC §1534.

V. COOPERATION WITH STATE GOVERNMENTS

A. Cooperation with state governments includes joint management agreements and a fund called the "cooperative endangered species conservation fund". State law is specifically allowed to be more, but not less, restrictive than ESA requirements. 16 USC §1545.

1. The Secretary is authorized to provide financial assistant to a State which has entered into a cooperative agreement to assist in developing programs for the conservation of endangered or threatened species or in monitoring species. The annual allocation is to be based on consideration of such factors as international commitments of the U.S., the readiness of a State to proceed, the potential for success, relative urgency, the importance of monitoring either a candidate or recovered species.

PROHIBITIONS, RESTRICTIONS AND EXEMPTIONS UNDER ESA

VI. PROHIBITED ACTS - note that these are automatically in force for ENDANGERED species of fish and wildlife, but **NOT** for **threatened species**. However, the Secretary may implement by regulation these prohibitions for a threatened species. Thus, the Secretary has much more **flexibility in designating specific protection for threatened species**.

A. Import or export of the species

B. "Taking" of the species which means to "harass, harm, pursue, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 USC §1532(19).

1. "Harm" in this context means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. 50 CFR §17.3(c).

C. Possessing, selling, carrying, shipping, etc., any species taken in violation of ESA; engaging in commercial interstate or foreign commerce with any such species.

D. Violating any regulations of the Secretary.

E. Attempting to commit, soliciting another to commit, or cause to be committed, any offense of ESA.

F. Slightly different prohibitions apply to endangered plants; i.e., the "taking" and "harm" definitions don't apply to them, but there is a prohibition against removal, malicious destruction and damage, etc., of species on federal land; on non-federal land prosecutors must show knowing violation of state law or regulation or criminal trespass law (recent Arizona cactus cases.)

G. There are import and export record-keeping requirements; designation of ports; species specific requirements (raptors, elephant ivory, sea turtles/TEDS) and special requirements for species held in captivity or controlled environments.

H. Criminal and civil penalties and enforcement provisions are found at 16 USC §1540.

1. The maximum criminal violation can result of a fine of not more than \$50,000 and one year in prison.

2. There's also a rewards section.

VII. Exceptions to above prohibitions - 16 USC §1539

A. The Secretary may permit any act otherwise prohibited by ESA for:

1. Any act for scientific purposes or to enhance the survival of the species, including establishment of experimental populations;

2. Any taking otherwise prohibited which is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

B. Before an incidental take permit may be issued, the applicant has to submit to the Secretary a proposed conservation plan, showing the likely impacts, mitigation measures, etc.

1. The Secretary must publish a notice in the Federal Register of each application for an exemption or incidental take permit. There's a 30 day statutory comment period (which can be waived in case of an emergency).

2. After the Secretary studies the proposed conservation plan and the public comments, he "shall" issue the permit if he/she finds that:

- a. the taking will be incidental;
- b. the applicant will, to the maximum extent practicable, minimize and mitigate the impacts;
- c. the applicant will ensure that \$ will be provided;
- d. the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- e. the applicant will meet all terms and conditions of the permit.

(1) The Secretary may revoke the permit if the terms and conditions are not met.

C. **Hardship exemption:** if a person enters into a contract with respect to a listed species prior to publication in the Federal Register of notice of consideration of that species as endangered, and subsequent listing of that species as endangered will cause **undue economic hardship**, there's a one year hardship exemption.

1. "Undue economic hardship" includes, but is not limited to:

- (a) substantial economic loss resulting from inability to perform contracts;
- (b) substantial economic loss to persons who derived a substantial portion of their income from the lawful taking of a species;

(c) curtailment of **subsistence** by persons dependent upon subsistence.

(1) The Secretary has a great deal of **discretion** as to "time, area, or other factor or applicability". 16 USC §1539(b)(3).

(2) But note that this exemption is triggered by consideration of listing, not listing itself. Since the listing process generally takes at least a year and the exemption only lasts a year, this exemption has not been used much.

D. There is an exemption for endangered or threatened species prohibitions for native peoples of Alaska, including **subsistence hunting and authentic native articles of handicrafts or clothing**. 16 USC §1539(e)

E. There is an detailed exemption relating to **sperm whale oil or finished scrimshaw products, and for certain antique articles** (over 100 years old). 16 USC §1539(f)

F. Another exemption covers noncommercial transshipment where the species may be lawfully taken and exported from the countries of origin and destination. 16 USC §1539(i)

G. Finally, there is an exemption relating to the establishment of an "experimental population" of an endangered or threatened species which the Secretary authorizes for release in a separate geographical area from nonexperimental populations. Critical habitat designations do not apply to experimental populations, unless essential to the continued existence of the species. 16 USC §1539(j).

FEDERAL AGENCY RESPONSIBILITIES AND PROCESSES

VIII. THE ROLE OF FEDERAL AGENCIES IN THE ENDANGERED SPECIES ACT.

A. The Section 7 provision: "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption

for such action the [Endangered Species Committee/aka the God Committee]. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available." 16 USC §1536(a)(2).

1. As in NEPA, permits or licenses are considered agency actions. 16 USC §1536(a)(3).

2. If a proposed agency action will occur in an area where either a listed species or a candidate species may be present, the federal agency proposing the action must conduct a biological assessment to determine whether any such species is "likely to be affected by such action." The biological assessment is to be completed within 180 days, and may be undertaken in the context of the NEPA process. 16 USC §1536(c).

3. If the action is likely to affect a listed species, the federal agency must "consult" with the Secretary. The consultation process is normally to be completed within 90 days (unless the Secretary extends it to 150 days upon issuing certain findings) and must be concluded within a period which is **agreeable** to the Secretary, the Federal agency, and the **applicant**. The result of the consultation is a "biological opinion" from the Secretary.

1. To try to avoid undue delay to the private sector, the Act was amended in 1982 to provide for a pre-application ESA consultation for prospective federal licensees or permittees .

4. If the biological opinion indicates that the proposed action is likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of its critical habitat, the biological opinion must also specify those reasonable and prudent alternatives which the Secretary considers **necessary or appropriate** to minimize such impact. 16 USC §1536(b)(4).

1. During the consultation period with Interior, neither the agency nor the permit nor license applicant can make "any irreversible or irretrievable commitment of resources . . . which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. . ." 16 USC §1536(d).

a. This restriction does not apply if the species in question is a **candidate** species. 16 USC §1536(a)(4).

IX. **THE GOD COMMITTEE/AKA THE ENDANGERED SPECIES COMMITTEE**

A. Established in 1978 after the Supreme Court held in TVA v. Hill that Section 7 barred the completion of federal projects in conflict with endangered species "whatever the cost". (Tellico Dam versus the snail darter.) **God Committee set up to allow for balancing of endangered species protection with economic and social impacts.**

B. **The God Committee is composed of the:**

1. Secretary of Agriculture
2. Secretary of the Army
3. Chairman of the Council of Economic Advisors
4. Administrator of EPA
5. Secretary of the Interior
6. Administrator of NOAA
7. An individual from each affected State, appointed by the President (upon written recommendations from Governors to Secretary to President).

a. Secretary of Interior is the Chairman; Five members are a quorum. 16 USC §1536(e)

C. Who may apply to the God Committee:

1. A federal agency (**any federal agency**, not just the one proposing the action);
2. The **Governor** of the State in which an action will occur, if any;
3. A **permit or license applicant** whose project is the subject of a jeopardy opinion. 16 USC §1536(g)

D. The Fish and Wildlife Service has promulgated regulatory requirements for the contents of the application (description of proposed action; copies of biological assessments and opinions, description of alternatives; discussion of benefits; public interest, regional or national significance; mitigation and enhancement measures, etc. 50 CFR §452.03

E. The exemption applicant has the burden of proof regarding initial threshold review and determination requirements: that is, whether basic ESA procedures were complied with in good faith and agency or applicant has carried out those initial responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives. The Secretary has 20 days to determine this.

1. If the Secretary makes a positive finding on each of the threshold determinations, he notifies the exemption applicant that the application qualifies for consideration by the Endangered Species Committee.

F. The Secretary must terminate the exemption process immediately if the Secretary of STATE certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation of other international obligation of the US. By statute, the Secretary of State has 60 days after the application is made to the Committee to so certify. 16 USC §1536(i); 50 CFR 452.03(e).

G. If the Secretary makes a positive threshold determination on the application for exemption, he proceeds to prepare a report for the Committee which:

1. discusses the availability of reasonable and prudent **alternatives** to the proposed action;
2. discusses the nature and extent of the **benefits** of the proposed action;
3. discusses the nature and extent of the **benefits** of alternative courses of action consistent with conserving the species or the critical habitat;
4. summarizes the evidence concerning whether the proposed action is of **national or regional significance**;
5. summarizes the evidence concerning whether the proposed action is **in the public interest**;
6. discusses **appropriate and reasonable mitigation and enhancement measures** which should be considered by the Committee;
7. discusses whether the federal agency and permit or license applicant, if any, have refrained from making irreversible or irretrievable commitment of resources. 50 CFR 452.04(a).

H. To help develop the report, the Secretary must designate an Administrative Law Judge and hold hearings for the record in accordance with the Administrative Procedure Act. 16 USC §1536(g)(4); 50 CFR 452.05. Ex parte rules apply.

1. The Secretary has 140 days to conduct this process and to prepare the report, or such other period of time as is mutually agreeable to the exemption applicant and the Secretary. 16 USC §1536(g)(5).

I. Within 30 days of receiving the report, the Committee must make a final determination on the record by a vote of not less than 5 of its members (voting in person, not by representative). The Committee may hold public hearings and has subpoena power. 50 CFR §§453.04,05,06. The Committee is **statutorily mandated to grant an exemption** if, through said vote, the Committee finds that:

1. There are no reasonable and prudent alternatives to the agency action;
2. The **benefits** of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;
3. The action is of **regional or national significance**; and,
4. It establishes such reasonable mitigation and enhancement measures, including but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered or threatened species or critical habitat. 16 USC §1536(h).

J. The Committee's determination is permanent, unless the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of a previous biological assessment or opinion and the Committee determines within 60 days after the date of such a finding that the exemption should not be permanent.

K. The Committee's grant of an exemption is not a major federal action for purposes of NEPA provided that an EIS which discussed the impacts upon the species or habitat has been previously prepared with respect to the agency action exempted by the Committee's order. 16 USC §1536(k)

L. The Committee's decision is subject to judicial review.

1. There's a 90 day statute of limitations. 16 USC §1536(n)

M. If the Committee grants an exemption and orders mitigation and enhancement measures, the applicant submits an annual report to CEQ, which is published in the Federal Register. 16 USC §1536(f)(2)

N. Mitigation and enhancement measures are to be counted by the applicant as part of the costs of continuing the proposed action, but not for the purpose of computing benefit-cost or other ratios for the proposed action. The applicant may request the Secretary to carry out the mitigation and enhancement measures, in which case the applicant still pays for the costs. All necessary mitigation and enhancement measures must be authorized prior to implementing the action and funded concurrently with all other project features. 16 USC §1536(f).

O. "Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security." 16 USC §1536(j)

P. If the President determines he needs an exemption to prevent the recurrence of a natural disaster and to reduce the potential loss of human life under the Disaster Relief Act and the situation involves an emergency situation which doesn't allow the ordinary procedures of this section be followed, the Committee shall accept the determinations of the President. 16 USC §1536(p)

Q. A bit of perspective: To the best of my knowledge, there have been five applications to the God Committee, only two of which were actually considered by the Committee. Both of the two projects considered were statutorily exempted from the threshold process of getting to the Committee. One of those involved the Tellico Dam situation which, despite the fact that it was that situation which stimulated the formation of the Committee, did not pass the Committee's muster. By unanimous vote of the Committee, Tellico failed to pass either the benefits test or the "no reasonable and prudent alternatives" test. The other project was the Grayrocks Dam and Reservoir in Nebraska, which involved a Corps permit and an REA loan guarantee. The Committee did allow that project to proceed with specific mitigation and enhancement measures, and the applicant does file its annual report with CEQ.

Of the other three initial applications, one involved the oil refinery which the Pittston Company wanted to site at Eastport, Maine, (impact whales and eagles). That application was dismissed on the grounds that the ESA administrative process was not yet complete. A second application involved a barge company's request to "fleet" (park) barges in an area which would have affected an endangered mussel. Among other things, the request did not meet the national or regional significance criteria. A third application, ostensibly by the Suwanne River Authority regarding a project which would affect manatees was withdrawn when it was discovered the application had not been approved by the river authority.

To date, neither the special authority of the Secretary of State to block an exemption, nor the authorities of the Secretary of Defense and the President to by-pass the normal Committee procedures has ever been used.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

**Balancing/Exception/Exemption Provisions in
the Endangered Species Act**

The Listing Process:

Strictest part of ESA process

Decision to list is to be based solely on the basis of best scientific and commercial data available.

Exempt from NEPA analysis since balancing with economic and social factors not permitted

. . . Insects which are pests are not included in protected species; nor are invertebrate populations, as opposed to species (i.e., populations of butterflies).

Hardship exemption applies to party who enters into contract involving listed species and who would suffer **substantial economic loss** resulting from inability to utilize species. This exemption lasts one year from date of notice of consideration of proposed listing of species.

Critical Habitat:

The decisionmaker is specifically required to take into consideration the **economic** impact and any other relevant impact of designating critical habitat. Secretary may **exclude** area from designation if he/she determines that the benefits of such exclusion outweigh the benefits of designation (unless extinction of species would result)

Recovery Plans:

Recovery plan is to include **costs and time** and the opportunity for public review and comment.

Relief from Prohibitions against "takings", etc.:

Acts which are prohibited in relation to endangered species (trade, taking, etc.) are not automatically prohibited for threatened species. The Secretary may, by regulation, designate specific protection for threatened species (i.e., spotted owls).

Secretary may issue an **incidental take permit** to an applicant who wishes to pursue otherwise lawful

activity during which an endangered species may be incidentally taken, so long as the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Particular exemption provisions for:

Native peoples of Alaska: subsistence hunting, clothing,
handicrafts
Sperm whale oil and finished scrimshaw products
Noncommercial transshipment (through the US - not prohibited
in either country of origin or destination)
Establishment of experimental populations

Federal Agency Responsibilities (Section 7 Consultation):

There's a pre-application procedure for prospective applicants for federal licenses or permits.

If consultation indicates that proposed action is likely to jeopardize continued existence of a species, the focus becomes the search for reasonable and prudent alternative measures.

If success is not achieved during the consultation period in identifying reasonable and prudent alternatives which would permit the proposed action to go forward, **the applicant, any federal agency or the Governor of the State** in which the proposed action would occur may petition the Endangered Species Committee (the **God Committee**). The God Committee is composed of:

Secretary of Interior (Chairman)
Secretary of Agriculture
Secretary of the Army
Chairman of CEA
EPA Administrator
NOAA Administrator
Individual from each affected State, appointed by President

The Committee **must grant an exemption to ESA** if, by vote of no less than 5 members, it finds that:

. . . there are no reasonable & prudent alternatives to the agency action;

. . . the benefits of the action clearly outweigh the benefits of alternative courses of action which would

conserve the species or habitat, and such action is in the public interest;

. . . the action is of regional or national significance;

. . . the action establishes reasonable mitigation and enhancement measures.

Other Exemptions Open to the God Committee:

The God Committee **shall** grant an exemption for any action which the Secretary of Defense finds is necessary for reasons of national security.

The Committee **shall** accept determinations of the President regarding an exemption needed because of a natural disaster/emergency situation under the Disaster Relief Act.

History of Exemption Requests to the God Committee:

There have been five applications to the God Committee, only two of which were actually considered by the Committee. One of those was the Tellico Dam situation. By unanimous vote of the Committee, Tellico failed to pass either the benefits test of the "no reasonable and prudent alternatives" test. The other project was the Grayrocks Dam and Reservoir in Nebraska, which involved a Corps permit and an REA loan guarantee. The Committee did allow that project to proceed with specific mitigation and enhancement measures, and the applicant files its annual report with CEQ.

Of the other three initial applications, one involved the oil refinery which the Pittston Co. wanted to site at Eastport, Maine (impact on whales and eagles). That application was dismissed on the grounds that the ESA administrative process was not yet complete. A second application involved a barge company's request to "fleet" (park) barges in an area which would have affected an endangered mussel. Among other things, the request did not meet the national or regional significance criteria. A third application, ostensibly by the Suwannee River Authority regarding a project which would affect manatees, was withdrawn when it was discovered the application had not been approved by the river authority.

To date, neither the special authority of the Secretary of State to block an exemption, nor the authorities of the Secretary of Defense and the President to by-pass the normal Committee procedures has ever been used.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20500

Michael R. Deland
Chairman

(202) 395-5080

July 5, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

ANDY CARD
EDE HOLIDAY
C. BOYDEN GRAY
ROGER PORTER
RICHARD DARMAN
BOB GRADY

FROM:

MICHAEL DELAND

SUBJECT:

FLEXIBILITY IN THE ENDANGERED SPECIES ACT

Given current discussions over the Endangered Species Act, CEQ has prepared a legal analysis which summarizes the considerable administrative flexibility already existing in the statute. While identification of species threatened with extinction is a scientific process, the Act explicitly requires the Administration to include economic considerations in responding to that decision.

Two reviews of the Act are attached. The longer document fully describes, in a section by section format, the Act's procedures for listing and exemption, and provides a history of exemption requests to the Endangered Species Committee. The shorter memo provides a quick reference to provisions in the Act for exemptions and for consideration of economic factors.

Attachments

file

AC HAS SEEN 7/6/90
AHC

*I recommended
to D Strubbs that
Boskin also get a
copy.
AHC
7/6*



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Balance and Flexibility
in the Endangered Species Act

The Endangered Species Act (ESA)¹ is intended to:

"Provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions² set forth in subsection (a) of this section." 16 USC 1531(5)

The Endangered Species Act has, over the past seventeen years, stimulated both respect and even reverence, while provoking considerable controversy and hostility. While few would dispute in the abstract the desirability of preventing species extinction, real or perceived conflicts between the needs of human beings and other species has resulted in several amendments to ESA. The current focus on the perceived conflict between the needs of the spotted owl and the needs of people who rely on the timber industry for jobs - or, in a broader sense - the conflicts between protection of the remaining old growth forests and resource development in those forests - has stimulated numerous calls for further amendments to ESA, generally with the view of providing an avenue to balance economic considerations with ecological ones. The Secretaries of Interior and Agriculture have suggested broadening the discretion of the Endangered Species Committee (the so called "God Committee"), to expand that Committee's mandate to allow it to develop a long-term forest management plan for federal lands.

¹. 16 USC §1531 et seq.

². Those treaties and conventions are the migratory bird treaties with Canada and Mexico; the Migratory and Endangered Bird Treaty with Japan; the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; the International Convention for the Northwest Atlantic Fisheries; the International Convention for the High Seas Fisheries of the North Pacific Ocean; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and other international agreements. 16 USC 1631(a)(4).

The purpose of this memo is to briefly outline the current requirements of the ESA and highlight (literally - in bold type) provisions which allow for flexibility and for balancing economic, social and other concerns with the needs of a listed species.

LISTING, HABITAT, PLANS AND ADMINISTRATIVE STRUCTURES

I. THE LISTING PROCESS - HOW A CRITTER GETS TO BE OFFICIALLY RECOGNIZED AS THREATENED OR ENDANGERED.

A. Who qualifies to be a listed species? Any species or subspecies of fish, wildlife or plant, and any distinct population segment of any vertebrate species of fish and wildlife that interbreeds when mature. **Excluded is any species of the Class Insecta determined by the Secretary³ to constitute a pest whose protection under the provisions of ESA would present an overwhelming and overriding risk to man.** 16 USC §1532(6); 50 CFR §424.02(k).

B. A species may become threatened or endangered because of: present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms, or other natural or manmade factors. 16 USC §1533(1); 50 CFR 424.11(c).

1. A threatened species "means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 USC §1532(20).

2. An endangered species is a species which is in danger of extinction throughout all or a significant portion of its range. 16 USC §1532(6).

C. Basis for determination - The Secretary must make determinations regarding listing solely on the basis of the best scientific and commercial data available. 16 USC §1533(1)(A); 50 CFR §424.11(b).

1. In 1983, CEQ determined that proposed listings were exempt from NEPA analysis and documentation as a matter of law. Listings are the only ESA act which CEQ has

³. Depending upon the species at issue, "Secretary" refers to the Secretary of the Department of the Interior, Commerce, or Agriculture.

found to be exempt from NEPA.

D. The listing process in a nutshell:

1. Any person may submit a petition to list, delist, or reclassify a species. 50 CFR §424.14(a)

2. To the "maximum extent practicable, the Secretary must make a finding within 90 days "as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted." The Secretary publishes the finding in the Federal Register. 16 USC 1533(b)(3)(A); 50 CFR 424.14

3. If the answer to the above query is "yes", the Secretary commences a review of the status of the species and determines within 12 months whether:

- a. The petitioned action is not warranted;
- b. The petitioned action is warranted, in which case the Secretary commences action immediately, or,
- c. The petitioned action is warranted but that immediate action is precluded because of other pending ESA listing actions (in other words, we have a backlog). The Secretary is to "give consideration" to species which have been designated as requiring protection from commerce by any foreign nation or pursuant to any international agreement, or identified as in danger of extinction or likely to become so within the foreseeable future by a state or foreign fish, game or plant agency, but there are no statutory priorities for who goes first in the case of a substantial backlog. 16 USC §1533(b)

4. If the Secretary proposes a listing (or revision of a listing), the proposal must go through APA rulemaking procedures not less than 90 days and no more than one year before adoption of the final regulation. 16 USC §1533(5)(6).

5. If the Secretary finds that there is substantial disagreement regarding the sufficiency or accuracy of the available relevant data, the 1 year period may be extended for not more than 6 months to get additional data.

E. The ESA List: The Interior Secretary publishes the ESA list and is supposed to conduct, at least once every 5 years, a review of all species on that list to determine

any changes in status which should be made.

- F. Look alike: The Secretary may treat any species as endangered or threatened if it looks so much like a listed species that not protecting it would endanger the listed species.
- G. Emergency listings: There is a provision for emergency listing, which takes effect immediately and has a 240 day period in which the Secretary is undertake rulemaking activities. 16 USC §1533(C)(7); 50 CFR 424.20.

II. CRITICAL HABITAT

A. Critical habitat is to be designated for both endangered and threatened species to the maximum extent prudent (i.e., the designation won't increase the risk to the species), and determinable (i.e., we know where it is) at the time a species is proposed for listing. It is the geographical area found to be essential to the conservation of a species and unless so determined by the Secretary **shall not include the entire geographical area which could be occupied by the endangered or threatened species.** 16 USC §1532(5)(A)(B)(C)

- 1. If essential to the conservation of a species, a critical habitat regulation may be published on an expedited basis. 16 USC §1533(C)(i)
- 2. If there is a problem with determining the scope of the critical habitat, the designation period may be extended for not more than one year. 16 USC §1533(C)(ii)

B. The Secretary is to designate critical habitat on the basis of the best scientific data available **and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.** After identifying any significant activities which would either affect an area likely to be designated as critical habitat or to be affected by the designation, including **probable economic impacts**, the Secretary may **exclude** any area from critical habitat if he/she determines that the benefits of such exclusion **outweigh** the benefits of designation. 16 USC §1533(2); 50 CFR §§424.12, 424.19.

- 1. The only exception to this **weighing and balancing** process is if failure to designate critical habitat would result in extinction of the species.

III. RECOVERY PLANS

- A. The principal goal of ESA is, of course, recovery of the

species to the point where it can be taken off the list (alligators; bald eagles).

B. The Secretary is to develop and implement recovery plans for both endangered and threatened species, unless he finds that such a plan will not promote the conservation of the species. To the maximum extent possible, the Secretary is to give priority to those species which are, or may be, in conflict with construction or other development projects or other forms of economic activity.

1. The recovery plan is to include **time and costs** and the process of developing the plan is to include an opportunity for **public review and comment**.

IV. LAND ACQUISITION UNDER ESA

A. ESA authorizes the appropriate Secretaries to acquire yb purchase through funds under the Land and Water Conservation Fund, donation, or otherwise, lands, waters or interest therein for the protection of listed species. 16 USC §1534.

V. COOPERATION WITH STATE GOVERNMENTS

A. Cooperation with state governments includes joint management agreements and a fund called the "cooperative endangered species conservation fund". State law is specifically allowed to be more, but not less, restrictive than ESA requirements. 16 USC §1545.

1. The Secretary is authorized to provide financial assistant to a State which has entered into a cooperative agreement to assist in developing programs for the conservation of endangered or threatened species or in monitoring species. The annual allocation is to be based on consideration of such factors as international commitments of the U.S., the readiness of a State to proceed, the potential for success, relative urgency, the importance of monitoring either a candidate or recovered species.

PROHIBITIONS, RESTRICTIONS AND EXEMPTIONS UNDER ESA

VI. PROHIBITED ACTS - note that these are automatically in force for ENDANGERED species of fish and wildlife, but **NOT** for **threatened species**. However, the Secretary may implement by regulation these prohibitions for a threatened species. Thus, the Secretary has much more **flexibility in designating specific protection for threatened species**.

- A. Import or export of the species
- B. "Taking" of the species which means to "harass, harm, pursue, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 USC §1532(19).
 - 1. "Harm" in this context means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. 50 CFR §17.3(c).
- C. Possessing, selling, carrying, shipping, etc., any species taken in violation of ESA; engaging in commercial interstate or foreign commerce with any such species.
- D. Violating any regulations of the Secretary.
- E. Attempting to commit, soliciting another to commit, or cause to be committed, any offense of ESA.
- F. Slightly different prohibitions apply to endangered plants; i.e., the "taking" and "harm" definitions don't apply to them, but there is a prohibition against removal, malicious destruction and damage, etc., of species on federal land; on non-federal land prosecutors must show knowing violation of state law or regulation or criminal trespass law (recent Arizona cactus cases.)
- G. There are import and export record-keeping requirements; designation of ports; species specific requirements (raptors, elephant ivory, sea turtles/TEDS) and special requirements for species held in captivity or controlled environments.
- H. Criminal and civil penalties and enforcement provisions are found at 16 USC §1540.
 - 1. The maximum criminal violation can result of a fine of not more than \$50,000 and one year in prison.
 - 2. There's also a rewards section.

VII. Exceptions to above prohibitions - 16 USC §1539

- A. The Secretary may permit any act otherwise prohibited by ESA for:
 - 1. Any act for scientific purposes or to enhance the survival of the species, including establishment of experimental populations;

2. Any taking otherwise prohibited which is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

B. Before an incidental take permit may be issued, the applicant has to submit to the Secretary a proposed conservation plan, showing the likely impacts, mitigation measures, etc.

1. The Secretary must publish a notice in the Federal Register of each application for an exemption or incidental take permit. There's a 30 day statutory comment period (which can be waived in case of an emergency).

2. After the Secretary studies the proposed conservation plan and the public comments, he "shall" issue the permit if he/she finds that:

- a. the taking will be incidental;
- b. the applicant will, to the maximum extent practicable, minimize and mitigate the impacts;
- c. the applicant will ensure that \$ will be provided;
- d. the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- e. the applicant will meet all terms and conditions of the permit.

- (1) The Secretary may revoke the permit if the terms and conditions are not met.

C. **Hardship exemption:** if a person enters into a contract with respect to a listed species prior to publication in the Federal Register of notice of consideration of that species as endangered, and subsequent listing of that species as endangered will cause **undue economic hardship**, there's a one year hardship exemption.

1. "**Undue economic hardship**" includes, but is not limited to:

- (a) **substantial economic loss** resulting from inability to perform contracts;
- (b) **substantial economic loss** to persons who derived a substantial portion of their income from the lawful taking of a species;

(c) curtailment of **subsistence** by persons dependent upon subsistence.

(1) The Secretary has a great deal of **discretion** as to "time, area, or other factor or applicability". 16 USC §1539(b)(3).

(2) But note that this exemption is triggered by consideration of listing, not listing itself. Since the listing process generally takes at least a year and the exemption only lasts a year, this exemption has not been used much.

D. There is an exemption for endangered or threatened species prohibitions for native peoples of Alaska, including **subsistence hunting and authentic native articles of handicrafts or clothing**. 16 USC §1539(e)

E. There is an detailed exemption relating to **sperm whale oil or finished scrimshaw products, and for certain antique articles** (over 100 years old). 16 USC §1539(f)

F. Another exemption covers noncommercial transshipment where the species may be lawfully taken and exported from the countries of origin and destination. 16 USC §1539(i)

G. Finally, there is an exemption relating to the establishment of an "experimental population" of an endangered or threatened species which the Secretary authorizes for release in a separate geographical area from nonexperimental populations. Critical habitat designations do not apply to experimental populations, unless essential to the continued existence of the species. 16 USC §1539(j).

FEDERAL AGENCY RESPONSIBILITIES AND PROCESSES

VIII. THE ROLE OF FEDERAL AGENCIES IN THE ENDANGERED SPECIES ACT.

A. The Section 7 provision: "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption

for such action the [Endangered Species Committee/aka the God Committee]. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available." 16 USC §1536(a)(2).

1. As in NEPA, permits or licenses are considered agency actions. 16 USC §1536(a)(3).

2. If a proposed agency action will occur in an area where either a listed species or a candidate species may be present, the federal agency proposing the action must conduct a biological assessment to determine whether any such species is "likely to be affected by such action." The biological assessment is to be completed within 180 days, and may be undertaken in the context of the NEPA process. 16 USC §1536(c).

3. If the action is likely to affect a listed species, the federal agency must "consult" with the Secretary. The consultation process is normally to be completed within 90 days (unless the Secretary extends it to 150 days upon issuing certain findings) and must be concluded within a period which is **agreeable** to the Secretary, the Federal agency, and the **applicant**. The result of the consultation is a "biological opinion" from the Secretary.

1. To try to avoid undue delay to the private sector, the Act was amended in 1982 to provide for a pre-application ESA consultation for prospective federal licensees or permittees .

4. If the biological opinion indicates that the proposed action is likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of its critical habitat, the biological opinion must also specify those reasonable and prudent alternatives which the Secretary considers **necessary or appropriate** to minimize such impact. 16 USC §1536(b)(4).

1. During the consultation period with Interior, neither the agency nor the permit nor license applicant can make "any irreversible or irretrievable commitment of resources . . . which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. . ." 16 USC §1536(d).

a. This restriction does not apply if the species in question is a **candidate** species. 16 USC §1536(a)(4).

IX. THE GOD COMMITTEE/AKA THE ENDANGERED SPECIES COMMITTEE

A. Established in 1978 after the Supreme Court held in TVA v. Hill that Section 7 barred the completion of federal projects in conflict with endangered species "whatever the cost". (Tellico Dam versus the snail darter.) **God Committee set up to allow for balancing of endangered species protection with economic and social impacts.**

B. **The God Committee is composed of the:**

1. Secretary of Agriculture
2. Secretary of the Army
3. Chairman of the Council of Economic Advisors
4. Administrator of EPA
5. Secretary of the Interior
6. Administrator of NOAA
7. An individual from each affected State, appointed by the President (upon written recommendations from Governors to Secretary to President).

a. Secretary of Interior is the Chairman; Five members are a quorum. 16 USC §1536(e)

C. Who may apply to the God Committee:

1. A federal agency (**any federal agency**, not just the one proposing the action);
2. The **Governor** of the State in which an action will occur, if any;
3. A **permit or license applicant** whose project is the subject of a jeopardy opinion. 16 USC §1536(g)

D. The Fish and Wildlife Service has promulgated regulatory requirements for the contents of the application (description of proposed action; copies of biological assessments and opinions, description of alternatives; discussion of benefits; public interest, regional or national significance; mitigation and enhancement measures, etc. 50 CFR §452.03

E. The exemption applicant has the burden of proof regarding initial threshold review and determination requirements: that is, whether basic ESA procedures were complied with in good faith and agency or applicant has carried out those initial responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives. The Secretary has 20 days to determine this.

1. If the Secretary makes a positive finding on each of the threshold determinations, he notifies the exemption applicant that the application qualifies for consideration by the Endangered Species Committee.

F. The Secretary must terminate the exemption process immediately if the Secretary of STATE certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation of other international obligation of the US. By statute, the Secretary of State has 60 days after the application is made to the Committee to so certify. 16 USC §1536(i); 50 CFR 452.03(e).

G. If the Secretary makes a positive threshold determination on the application for exemption, he proceeds to prepare a report for the Committee which:

1. discusses the availability of reasonable and prudent **alternatives** to the proposed action;
2. discusses the nature and extent of the **benefits** of the proposed action;
3. discusses the nature and extent of the **benefits** of alternative courses of action consistent with conserving the species or the critical habitat;
4. summarizes the evidence concerning whether the proposed action is of **national or regional significance**;
5. summarizes the evidence concerning whether the proposed action is **in the public interest**;
6. discusses **appropriate and reasonable mitigation and enhancement measures** which should be considered by the Committee;
7. discusses whether the federal agency and permit or license applicant, if any, have refrained from making irreversible or irretrievable commitment of resources. 50 CFR 452.04(a).

H. To help develop the report, the Secretary must designate an Administrative Law Judge and hold hearings for the record in accordance with the Administrative Procedure Act. 16 USC §1536(g)(4); 50 CFR 452.05. Ex parte rules apply.

1. The Secretary has 140 days to conduct this process and to prepare the report, or such other period of time as is mutually agreeable to the exemption applicant and the Secretary. 16 USC §1536(g)(5).

I. Within 30 days of receiving the report, the Committee must make a final determination on the record by a vote of not less than 5 of its members (voting in person, not by representative). The Committee may hold public hearings and has subpoena power. 50 CFR §§453.04,05,06. The Committee is **statutorily mandated to grant an exemption** if, through said vote, the Committee finds that:

1. There are no reasonable and prudent alternatives to the agency action;
2. The **benefits** of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;
3. The action is of **regional or national significance**; and,
4. It establishes such reasonable mitigation and enhancement measures, including but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered or threatened species or critical habitat. 16 USC §1536(h).

J. The Committee's determination is permanent, unless the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of a previous biological assessment or opinion and the Committee determines within 60 days after the date of such a finding that the exemption should not be permanent.

K. The Committee's grant of an exemption is not a major federal actions for purposes of NEPA provided that an EIS which discussed the impacts upon the species or habitat has been previously prepared with respect to the agency action exempted by the Committee's order. 16 USC §1536(k)

L. The Committee's decision is subject to judicial review.

1. There's a 90 day statute of limitations. 16 USC §1536(n)

M. If the Committee grants an exemption and orders mitigation and enhancement measures, the applicant submits an annual report to CEQ, which is published in the Federal Register. 16 USC §1536(f)(2)

N. Mitigation and enhancement measures are to be counted by the applicant as part of the costs of continuing the proposed action, but not for the purpose of computing benefit-cost or other ratios for the proposed action. The applicant may request the Secretary to carry out the mitigation and enhancement measures, in which case the applicant still pays for the costs. All necessary mitigation and enhancement measures must be authorized prior to implementing the action and funded concurrently with all other project features. 16 USC §1536(f).

O. "Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security." 16 USC §1536(j)

P. If the President determines he needs an exemption to prevent the recurrence of a natural disaster and to reduce the potential loss of human life under the Disaster Relief Act and the situation involves an emergency situation which doesn't allow the ordinary procedures of this section be followed, the Committee shall accept the determinations of the President. 16 USC §1536(p)

Q. A bit of perspective: To the best of my knowledge, there have been five applications to the God Committee, only two of which were actually considered by the Committee. Both of the two projects considered were statutorily exempted from the threshold process of getting to the Committee. One of those involved the Tellico Dam situation which, despite the fact that it was that situation which stimulated the formation of the Committee, did not pass the Committee's muster. By unanimous vote of the Committee, Tellico failed to pass either the benefits test or the "no reasonable and prudent alternatives" test. The other project was the Grayrocks Dam and Reservoir in Nebraska, which involved a Corps permit and an REA loan guarantee. The Committee did allow that project to proceed with specific mitigation and enhancement measures, and the applicant does file its annual report with CEQ.

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To date, neither the special authority of the Secretary of State to block an exemption, nor the authorities of the Secretary of Defense and the President to by-pass the normal Committee procedures has ever been used.



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**Balancing/Exception/Exemption Provisions in
the Endangered Species Act**

The Listing Process:

Strictest part of ESA process

Decision to list is to be based solely on the basis of best scientific and commercial data available.

Exempt from NEPA analysis since balancing with economic and social factors not permitted

. . . Insects which are pests are not included in protected species; nor are invertebrate populations, as opposed to species (i.e., populations of butterflies).

Hardship exemption applies to party who enters into contract involving listed species and who would suffer **substantial economic loss** resulting from inability to utilize species. This exemption lasts one year from date of notice of consideration of proposed listing of species.

Critical Habitat:

The decisionmaker is specifically required to take into consideration the **economic** impact and any other relevant impact of designating critical habitat. Secretary may **exclude** area from designation if he/she determines that the benefits of such exclusion outweigh the benefits of designation (unless extinction of species would result)

Recovery Plans:

Recovery plan is to include **costs and time** and the opportunity for public review and comment.

Relief from Prohibitions against "takings", etc.:

Acts which are prohibited in relation to endangered species (trade, taking, etc.) are not automatically prohibited for threatened species. The Secretary may, by regulation, designate specific protection for threatened species (i.e., spotted owls).

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Federal Agency Responsibilities (Section 7 Consultation):

There's a pre-application procedure for prospective applicants for federal licenses or permits.

If consultation indicates that proposed action is likely to jeopardize continued existence of a species, the focus becomes the search for reasonable and prudent alternative measures.

If success is not achieved during the consultation period in identifying reasonable and prudent alternatives which would permit the proposed action to go forward, **the applicant, any federal agency or the Governor of the State** in which the proposed action would occur may petition the Endangered Species Committee (the **God Committee**). The God Committee is composed of:

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Secretary of the Army
Chairman of CEA
EPA Administrator
NOAA Administrator
Individual from each affected State, appointed by President

The Committee **must grant an exemption to ESA** if, by vote of no less than 5 members, it finds that:

. . . there are no reasonable & prudent alternatives to the agency action;

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The Committee shall accept determinations of the President regarding an exemption needed because of a natural disaster/emergency situation under the Disaster Relief Act.

History of Exemption Requests to the God Committee:

There have been five applications to the God Committee, only two of which were actually considered by the Committee. One of those was the Tellico Dam situation. By unanimous vote of the Committee, Tellico failed to pass either the benefits test of the "no reasonable and prudent alternatives" test. The other project was the Grayrocks Dam and Reservoir in Nebraska, which involved a Corps permit and an REA loan guarantee. The Committee did allow that project to proceed with specific mitigation and enhancement measures, and the applicant files its annual report with CEQ.

Of the other three initial applications, one involved the oil refinery which the Pittston Co. wanted to site at Eastport, Maine (impact on whales and eagles). That application was dismissed on the grounds that the ESA administrative process was not yet complete. A second application involved a barge company's request to "fleet" (park) barges in an area which would have affected an endangered mussel. Among other things, the request did not meet the national or regional significance criteria. A third application, ostensibly by the Suwannee River Authority regarding a project which would affect manatees, was withdrawn when it was discovered the application had not been approved by the river authority.

To date, neither the special authority of the Secretary of State to block an exemption, nor the authorities of the Secretary of Defense and the President to by-pass the normal Committee procedures has ever been used.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20500

Michael R. Deland
Chairman

May 18, 1990

(202) 395-5080

MEMORANDUM TO GOVERNOR SUNUNU

FROM: Michael R. Deland

SUBJECT: Attached memorandum, "Bush Administration Environmental Initiatives and Accomplishments"

We have prepared the enclosed memorandum for your use, entitled "The Bush Administration and the Environment: Initiatives and Accomplishments." It is being circulated to all relevant Executive Branch personnel.

This memorandum summarizes all Administration actions which promise to have a beneficial result for environmental quality and conservation of natural resources. It should be helpful to Executive Branch colleagues as they prepare speeches, respond to inquiries and track issues. It was not prepared for release to the news media, but it has been rigorously reviewed to ensure its factual integrity.

In the past year, several summaries or "scorecards" have been prepared by various EOP offices, Federal departments and agencies, and outside groups. These have been consulted and this summary incorporates many of those items.

We would welcome your comments, suggestions or additions. The memorandum will be kept up to date and distributed at least quarterly by my assistant, Dale Curtis, who can be reached on 395-5750.



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The Bush Administration and the Environment:

Summary of Initiatives and Accomplishments

May 1990

President George Bush, continuing a life-long record of concern for the environment, has demonstrated a commitment to environmental protection, conservation, and wise management of our natural resources. What follows is a summary of the Administration's initiatives and accomplishments.

1. General leadership
2. Air pollution
3. Environmentally-sensitive budget policy
4. Pollution prevention and recycling
5. Asbestos ban
6. Water pollution, water projects and wetlands
7. Energy
8. Global climate change
9. International environmental initiatives
10. Alaskan oil spill
11. Future oil spill prevention
12. Food safety
13. Hazardous wastes and Superfund
14. Clean oceans and coastlines
15. Radon
16. Defense & the Environment Initiative
17. Endangered species
18. Earth Day
19. Environmental education
20. Enforcement
21. Deterring conflicts of interest

1) **General leadership:**

President Bush appointed William K. Reilly to be Administrator of the Environmental Protection Agency (EPA), the first professional conservationist to hold the post.

The President named Michael R. Deland, former Administrator of EPA's Boston regional office, to be chairman of the President's Council on Environmental Quality (CEQ). The President is committed to revitalizing CEQ's advisory role and requested funding to increase the staff of CEQ from 10 to 34 positions over two years.

The President supports elevating EPA from sub-Cabinet to full Cabinet status, and approved the elevation of EPA's International Activities Office to the assistant administrator level.

President Bush has directed all Cabinet officers to incorporate consideration of environmental impacts into all agency decisions. More departments are embarked on substantive environmental policy initiatives than ever before (see below). The President has devoted dozens of speeches, news conferences, and events to environmental themes, and the White House Domestic Policy staff has devoted thousands of hours to ambitious environmental quality initiatives.

2) **Air pollution:**

After a decade of policy gridlock, President Bush's Administration crafted amendments to the U.S. Clean Air Act to reduce the emissions that cause acid rain, urban smog and toxic air pollution. Thanks in large measure to the President's personal commitment, a bill recently passed the Senate and it appears likely this complex reform package will be enacted in 1990.

Among several other administrative actions on clean air, EPA issued rules that lower gasoline volatility (which contributes to smog) in summer months; and rules to reduce industrial emissions of the hazardous pollutant benzene by 90 percent. EPA proposed standards to require source separation by municipal waste handlers to effectively reduce overall air emissions from municipal waste incinerators by 90 percent.

The Administration has taken important strides forward on global air pollution issues (see #8 and #9).

Related actions on automobile fuel efficiency, energy efficiency and renewables, and clean coal technology are listed below.

3) **Environmentally-sensitive budget policy:**

The Administration's budget request for 1991 continued a trend begun with the President's first budget in 1990: substantial funding increases for most environmental programs, and greater sensitivity to the impact of federal actions on the environment. Notable areas include:

-- Increases for EPA's operating budget, especially for enforcement (more than 500 new staff) and cleanup at Superfund and federal sites (see #10)

-- "**America the Beautiful**": a three-pronged effort to acquire lands with high environmental or recreation value (up to \$1 billion over four years); restore threatened natural resource and recreation areas ("Legacy '99"); and a new program to expand and accelerate national reforestation to a rate of one billion trees annually

-- concerning global climate change, sharply higher funding for the "Mission to Planet Earth" space-based Earth observation system, solar and renewable energy, energy conservation (see #7), and basic research

-- research, protection and enhancement of the nation's wetlands; termination or mitigation of certain water projects (see #5)

-- proposed demonstration projects to terminate wasteful "below-cost" timber sales at nine national forests and provide improved recreational facilities in those areas

-- an increase of almost \$800 million, or 21 percent above 1990 levels, for Federal facility cleanups

-- full funding for the Clean Coal Technology program

4) **Pollution prevention and recycling:**

The Administration seeks reforms to move beyond costly end-of-the-process cleanups, toward an emphasis on pollution prevention.

Within EPA, two percent of every program's budget has been set aside to fund specific pollution prevention demonstration projects.

EPA has launched a nationwide "early warning system" to prevent municipal sewage treatment plants from violating Clean Water Act standards.

Legislation and administrative actions are under development to spur federal and private pollution prevention efforts. The legislation would set numerical goals and timetables, enhance data collection, improve municipal solid waste minimization and management, and create helpful new market incentives.

5) **Asbestos ban:**

EPA announced a ban on almost all uses of asbestos in the United States by 1997. Asbestos is a carcinogen linked to lung and chest cancer.

6) **Water pollution, water projects, and wetlands:**

EPA Administrator Reilly blocked issuance of a permit that would allow construction to begin on the Two Forks Dam in Colorado. President Bush seeks termination of uneconomic and destructive projects such as the Garrison Diversion Unit in North Dakota. EPA rejected the proposed Big River reservoir project in Rhode Island, based on unacceptable adverse effects on wetlands, wildlife and recreation.

EPA issued proposals to regulate 17 pesticides and 21 other contaminants in drinking water, almost doubling the number of pollutants subject to federally enforceable standards. The proposals also call for monitoring 110 currently unregulated contaminants.

The Bureau of Reclamation has been given new direction and proposed doubled funding to pursue mitigation of adverse impacts of certain large water projects already constructed.

Concerned by the rapid loss of American wetland habitats, the President directed an interagency task force to report by late 1990 on ways to implement a policy of "no net loss" of wetlands. EPA and Army Corps of Engineers signed an agreement to clarify wetlands protection policy; the Bureau of Reclamation and the U.S. Fish and Wildlife Service signed an agreement to cooperate in expanding the wetlands breeding habitat for numerous species.

The President's FY91 budget seeks a 24 percent boost (to \$460 million) for research, protection and enhancement of wetlands, including acceleration of the national wetlands inventory. This follows a 32 percent increase in 1990.

For related actions on ocean pollution, see #14.

7) **Energy:**

The Department of Energy is preparing a National Energy Plan which emphasizes, among other things: energy conservation and efficiency; alternative and renewable energy sources; and nuclear power safety.

DOE announced eleven initiatives in energy efficiency and renewables, including: more efficient lighting for federal buildings; regulatory and legislative changes to stimulate efficiency improvements in the utility, commercial and construction sectors; and using the government-industry technology transfer process to speed promising energy technologies into widespread use.

In a reversal of previous policy, DOE proposed rules to centralize and significantly strengthen compliance with the environmental assessment process under the National Environmental Policy Act.

The Department of Transportation raised the corporate average fuel economy (CAFE) standard for autos to 27.5 mpg.

The President postponed lease sales and oil and gas development in sensitive areas off the shores of California and Florida, and will make a final decision on these leases in 1990.

The President has requested all of the necessary funds to complete the \$2.5 billion Clean Coal Technology program.

To address waste cleanup at DOE facilities, funding was increased by \$500 million in FY90; an increase of \$600 million is sought for FY91. DOE released a five-year, site-by-site cleanup plan, and a five-year research and development plan to reduce outyear costs.

8) **Global climate change:**

The Bush Administration has demonstrated a willingness to confront the complex and important question of global climate change.

The Secretary of State's first major address in January 1989 expressed the President's intention to take comprehensive action in this area. In February 1990, the President became the first and only head of state to address the U.N.-sponsored Intergovernmental Panel on Climate Change (IPCC), the leading global forum for climate change policy.

The U.S. agreed in November 1989 to stabilize U.S. carbon dioxide emissions and study further reductions; the President proposed two major international conferences on the issue in 1990. The first conference, held April 17-18, addressed scientific and economic questions. The second conference would open negotiations toward a multilateral framework treaty once the IPCC has completed initial assessments of the scientific evidence, potential impacts, and policy options.

The President supports efforts to build upon the Montreal Protocol and phase-out all uses of chloro-fluorocarbons (CFC's) and halons by the turn of the century. The Administration supports financial and technical assistance to developing countries to make the transition to non-CFC technologies.

The FY91 budget request seeks \$1 billion for research into global climate change, up 57 percent from 1990. That research includes work on the "Mission to Planet Earth" orbiting observation system, renewable and solar energy sources, and energy efficiency/conservation.

The Administration's clean air bill, National Energy Strategy and increased CAFE standard also will have the effect of stabilizing/reducing "greenhouse gas" emissions.

9) **Other international environmental initiatives:**

The President banned imports of African elephant ivory (see #18).

During his 1989 trips abroad, the President pledged financial and technical aid to Poland and Hungary to control air and water pollution, draft environmental statutes, and establish an East European environmental center.

President Bush led efforts to make the environment a major focus of the "G-7" Summit in Paris. In Tokyo, the President held meetings with leaders of Japan and Brazil to discuss the problem of rapid rainforest depletion.

The Administration helped develop and then signed the Basel Convention, which governs transboundary shipments of hazardous wastes in an environmentally sound manner.

President Bush supported and signed a bill to prohibit U.S. support for foreign development loans unless environmental impacts are studied first.

The Administration persuaded Japan, Taiwan and Korea to enter into agreements to monitor driftnet fishing. This will allow the U.S. to monitor the incidental take of birds, seals, whales, dolphins and other marine mammals.

In 1990, for the first time, Peace Corps volunteers will be trained by EPA in water pollution prevention, waste disposal, reforestation and pesticide management.

The President's plan to elevate EPA to full Cabinet status will give the U.S. Environment Secretary commensurate status with his counterparts from other nations. The plan would also enhance "USDE" authority to offer technical assistance to foreign environmental programs. In early 1989, EPA's International Activities Office was elevated to the assistant administrator level.

10) **Alaskan oil spill:**

The President sent Vice President Quayle and a Cabinet-level team to assess the situation; the Department of Transportation is overseeing cleanup by Exxon, while EPA is coordinating an interagency task force on long-range restoration of Prince William Sound.

After negotiations broke down, the Justice Department issued a five-count criminal indictment against Exxon with potential penalties of up to \$600 million.

11) **Future oil spill prevention:**

The President proposed, and Paris Summit leaders accepted, a call for increased international efforts on oil spill prevention and cleanup. In May 1989, President Bush sent Congress comprehensive oil pollution liability and compensation legislation. The Interior Department began a \$6 million, 3-year joint project with the American Petroleum Institute to research and develop new cleanup technology.

12) **Food safety:**

The Administration proposed legislation to improve food safety by streamlining regulations to allow faster removal of dangerous substances from the market. EPA prohibited all sales, distribution and use of "Alar" products labeled for use on food products, and stepped up its efforts against other suspect pesticides. EPA blocked the sale of roughly 100 million apples that had been illegally treated with the fungicide "Botran."

13) **Hazardous wastes and Superfund:**

After an intensive management review, the Administration reoriented the "Superfund" hazardous waste dump cleanup to an "enforcement first" program to get more responsible parties to undertake cleanups. EPA added 500 new enforcement staff to this program.

The Administration fought Congressional attempts to cut the Superfund budget and in 1989, exceeded Congressionally-mandated targets for cleanup starts and site studies.

The Administration commenced a similar review of the Resource Conservation and Recovery Act (RCRA), expected to yield proposals for upcoming legislative reauthorization.

14) **Clean oceans and coastlines:**

EPA implemented the first step of the President's commitment to prevent medical wastes from washing up on beaches: a pilot medical waste tracking system to serve as a model for further action. The program involves the states of Connecticut, Louisiana, New Jersey, New York and Rhode Island, as well as the District of Columbia and Puerto Rico.

EPA negotiated agreements with local jurisdictions to stop ocean dumping of sewage sludge by late 1991, an initiative that also resulted in penalty actions against 61 cities in 1989. The President proposed legislation to require criminal felony penalties for illegal ocean dumping.

15) **Radon:**

EPA released data showing high levels of cancer-causing radon to be widespread in housing throughout the country, and undertook public education efforts to urge Americans to test and safeguard their homes, schools and businesses.

16) **Defense & the Environment Initiative**

The Department of Defense established a five-point initiative intended to forge long-term partnerships in defense-environmental matters well beyond mere compliance. An autumn 1990 conference will attempt to: finalize a near-term DOD environmental action plan; activate an enhanced DOD environmental decision-making structure; and discuss how global strategic policy might encompass environmental challenges.

17) **Endangered species:**

The President has rejected the suggestion of amendments to the federal Endangered Species Act.

The President banned imports of African elephant ivory products in an effort to save that endangered species; and he requested funding from Congress to assist African countries with management and protection of this species.

The Department of Interior issued an emergency listing of the Desert Tortoise as an endangered species in Southern California, Utah and Nevada. DOI acquired additional habitat for endangered panthers in Florida.

The Two Forks Dam and Big River decisions (see #6) protected thousands of acres of wildlife habitat. And the President reversed a proposal to cap the outlay of funds under the Wallop-Breaux Trust Fund used for fisheries protection and development.

18) **Earth Day**

The Council on Environmental Quality coordinated actions by all federal agencies to celebrate the 20th anniversary of Earth Day, including an exhibition on the Mall in Washington, and various activities by more than a dozen Federal agencies.

19) **Environmental education**

The President proposed a program of cash awards of up to \$5,000 to elementary and secondary school teachers in the 50 states, the District of Columbia and the territories who develop innovative, effective environmental education curricula.

20) **Enforcement**

EPA's aggressive enforcement program levied civil and administrative penalties totaling just under \$35 million in fiscal year 1989, including \$13.6 million from over 4,000 administrative actions, two record highs.

EPA referred 364 civil judicial cases of alleged environmental law violation to the Department of Justice for prosecution in FY89, just short of the 1988 record of 372. EPA referred 60 criminal cases to Justice in FY89.

Notable enforcement actions include:

--Proposed fines of \$1.65 million on 42 companies that failed to report toxic chemical discharges as required by law.

--Civil lawsuits against 34 companies and individuals to halt violations of rules protecting the public from unlawful asbestos demolition and renovation practices.

--Civil lawsuits against 61 cities (including Detroit, El Paso, Phoenix and San Antonio) for violations of the Clean Water Act.

--A civil penalty of \$15 million against the Texas Eastern company for toxic substance violations at up to 89 sites along a 1,000 mile-long natural gas pipeline. The fine was the largest ever for violation of any environmental statute.

--A coordinated campaign to protect the Chesapeake Bay included charges against 26 facilities in the watershed for violations of the Clean Water Act.

After negotiations broke down, the Justice Department issued a five-count criminal indictment against Exxon with potential penalties of up to \$600 million.

21) **Deterring conflicts of interest:**

EPA has set a strict new policy on the agency's use of contractors, barring them from involvement 17 specific activities and warning of improper conflicts of interest in 15 additional areas.