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United States
Department of
Agriculture

Office of Press and Media Relations
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YEUTTER AND LUJAN ANNOUNCE PLAN TO BALANCE CONSERVATION OF SPOTTED OWL AND ECONOMIC WELL-BEING OF FAMILIES

Washington, September 21--Secretary of Agriculture Clayton Yeutter and Secretary of the Interior Manuel Lujan today announced the Administration's response to the listing of the Northern Spotted Owl as a threatened species under the Endangered Species Act of 1973 (ESA).

That response is based on the recommendations of the Administration's Task Force on the Spotted Owl, which was established on June 26, 1990, following the June 22, 1990 listing. The announcement includes a proposed Forest Service timber sale program for FY 1991, an explanation of the Department of the Interior's plan to implement the ESA with respect to the Spotted Owl, and a plan for longer-term responses to the issue.

Secretary Yeutter and Secretary Lujan said this is a significant step in fulfilling the government's responsibility to achieve equity, fairness, and balance between reasonable and competing environmental and timber objectives.

"The Task Force sought to balance conservation of the Spotted Owl and the economic well-being of families who live in the region," Yeutter and Lujan stated. "This is not a perfect answer, because a perfect answer does not exist. But it is the beginning of a good balance built on knowledge and dialogue to protect our heritage, while minimizing economic dislocation in timber-dependent communities of the Pacific Northwest."

The Secretaries of Agriculture and Interior said the Task Force developed its proposals after working in close consultation with Members of Congress and after having sent a sub-cabinet level working group on a week-long trip in July to Washington, Oregon, and northern California. "We have balanced these very sensitive, competing interests in a rational way," said Yeutter. Lujan added, "It is now imperative that the Congress do its part to advance this process."

Yeutter and Lujan proposed short and long-term strategies to guarantee balance in forest management. In the near term, the Administration is requesting that Congress immediately enact

-more-

legislation enabling the sale of .31 billion board feet (bbf) of timber in FY 1991 in Forest Service Region 5 (northern California), and 3.2 bbf in Region 6 (Washington and Oregon). These sales would include .2 bbf of timber carried over from the FY 1990 timber sale program in Region 6, and 3.31 bbf of new sales in the two Regions combined.

Nothing in the Task Force's recommendations would require sales of timber from the habitat conservation areas proposed by the Interagency Scientific Committee (ISC). In order for those sales to proceed in a timely way, the legislation must provide insulation from the National Forest Management Act (NFMA), the National Environmental Policy Act (NEPA), and certain provisions of last year's Section 318 legislation. "We do not recommend precluding judicial review. However, Congress must adopt language that requires implementation of the elements proposed in this plan, notwithstanding the terms of these statutes. Otherwise any sale level set by Congress will be a hollow promise," said Yeutter and Lujan.

The Administration also urges Congress to enact legislation authorizing the immediate convening of the Endangered Species Committee to review both timber sales and land management plans of the Forest Service and the Bureau of Land Management, as they relate to the Spotted Owl. This recommendation would not in any way alter the substance of the Endangered Species Act. The intent is to allow the Endangered Species Committee to act efficiently and in a timely manner in applying the standards of the ESA to actions taken by the Federal land management agencies.

Both Secretaries stressed little time remains in this Congressional session and quick enactment of this legislation is therefore essential to preserve continuity and stability in the Federal timber sale program.

Secretary Lujan also announced the Fish and Wildlife Service, operating under current law, will not require state and private landowners to follow the ISC recommendations as some have feared. Secretary Lujan noted that "many of the high estimates of job losses associated with the Spotted Owl listing assume that the ISC recommendations would apply on state and private lands."

In addition, Secretary Lujan announced that the Fish and Wildlife Service would continue to review all incoming evidence on the conditions affecting the Northern Spotted Owl, including reports that the owl has been able to live in certain second growth forests, particularly in northern California. "If those reports are borne out," Lujan stated, "the Fish and Wildlife Service may well have more conservation options in applying the ESA." These

particular measures, Lujan emphasized, need not await new legislation in order to be implemented.

Lujan also stated that he would soon appoint a team to begin the development of a recovery plan for the Northern Spotted Owl, as required by the Endangered Species Act. According to Lujan, "this recovery plan will outline a series of steps needed for the conservation of the owl, and will be developed with extensive involvement of scientific experts, environmental organizations, timber interests, and the public."

The longer-term response calls for continuation of the Administration Task Force, which is chaired by Secretary Yeutter, but with a new charge that it now broadly review the nation's forest management needs. This review will encompass considerations of:

- o the potential impact of other possible listings under the Endangered Species Act;
- o the challenge of conserving our old-growth forests in an appropriate manner;
- o the need to anticipate and plan for adjustments in forest usage, so that abrupt disruptions of local communities can be minimized or avoided;
- o the necessity of finding flexible approaches in dealing with multiple demands on our forest resources, including new forestry techniques that may reduce the incompatibility between timber harvesting and habitat preservation; and
- o the development of a timber reserve that would provide the Secretary of Agriculture with discretion to respond to cyclical changes in timber demand. One possibility is setting aside a portion of the areas administratively withdrawn from the timber base (perhaps 1-2%), where the impact on the Spotted Owl would be minimal, as a reserve from which sales could be made under carefully delineated criteria.

The Task Force will recommend administrative and legislative responses necessary to achieve effective and balanced management of public lands.

THE CHIEF of STAFF
has seen

DRAFT-1

Washington, September 14 - Secretary of Agriculture Clayton Yeutter and Secretary of the Interior Manuel Lujan today announced the report of the Administration's Task Force on the Spotted Owl. This Task Force was established on June 26, 1990, following the June 22, 1990 listing of the Northern Spotted Owl as a threatened species under the Endangered Species Act of 1973 (ESA). The report includes a proposed Forest Service timber sale program for FY 1991 and recommendations for longer term responses to the issue.

Secretary Yeutter and Secretary Lujan called the report, "A significant step in fulfilling the government's responsibility to achieve equity, fairness, and balance between reasonable and competing environmental and timber objectives."

"The Task Force sought to balance preservation of the Spotted Owl and the economic well-being of men and women who live in the region," Yeutter and Lujan stated. "This is not a perfect answer, because a perfect answer does not exist. But it is the beginning of a good balance built on knowledge and dialogue to protect our heritage, while minimizing economic dislocation in timber-dependent communities of the American Northwest."

The Secretaries of Agriculture and Interior said that the Task Force issued its report after working in close consultation with key Members of Congress and after having sent a sub-cabinet level working group on a five-day trip in August to Washington, Oregon, and northern California. "We have done our best, in good faith. Now Congress must choose."

Yeutter and Lujan proposed short and long-term strategies to guarantee balance in this important question. In the near term, the Administration will request that Congress immediately enact legislation permitting the sale of _____ billion board feet (bbf) of timber in FY 1991 in Forest Service Region 5 (northern California) and _____ in Region 6 (Washington and Oregon). These sales would include _____ bbf of timber carried over from the FY 1990 program for Region 6 and _____ bbf of new sales in the two Regions. All timber sold would be outside the habitat conservation areas proposed by the Interagency Scientific Committee. "We do not recommend that the 1991 sale program carry with it a proposal to restrict judicial review. However, Congress must act to declare the 1991 program "legally sufficient" to meet the requirements of all relevant statutes. Otherwise, any harvest level set by Congress is a hollow promise," said Yeutter and Lujan.

The Administration will also ask Congress to enact legislation authorizing the immediate convening of the Endangered Species Committee to review land management plans of the Forest Service and the Bureau of Land Management. Secretaries Yeutter and Lujan

emphasized that this recommendation and a convening of the Committee would not in any way alter the substance of the Endangered Species Act. The intent is to allow the Endangered Species Committee to act efficiently in applying the standards of the ESA to actions taken by the Federal land management agencies.

Both Secretaries stressed that little time remains in this Congressional session. Without quick enactment of these recommendations, communities and working families will suffer as FY 1991 timber sales will be radically curtailed from traditional levels.

The longer-term response calls for continuation of the Administration Task Force chaired by Secretary Yeutter. The Task Force's new charge is to broadly review the nation's forest management needs and recommend administrative and legislative responses necessary to achieve effective, balanced management of public lands. This review will encompass considerations of: (1) the potential economic impact of other possible listings under the Endangered Species Act; (2) the challenge of conserving our ancient forests in an appropriate manner; (3) the need to anticipate and plan for adjustments in forest usage, so that abrupt disruptions of local communities can be minimized or avoided; (4) the necessity of finding flexible approaches in dealing with multiple demands on our forest resources, including forestry techniques that may reduce the incompatibility between timber harvesting and habitat preservation; (5) eliminating or reducing the impact of Spotted Owl protection on state and private lands.

The Secretaries also call, as part of a long term solution, for Congressional enactment of a "timber reserve" to stabilize timber supply, to reduce job losses and community instability in the Pacific Northwest. This timber reserve would allow, beginning in FY 1992, the harvest of 2% of the Habitat Conservation Areas throughout Forest Service Region 5 and 6. The 2% would be harvested over the next 10 years, at the discretion of the Secretary of Agriculture, at a rate of not more than 10% of that reserve per year. "A harvest of 2% will not endanger the Spotted Owl species but it will go a long way toward preserving families and communities since a harvest of 2% of the HCA's will allow an added harvest level of a total of 2.4 billion board feet."

Slade Gorton

UNITED STATES SENATOR FOR WASHINGTON



FAX DOCUMENT

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TO:

Gov. SUNUNU

OFFICE:

PHONE:

PAGE 1 OF:

3

FROM:

Sen. Slade Gorton

SUBJECT:

J.

THE WHITE HOUSE

WASHINGTON

September 20, 1990

THE CHIEF of STAFF
has seen

MEMORANDUM FOR THE PRESIDENT

FROM: ROGER B. PORTER *RBP*
SUBJECT: Northern Spotted Owl

Following the listing of the northern spotted owl as a "threatened" species under the Endangered Species Act on June 22, the Administration created an interagency task force, chaired by Secretary Yeutter, to develop a policy response to the listing. The task force included Secretary Yeutter, Secretary Lujan, Dick Darman, Bill Reilly, Michael Boskin, and myself. The objective of the task force was to implement your concept of balance between environmental and economic considerations in preserving the spotted owl and managing the old-growth forests of the Northwest.

The task force has now completed its analysis of the options available to the Forest Service under current law and plans to announce the following Administration actions.

1. Request that Congress immediately enact legislation permitting the sale in FY 1991 of 3.2 bbf and .31 bbf of timber in Region 6 and Region 5, respectively. All these sales would be outside the habitat conservation areas (HCAs) recommended by the Thomas Committee, but a small number of sales would be inconsistent with a separate element of the Thomas plan. This is the maximum volume of sales that can be made without entering HCAs in FY 1991. It compares to approximately 4.0 bbf and .6 bbf, respectively, if the listing had not occurred.
2. Request that Congress legislatively protect these sales from the delays that could occur under current law.
3. Request that Congress legislatively "jump-start" the Endangered Species Committee and allow the Committee expeditiously to address spotted owl and old growth forest issues for the long run.
4. Announce that under current law the Fish and Wildlife Service will not impose habitat conservation areas on State or private lands.
5. Announce that the Fish and Wildlife Service will continue to review evidence that the spotted owl is thriving outside old-growth forests in certain regions and that it

will take account of these findings in determining the how the Endangered Species Act should be applied to harvests on Federal, State, and private lands.

6. Announce the formation of a team of experts to develop a recovery plan for the owl, as required under current law.
7. Direct the task force to consider additional long-run options for striking a balance in the management of Federal lands, including the development of a "timber reserve" system that would provide the Secretary of Agriculture with discretion to respond to cyclical changes in timber demand. The continued work of the task force will become particularly important if Congress fails to enact the Endangered Species Committee legislation described above.

Governor Sununu, Secretary Yeutter, and myself have had extensive discussions on this issue with Senators Hatfield, Packwood, and Gorton. Senator Hatfield is firmly persuaded that it will not be possible to get legislative sufficiency for FY 1991 sales above the 3.2 bbf and .31 bbf levels. Senators Packwood and Gorton reluctantly agree. Seeking a higher level might well jeopardize getting congressional support for this volume of sales.

Both Gorton and Packwood strongly support seeking to legislatively "jump-start" the Endangered Species Committee. Senators Burdick and Chafee have written opposing this action. Gorton and Packwood acknowledge that it is unlikely Congress will support the action since it would involve amending the Endangered Species Act, but feel calling for the action is an important signal to send politically.

Likewise, Gorton and Packwood strongly support establishing a timber reserve to respond to cyclical changes in demand. We would announce that the task force will examine this idea.

The members of the task force, or their representatives, have reviewed and approved of the attached press release. Announcement of these measures will be made in this press release issued jointly by Secretaries Yeutter and Lujan. Like any effort to achieve a workable balance, this announcement may well draw fire from both sides.

Attachment

cc: Governor Sununu

DRAFT

September 20, 1990 (6:30 pm)

Washington, September 00--Secretary of Agriculture Clayton Yeutter and Secretary of the Interior Manuel Lujan today announced the Administration's response to the listing of the Northern Spotted Owl as a threatened species under the Endangered Species Act of 1973 (ESA). That response is based on the recommendations of the Administration's Task Force on the Spotted Owl, which was established on June 26, 1990, following the June 22, 1990 listing. Their announcement includes a proposed Forest Service timber sale program for FY 1991, an explanation of the Department of the Interior's plan to implement the ESA with respect to the spotted owl, and a plan for longer-term responses to the issue.

Secretary Yeutter and Secretary Lujan said that this is a significant step in fulfilling the government's responsibility to achieve equity, fairness, and balance between reasonable and competing environmental and timber objectives.

"The Task Force sought to balance preservation of the Spotted Owl and the economic well-being of families who live in the region," Yeutter and Lujan stated. "This is not a perfect

answer, because a perfect answer does not exist. But it is the beginning of a good balance built on knowledge and dialogue to protect our heritage, while minimizing economic dislocation in timber-dependent communities of the American Northwest."

The Secretaries of Agriculture and Interior said that the Task Force developed its proposals after working in close consultation with Members of Congress and after having sent a sub-cabinet level working group on a five-day trip in August to Washington, Oregon, and northern California. "We have balanced these very sensitive, competing interests in a rational way," said Yeutter. And Lujan added: "It is now imperative that the Congress do its part to advance this process."

Yeutter and Lujan proposed short- and long-term strategies to guarantee balance in forest management. In the near term, the Administration is requesting that Congress immediately enact legislation enabling the sale of .31 billion board feet (bbf) of timber in FY 1991 in Forest Service Region 5 (northern California) and 3.2 bbf in Region 6 (Washington and Oregon). These sales would include .2 bbf of timber carried over from the FY 1990 timber sale program in Region 6, and 3.31 bbf of new sales in the two Regions combined. Nothing in the Task Force's recommendations would require sales of timber from the habitat conservation areas proposed by the Interagency Scientific Committee. In order for those sales to proceed in a

timely way, the legislation must provide insulation from the National Forest Management Act (NFMA), the National Environmental Policy Act (NEPA), and certain provisions of last year's Section 318 legislation. "We do not recommend precluding judicial review. However, Congress must adopt language that requires implementation of the elements proposed in this plan, notwithstanding the terms of these statutes. Otherwise any sale level set by Congress will be a hollow promise," said Yeutter and Lujan.

The Administration is also urging Congress to enact legislation authorizing the immediate convening of the Endangered Species Committee to review both timber sales and land management plans of the Forest Service and the Bureau of Land Management, as they relate to the spotted owl. This recommendation would not in any way alter the substance of the Endangered Species Act. The intent is to allow the Endangered Species Committee to act efficiently and in a timely manner in applying the standards of the ESA to actions taken by the Federal land management agencies.

Both Secretaries stressed that little time remains in this Congressional session and that quick enactment of this legislation is therefore essential to preserve continuity and stability in the Federal timber sale program.

Secretary Lujan also announced that the Fish and Wildlife Service, operating under current law, will not require state and private landowners to follow the ISC recommendations as some have feared. Secretary Lujan noted that "many of the high estimates of job losses associated with the spotted owl listing assume that the ISC recommendations would apply on state and private lands."

In addition, Secretary Lujan announced that the Fish and Wildlife Service would continue to review all incoming evidence on the conditions affecting the Northern Spotted Owl, including reports that the owl has been able to live in certain second growth forests, particularly in northern California. "If those reports are borne out," Lujan stated, "the Fish and Wildlife Service may well have more conservation options in applying the ESA." These particular measures, Lujan emphasized, need not await new legislation in order to be implemented.

Lujan also stated that he would soon appoint a team to begin the development of a recovery plan for the Northern Spotted Owl, as required by the Endangered Species Act. According to Lujan, "this recovery plan will outline a series of steps needed for the conservation of the owl, and will be developed with extensive involvement of scientific experts and the public."

The longer-term response calls for continuation of the Administration Task Force, which is chaired by Secretary Yeutter, but with a new charge that it now broadly review the nation's forest management needs. This review will encompass considerations of: (1) the potential impact of other possible listings under the Endangered Species Act; (2) the challenge of conserving our ancient forests in an appropriate manner; (3) the need to anticipate and plan for adjustments in forest usage, so that abrupt disruptions of local communities can be minimized or avoided; (4) the necessity of finding flexible approaches in dealing with multiple demands on our forest resources, including new forestry techniques that may reduce the incompatibility between timber harvesting and habitat preservation; and (5) the development of a "timber reserve" that would provide the Secretary of Agriculture with discretion to respond to cyclical changes in timber demand. One possibility is setting aside a portion of the areas administratively withdrawn from the timber base (perhaps 1-2%), where the impact on the spotted owl would be minimal, as a reserve from which sales could be made under carefully delineated criteria. The Task Force will recommend administrative and legislative responses necessary to achieve effective and balanced management of public lands.

THE WHITE HOUSE

WASHINGTON

September 17, 1990

THE CHIEF of STAFF
has seen

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Northern Spotted Owl -- Proposed Press Release

I have met with Secretary Yeutter to discuss a press release that he proposes to issue jointly with Secretary Lujan on the spotted owl decision. The elements of the proposed release are outlined below.

First, the Administration will request that Congress immediately enact legislation permitting the sale in FY 1991 of 3.2 bbf and .31 bbf of timber in Region 6 and Region 5, respectively. All of these sales would be outside HCAs, but some of those in Region 5 would be inconsistent with the "50-11-40" rule recommended by the Thomas Committee.

Second, the Administration will request legislative sufficiency for these sales.

Third, the Administration will request that Congress legislatively "jump-start" the Endangered Species Committee and allow the Committee to address ten-year land management plans (as opposed to individual sales) of either the Forest Service or BLM.

Fourth, Secretary Lujan will announce that the Fish and Wildlife Service will not require the Thomas plan to be adopted on State or private lands.

Fifth, Secretary Lujan will announce that the Fish and Wildlife Service will continue to review evidence that the spotted owl is thriving in certain second and third growth forests, and that it will take account of these findings in determining the how the Endangered Species Act should be applied to harvests on Federal, State, and private lands.

Finally, the Task Force will remain in existence to consider long run options for striking a balance in the management of Federal lands, including developing a "timber reserve."



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 18, 1990

MEMORANDUM FOR: Governor Sununu
Director Darman
Roger Porter

FROM: Robert E. Grady *RG*
Associate Director

RE: Decision Memorandum on the Northern
Spotted Owl

Summary:

This memorandum presents background concerning the planned listing this week of the Northern Spotted Owl as a "threatened" species; information concerning responses currently planned by affected Federal agencies; and options for potential White House actions to be taken in response to the listing.

Background:

On Friday, June 22, the U.S. Fish and Wildlife Service is planning to announce the listing of the Northern Spotted Owl as a "threatened" species under the terms of the Endangered Species Act of 1973 (ESA). The listing is a major step in a long and litigious process; but the decision to list is based solely on biological considerations.

Under the terms of the ESA, the Fish and Wildlife Service must prepare a recovery plan for the owl, and, significantly, must approve any major Federal action (including contracts for timber sales) that would threaten the species' recovery. While economics can be considered in the development of a recovery plan, under the law no plan can be approved that would allow for a flat or declining owl population. The only variable is the rate of the planned recovery of the species.

The overwhelming majority of remaining owl habitat is on Federally-owned lands. 71% of remaining owl habitat is on National Forest lands owned by the U.S.D.A.'s Forest Service;

and another 12% is on lands owned by the Interior Department's Bureau of Land Management (BLM). Most of the spotted owl habitat on private lands has been destroyed. It is estimated that spotted owl habitat has been reduced by 60% since 1800.

It is important to note that the timber industry has experienced significant job loss prior to this listing, and would be likely to continue to do so regardless of the spotted owl. Between 1979 and 1989, timber-based employment in Washington and Oregon declined by about 26,000, to 131,500. Projections are that if current policies were followed (prior to listing of the owl), approximately 6,000 additional jobs would be lost in the "old growth" areas of Washington, Oregon, and Northern California.

The Interior and Related Agencies Appropriations bill for fiscal year 1990 contained a set of provisions designed to address the contentious issue of logging in the old growth forests. These provisions, known collectively as "Section 318" of the bill, codified the establishment of an Interagency Scientific Committee (ISC), chaired by a Forest Service biologist named Jack Ward Thomas (hence the Committee's report is known as the "Thomas Report"), and charged the Committee with developing a scientifically credible conservation and recovery plan for the owl. The bill also mandated a certain minimum level of timber harvest in the Northwest (7.7 billion board feet over two years), and set up a consultation process with the Fish and Wildlife Service and other interested parties for approval of timber sales.

The Thomas Report proposed the creation of various "Habitat Conservation Areas" (HCAs) in the Northwest to preserve owl habitat. Of the just over 2,000 pairs of northern spotted owls remaining, an estimated 1,465 pairs live in the proposed HCAs. The strategy outlined in the Thomas Report is designed to increase this number to 1,759 pairs.

If implemented fully with no offsetting measures, it is estimated that the Thomas Report conservation strategy would result in the loss of about 19,000 jobs by 1995 and 26,000 jobs by the year 2000. It is important to note that this number includes over 6,000 jobs that would be likely to be lost anyway due to reduced timber harvest levels contained in existing Forest plans.

This memorandum discusses possible steps being proposed by the BLM and the Forest Service to reduce or mitigate this job loss, and offers several other options for consideration.

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 (b)(9) Release would disclose geological or geophysical information

Actions Now Proposed by Affected Agencies:

Because of the marked difference between the affected forests under their jurisdictions, the proposed responses by BLM and the Forest Service are quite different.

BLM:

BLM old growth forest lands which serve as habitat for the spotted owl are concentrated mainly in southern Oregon and northern California. There are no BLM lands in the State of Washington. The BLM lands tend to be smaller patches of forest, not closely connected to each other.

If the conservation strategy in the Thomas Report were to be implemented without amendment, it would reduce by 58 percent the volume of timber available for harvest from BLM old growth in the region over the next ten years. Of the 25,000 jobs predicted to be lost by the year 2000 from full implementation of the Thomas plan, 8,000 would be due to reduced timber volumes on BLM lands.

The proposed response of the BLM is to draw boundaries for the Habitat Conservation Areas (HCAs) that are smaller than those recommended in the conservation strategy contained in the Thomas Report, and to allow full harvesting of non-HCA areas. One of the requirements of the owl's survival is to be able to move from one patch of old growth forest to another, and one implication of the BLM plan is that they would not be able to fly between areas. Thus, part of the BLM plan is to capture the owls (using as bait live mice), and to transport them from one HCA to another. The BLM plan has been developed by its Director, Cy Jamison, and hence is becoming known as the "Jamison Plan".

A key aspect of the Jamison plan is that, because of full harvesting in the non-HCA areas, it would not be able to meet the criteria in the Thomas report which require that owl habitat areas between HCAs have forest with 50 percent old growth trees of at least 11 inches in average diameter, and 40 percent canopy closure. (The so-called "50-11-40" rule.) The need for these features in the areas outside the HCAs is obviated by the BLM plan to physically transport the owls.

The benefit of this plan is that BLM believes that by adopting these smaller HCAs, enough timber can be cut on BLM lands to reduce the job loss related to these lands from 8,000 to just over 1,000.

In the absence of legislation, the BLM's plan is certain to be challenged in court. The environmental groups have stated -- as have the authors of the Thomas Report themselves -- that the conservation strategy in the Thomas Report is the minimum needed to restore the species. Thus, the BLM plan, to be successful, would have to be legislated. The BLM has already been exploring this path with key members of Congress.

Forest Service:

Adoption of the conservation strategy in the Thomas report would reduce by 45 percent the amount of Forest Service old-growth timber scheduled to be harvested in the Northwest over the next ten years under existing forest plans. This timber is located principally in the states of Washington and northern Oregon. Unlike affected BLM lands, the Forest Service lands in question tend to be large, contiguous stretches of National Forest. Of the 26,000 jobs predicted to be lost by the year 2000 from adoption of the Thomas Report, about 18,000 are due to reduced timber volumes from Forest Service lands -- 6,200 because of existing Forest Plans, and 11,500 from the spotted owl listing per se.

The current intention of the Forest Service is to adopt the provisions of the Thomas Report in seeking to promote recovery of the owl. At the same time, they would like to seek legislation stating that the conservation strategy contained in the Thomas Report is a sufficient recovery plan. (In the parlance, they will be seeking "sufficiency language" from the Congress.)

The Forest Service argues that to adopt anything less than the Thomas Report strategy would result in certain litigation (and probable loss of the litigation to the environmental groups), with the result of making even less timber available for harvest. The principal goal of the Forest Service at this point is to stay out of court in seeking to provide an adequate supply of timber for the industry.

Options

Decision I: *How should the Administration react to the owl's listing on June 22nd?*

Option 1: Allow BLM to implement Jamison plan;
 Allow Forest Service to implement Thomas plan;
 Propose job-creating recreation initiative;
 Endorse export ban on logs from state lands.

The BLM's decision to depart from the Thomas plan has enabled it to put forward a scientifically defensible recovery plan that keeps job loss to a minimum. If the Forest Service does stick with the Thomas plan, it will be necessary to put forward accompanying initiatives to reduce job loss. The Forest Service has prepared detailed estimates for two such initiatives: support for the ban on the export of raw logs taken from state lands which is now pending in House-Senate conference, and an initiative to create jobs in the recreation, wildlife, and tourism areas.

The Forest Service estimates (SEE ATTACHMENT ONE) that a ban on the export of raw logs from Federal and state lands can preserve the existence of 3,440 jobs by 1993 and 5,840 jobs by 2000. The assumptions in the Forest Service's calculations mirror the provisions of the trade bill now pending in conference committee.

Further, the Forest Service has developed a package of recreation and wildlife initiatives on these lands, at a cost of \$10 million per year over 10 years, that could create in these areas 4,330 jobs by 1993 and 6,500 jobs by 2000. It should be noted that these jobs (e.g., running restaurants, hotels, outfitting services, fishing businesses, etc.) tend to be lower paying than timber related jobs. Salaries tend to be 50 to 70% of timber salaries.

The net effect, however, of the log export ban and adoption of a recreation initiative, however, would be to reduce the 18,000 job loss estimated in the year 2000 on Forest Service lands to about 9,000, once estimates of activity on private lands are taken into account.

Thus, the combined effect of this option would be a job loss in the range of 10,000 to 15,000 by the year 2000.

PROS:

- o "Balanced" in the sense that it offers something to both sides.
- o Allows Administration to argue that it has respected basic integrity of the Endangered Species Act.
- o Cuts approximately in half job loss attributable for listing of the owl.

CONS:

- o Recreation jobs are of substantially lower quality than timber-related jobs; thus still allows for major job loss in areas dependent on Forest Service timber.
- o Forest Service plan will be challenged in court by industry; BLM plan will be challenged in court by environmentalists.
- o Will engender vehement criticism from Northwest Congressional delegation; particularly Washington delegation.

Option 2: President announces support for legislation to convene the Endangered Species Committee (the "God Committee".)

Some Members of Congress have suggested that one solution would be to have the Congress legislate the convening of the so-called "God Committee." Speaker Foley's staff and Senator Packwood are among those who have floated this idea.

Under the Act, if an agency cannot reach agreement with the Fish and Wildlife Service on a proposed Federal action that the FWS believes would threaten the existence of the species, it can be referred (upon request by any affected department or the Governors of affected states) to the Endangered Species Committee, which consists of:

The Secretary of the Interior (chairman)
 The Secretary of Agriculture
 The Secretary of the Army
 The Administrator of NOAA
 The Administrator of EPA
 The Chairman of the Council of Economic Advisors
 One individual appointed by the President from each affected state.

The Committee is allowed to consider economics in reaching its decisions.

The problem is that when one of the affected parties calls for referral to the Committee, that party automatically becomes responsible for additional mitigation costs. Legislating the convening of the Committee gets around that problem.

More importantly, it clears the path for ultimate resolution of the issue. The logic employed by those recommending this course is that even if the Committee rules in favor of protecting the owl (as it did in the only other case in history in which it was convened -- that of Tellico Dam and the infamous snail darter), it is important to exhaust all avenues of administrative relief to clear the way for the Congress to legislate its own conservation plan, which may overrule the ESA.

PROS:

- o Speeds up ultimate resolution of the issue.
- o Committee is allowed to consider economics in its decisionmaking.
- o Will be supported by Northwest Congressional delegation.

CONS:

- o Places entire onus for at least initial resolution of the issue on the shoulders of the Administration.
- o Doesn't necessarily solve the problem.
- o Likely to be criticized by environmentalists.

Option 3: Continue harvest levels pursuant to current forest management plans.

Senator Gorton has suggested that the Administration simply proceed with timber harvests that are scheduled under the recently released forest management plans that pre-date any listing of the owl. A decision to proceed in this fashion would be certain to be challenged in court. The Senator's logic is that if the courts rule that this plan provides insufficient protection to the owl, he would seek to have Congress approve the plan by legislation.

The Department of Agriculture believes that this approach would be a clear violation of the Endangered Species Act. The Department's contention that court injunctions

preventing sales would follow such a wanton violation, and would result in less timber being available for Northwest mills than even under the Thomas plan.

PROS:

- o Results in minimum job loss beyond that which will occur for reasons unrelated to the owl's listing.
- o Will be supported by Senator Gorton.
- o Forest management plans are carefully developed through a balanced, consultative process.

CONS:

- o Will be immediately challenged in court; Forest Service believes with success.
- o Pending legislative fix -- which could be difficult to achieve -- could reduce timber harvests to levels even below those in the Thomas Plan.
- o Will be severely criticized by environmental interest and the press as blatantly ignoring the Endangered Species Act.

Option 4: Implement Thomas plan for Habitat Conservation Areas; but accelerate harvest outside HCAs.

Governor Gardner and Speaker Foley's staff have suggested the idea of accelerating previously planned timber harvest on lands which are not part of HCAs under the Thomas plan. In the next two to three years, this accelerated harvest would provide sufficient fiber to offset the effects of the owl listing on Northwest mills. Since this would be consistent with the Thomas plan, it would not require any change to the Endangered Species Act.

This action may, however, require a change to the National Forest Management Act (NFMA), which mandates that timber be taken at an "even flow" able to provide a "sustained yield" over time. These mandates contain various exemptions, however, and one outstanding legal question is whether the fact that requirements under the ESA have been triggered by the owl's listing might provide grounds for such an exemption from the NFMA's requirement.

PROS:

- o May not require legislation.

- o Provides adequate timber in the near term to delay major job loss for at least 3 years.
- o Respects basic framework of Endangered Species Act.

CONS:

- o May not be possible without amendment of National Forest Management Act.
- o Would actually create greater clear-cut areas in the State of Washington in the near term.
- o May actually encourage adoption of the Thomas plan for the long term.

Option 5: President calls for summit of Federal Agencies, Northwest Congressional delegation, and relevant Committee Chairmen and Ranking Members to resolve issue.

This option is self-explanatory.

PROS:

- o Maximizes probability of legislative solution to the issue.
- o Holds out promise for achieving a "balanced" solution in that all interests will be represented.
- o Responsibility for solving the problem spread evenly.

CONS:

- o Summit may fail to arrive at job-saving solution.
- o Encourages band-aid "deal" to fix structural problem with the ESA.

Decision II: Should the Administration support a change in the receipts sharing formulae with the states to prevent cuts in funds for schools and roads as a result of listing of the owl?

Background:

Under current law, states receive 25% of timber harvest receipts from Forest Service lands and 50% of such receipts from BLM lands. These funds are generally used to pay for roads and schools in areas within the Federal domain which have no source of local property taxes. A decline in timber harvesting of the level called for in the Thomas plan would reduce annual payments to Washington, Oregon, and California by \$58 million by 1995 and \$102 million by 2000.

Option 1: Change state share of Forest Service receipts to 50%; state share of BLM receipts to 75%

Comment: This option would increase receipts to the affected states above and beyond their current levels. The cost to the Treasury in foregone receipts would be \$400 million in FY 1995 and \$324 million in FY 2000.

Option 2: Change state share of Forest Service receipts to a percentage adequate to keep funds flowing to states constant.

Comment: This option would entail changing the receipts sharing formula on Forest Service lands to 32% for Washington and 29% for California, and changing the formula for BLM lands in Oregon to 75%. It would result in the Treasury foregoing \$95 million in annual receipts by FY 1995 and \$102 million in annual receipts by 2000 compared to what would otherwise have been collected.

It should be noted that under this option, those parts of the affected states which are not affected by the Thomas plan would receive a windfall. If the receipts sharing change were limited to those counties impacted by the Thomas plan (something which may be difficult to accomplish and administer), the cost in terms of annual foregone revenues would be \$75 million in FY 1995 and \$59 million in FY 2000.

Option 3: No change in receipts sharing formula.

Comment: This option would avoid setting an adverse precedent that would be hard to contain and hard to reverse.

**JOB LOSS DUE TO FOREST PLANS AND SPOTTED OWL, 1992, 1995 AND 2000
PLUS REPLACEMENT JOBS DUE TO PROJECTED PRIVATE RESPONSE; EXPORT BAN; AND REC., FISH AND WILDLIFE STRATEGY**

<u>1992</u>					
	FS Strategy on NFS Land	BLM Strategy on BLM Land	Export Ban On State/Fed lands	Rec, Fish & Wildlife Strat.	Change
Forest Plan	-6,247				
Spotted Owl	-11,433	0	+2,294	+2,886	-6,251
SUBTOTAL	-17,680	0	+2,294	+2,886	-12,498
PROJECTED PRIVATE RESPONSE					+7,282
NET CHANGE					-5,216
<u>1995</u>					
	FS Strategy on NFS Land	BLM Strategy on BLM Land 1)	Export Ban On State/Fed lands	Rec, Fish & Wildlife Strat.	Change
Forest Plan	-6,247				
Spotted Owl	-11,433	-7,729 2)	+5,840	+6,000	-7,322
SUBTOTAL	-17,680	-7,729	+5,840	+6,000	-13,569
PROJECTED PRIVATE RESPONSE					+12,137
NET CHANGE					-1,432 3)
<u>2000</u>					
	FS Strategy on NFS Land	BLM Strategy on BLM Land 1)	Export Ban On State/Fed lands	Rec, Fish & Wildlife Strat.	Change
Forest Plan	-6,247				
Spotted Owl	-11,433	-7,729 2)	+5,840	+6,500	-6,822
SUBTOTAL	-17,680	-7,729	+5,840	+6,500	-13,069
PROJECTED PRIVATE RESPONSE					-2,756
TOTAL					-15,825 3)

NOTE: For comparison, full time equivalent (12 month) jobs can be calculated as follows:
 -Timber employment: 80 percent full time, 20 percent part time (10 months).
 -Recreation employment: 40 percent full time, 60 percent part time (6 months).

For income comparison, income from an average recreation job is 60 percent of an average timber job.

- 1) Assumes economic effect of meeting ISC in 1993
- 2) The BLM assumes now that the Jamison plan, if adopted, would result in job loss of approximately 1,000 over time.
- 3) Net job loss under Option 1 could thus be negligible in 1995 and in the range of 9,000 in 2000. It should be noted that job quality would suffer, and that these estimates may be regarded as optimistic.

ATTACHMENT 1
Source: U.S. Forest Service

JUN 18 '90 15:31 USDA FS DEPUTY CHIEF NFS

P.12/13

6/21 Copy sent to Porter



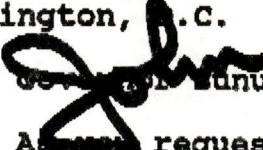
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

June 20, 1990

THE CHIEF of STAFF
has seen

The Honorable John Sununu
Chief of Staff
The White House
Washington, D.C. 20500

Dear  Sununu:

As requested in our phone conversation this evening, I am enclosing a list of actions that the Administration must request of the Congress in both the short and long term.

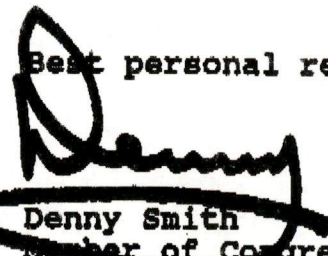
As a follow-up to our meeting last week, I am also enclosing more detailed proposals for the various actions that can be taken administratively by the Departments of Agriculture and Interior to help address the current timber supply problems facing the Pacific Northwest.

I appreciate your personal involvement in an issue that will significantly affect my constituents. Oregon has over 19 million acres of commercial forestland, and the Federal government owns almost sixty percent of the forested land in my state. We can have a sound timber industry and a sound environment--it does not have to be an either/or proposition.

Briefly, on the jobs issue, the environmentalists claim that jobs are being lost to automation. It is true that mills have modernized in the last decade, but the timber industry also suffered a severe recession in the early 1980s. There are fewer mills in operation today than there were in 1980, yet lumber companies have added 11,000 jobs since the recovery began in 1983.

I hope that you will find the enclosed proposals useful. If you or your staff have any questions concerning these proposals, please be sure to contact me.

Best personal regards,


Denny Smith
Member of Congress

DS/vs
5 Enclosures



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

(1) Actions Needed by the Congress

- 1) Congress may need to legislatively jump-start the Endangered Species Committee.
- 2) Congress may have to deem that the timber sale programs for the BLM and the Forest Service meet the requirements of NEPA, the Endangered Species Act, the National Forest Management Act, and other relevant acts.
- 3) Congress will probably have to deem that certain management plans are deemed to be sufficient interim protection for the spotted owl, until a recovery plan is established.
- 4) The timber sale preparation funds should be prohibited from being transferred to fund other Forest Service functions.
- 5) Eventually, the Administration--working with Congress--will have to propose changes to the Endangered Species Act.
- 6) Congress will have to streamline the administrative appeals process used by the Forest Service.
- 7) Congress will probably have to deem that the next round of Forest plans, and the BLM management plans scheduled to be implemented in 1993 meet the requirements of certain laws.



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

(3) Salvage of Blowdown

There is between 300 million and 500 million board feet of timber that blew down on federal lands during storms last winter. These trees are laying on the forest floor, and should be aggressively salvaged before they begin to deteriorate and lose their economic value. Reforestation, in accordance with the President's reforestation program, should be a top priority.

Approximately 150 million board feet of this volume has gone through the advisory committees, yet only 50 million to 75 million board feet has been offered for sale.

This volume is being offered as a part of the Section 318 volume. I believe that salvage sales should be offered in addition to the regular sale program, in order to help replenish the timber "pipeline."



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WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

(2) Timber Sale Preparation

I am concerned that the Forest Service has reallocated money appropriated for the purpose of preparing timber sales in Region 6. Over the past 5 years, roughly \$250 million has been appropriated for timber sale preparation--over \$162 million directly budgeted and an additional \$86 million allocated from timber management and salvage sale receipts. The total appropriations for this purpose have increased steadily over this period. The table below presents the timber preparation allocations in the final appropriations bills.

Despite this level of funding, it is my understanding that the Forest Service has not prepared enough sales to approach historical sales volumes for Fiscal Year 1991. I believe that a major reason the Forest Service supports the spotted owl conservation strategy is that it would severely restrict sales that would otherwise take place in FY 91, thus providing an excuse for their failure to prepare sufficient sales to date.

The Administration should take a hard look at the how the Forest Service has spent money that was appropriated for timber sale preparation in Oregon, and determine why so few sales were prepared.

Timber Preparation Allocations - Final Appropriations Bill
Region 6

(\$ Millions)

<u>Budget Line Item</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Timber Prep (only)	27.9	31.4	29.8	33.1	40.2
TM Receipts				13.8	3.5
Salvage Sale	7.1	6.8	11.0	18.9	42.9



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WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

(4) Protection from Eco-terrorism

The Forest Service has the administrative authority to protect loggers from acts of ecological sabotage and from harassment by preservationists who assault woodworkers or chain themselves to logging equipment. The best way to deal with these situations is to close the roads leading to controversial sales. The Forest Service has the authority to close roads under C.F.R. 261. 50-58. While this has been applied in the past mainly to fire hazards, I believe that the growing acts of ecological sabotage present a significant danger to the public.

The Forest Service should enhance its enforcement activities, and close roads where protesters are interrupting logging operations. Timber purchasers have paid the Federal government for the timber they are harvesting, and are logging sales in accordance with the law.

Logging sites have certain hazards. The presence of protestors at these sites presents a real physical danger to both the logger and the protestor.



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

(5) Section 318

The Fiscal Year 1990 Interior Appropriations Bill (P.L. 101-121), Section 318 (a), mandates that specific volumes of timber shall be offered for sale. In the 13 National Forests in Oregon and Washington that are known to contain the northern spotted owl, the bill requires that 5.8 billion board feet of net merchantable timber be sold in Fiscal Years 1989 and 1990. These are mandated harvest levels, not merely targets. We in the Congress spent weeks negotiating these harvest levels, and we expected that all of the volume would be offered.

To date, the Forest Service has sold only 56 percent of the mandated levels. The Forest Service maintains that they could offer up to 95 percent of the harvest levels before the end of the fiscal year, but we expect them to fall very short of this level. I believe that the Forest Service should be directed by the Administration to meet 100 percent of the mandated harvest level.

The Jack Ward Thomas Report, which presents a conservation strategy for the spotted owl, assumes that the Section 318 timber will be harvested, although it states that timber outside the proposed Habitat Conservation Areas (HCA's) would be preferable to timber within the HCA's (pp. 4, 29). Therefore, I do not believe that the report, or concerns for the spotted owl, represent a legitimate excuse for failing to meet the mandated harvest levels.

United States Senate

WASHINGTON, DC 20510

June 19, 1990

- THE CHIEF of STAFF
has seen

The Honorable John Sununu
Chief of Staff
The White House
Washington, D.C. 20500

Dear John:

As you know, the Secretary of the Interior is required to decide by Saturday, June 23rd whether to list the spotted owl as a threatened species under authority of the Endangered Species Act. Because of the unprecedented regional application of the Act in the case of the owl, following the process established by the Act is absolutely vital to our constituents and to our public resources.

If the owl is listed, as we expect will occur, that decision will constitute a significant federal action which will have profound effects on our regional economy. Since the process in applying this law is so important, we were deeply disturbed to learn Wednesday afternoon that the Forest Service intends to adopt and enforce the Interagency Scientific Committee's (ISC's) recommended conservation plan for the northern spotted owl as soon as the listing decision is announced. We were further informed that the Forest Service intends to adopt and implement the recommended plan even if the owl is not listed.

We believe this to be a highly inappropriate and potentially destructive action and request that you take immediate action to reverse this decision.

Instead, we believe that the administration should construct an interim owl protection plan that allows for more flexibility pending a final recovery plan. One possible response to the listing decision which we would support would be to direct the Secretary of Agriculture to adopt the revised Forest Service land and resource management plans as soon as each are completed. Those plans, according to information currently available to us, would reserve approximately 5.3 million acres of mature and overmature spotted owl habitat. While less than the ISC's recommended 8.4 million acres, such an approach would have substantially less immediate economic impact on our states.

John Sununu
Page 2

Additionally, following this suggestion would allow the Forest Service the flexibility it needs to prepare and offer a stable, though reduced, timber sale program for Fiscal Year 1991 and beyond while still meeting the needs of the owl for the near-term. Where final plans are not yet completed, the Forest Service should be directed to implement land allocation and management prescriptions set forth in draft plans until the final plans are completed. This would ensure that the agency is operating under improved environmental standards and guidelines.

This acreage, while less than the ISC's recommendation, is an amount 1.8 million acres greater than habitat already reserved in our national parks and wilderness areas. It is also a figure which has been developed after having proceeded through the public comment and technical analysis process for the last five years and has, therefore, a considerably greater degree of legitimacy.

In any event, it is critical that the Forest Service's pending decision in this matter be reversed immediately. We look forward to your response to our request at your earliest convenience.

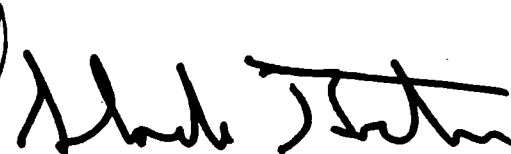
Sincerely,



Mark O. Hatfield
U.S. Senate



Bob Packwood
U.S. Senate



Slade Gorton
U.S. Senate



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

June 18, 1990

151384
Guidance
THE CHIEF of STAFF
has seen

The Honorable John Sununu
Chief of Staff to the President
The White House
Washington, D.C. 20500

Dear Governor Sununu:

Thank you for the time you spent last Thursday meeting with my constituents about the timber supply crisis facing Oregon. They appreciate the President's expression of concern about the potential job loss and the economic consequences of protecting the spotted owl. The meeting was a good opportunity for the group to tell you personally of the impact this situation is having on their communities and lives.

I will be sending to you within the week the concise proposals you encouraged us to send, but would like to take this opportunity to summarize for you the issues we presented Thursday.

The timber volumes specified in Section 318 of the Fiscal Year 1990 Interior Appropriations bill are mandated harvest levels, not merely targets. We in the Congress spent weeks negotiating those harvest levels, and we expected that all the volume would be sold. Despite optimistic claims from the Washington, D. C. headquarters, Region Six of the Forest Service will probably fall very short of this mandate.

There is also an estimated 300 million to 500 million board feet of blown down timber which must be harvested before it becomes fuel for forest fires. This blowdown should be aggressively salvaged and the areas reforested. This volume should be offered in addition to the Section 318 level, in an effort to help refill the timber pipeline.

We are very concerned that the Forest Service seems intent on implementing the Jack Ward Thomas report whether or not the owl is listed as threatened. Implementation of the Thomas report will bring economic disaster to the Pacific Northwest. This report recommends locking up over 8 million acres in Oregon and Washington, yet no one knows how many owls there are and how many are necessary for the species to be declared out of danger. We do know, however, that the recommendations of five men will put 50,000 Oregonians out of work.

The Honorable John Sununu
June 18, 1990
Page Two

While the compilation of available raw data under this report may be good, no one knows exactly how the policy recommendations were developed, and they have not been subject to review. It is a management strategy. But to say it is the only management strategy is a disservice to hard-working Oregonians.

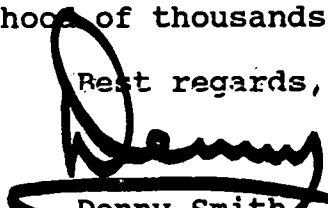
The Thomas report did not consider human and societal needs in deciding what was best for the owl. It falls far short of the balance between the environment and the economy that President Bush promised his Administration would provide. By contrast, the BLM is working on an owl management plan that seeks to minimize economic disruption.

Eco-terrorists must be stopped. We can achieve this by directing the Forest Service to take steps, including the closure of logging roads, to deal firmly with the life-threatening incidents that these groups engage in. We cannot make it our tacit policy to tolerate vandalism of equipment and tree spiking that is designed to maim or kill loggers and millworkers.

On the question of banning log exports from public lands, I would urge the Administration to accept the legislation that would establish such a ban currently pending in the Congress. Until this issue is resolved, it is the excuse the environmental extremists constantly use for the current raw material shortage in the Pacific Northwest.

The President's concern about the timber supply crisis is clear. His leadership during this time is critical to the economic survival of the Northwest. By working together, I'm confident we can have a win-win solution that will protect our environment and the livelihood of thousands of Oregonians.

Best regards,


Denny Smith
Member of Congress

DS:vs

Details on these suggestions
to follow —



DEPARTMENT of the INTERIOR

news release

Fish and Wildlife Service

For Release June 22, 1990
11:00 a.m.

Washington, DC:

Phil Million 202-208-4131

Elizabeth Lipscomb 202-208-5634

Portland, OR:

David Klinger 503-231-6121

NORTHERN SPOTTED OWL LISTED AS THREATENED SPECIES

The Department of the Interior's U.S. Fish and Wildlife Service Director John Turner announced today that the northern spotted owl will be listed as a threatened species throughout its range in Washington, Oregon, California, and British Columbia.

In accordance with the Endangered Species Act, the listing decision was made strictly on the basis of the species' biological status. The Act does not permit economic factors to be considered as part of a listing decision.

Turner said the Fish and Wildlife Service is prepared to go forward immediately with a regular program of "consultation" on proposed timber harvest activities.

"To minimize any possible delay or disruption, the Fish and Wildlife Service has already established guidelines for formal consultation with the Federal timber-managing agencies," Turner said. "As a result, we are way ahead of where we usually are, when a species is listed because we have been conferring with these agencies for over 6 months. In carrying out formal consultations, we will continue to provide an orderly review of

(over)

-2-

timber sales and other activities that may affect the survival of this species. We will work closely with the Federal agencies and all other interested parties to find alternatives that will enable owls and people to co-exist."

Since the owl was proposed for listing last year, the Fish and Wildlife Service has participated in a "conferencing" process with the principal timber management agencies in the Pacific Northwest--the U.S. Forest Service and the Bureau of Land Management--on actions such as logging, roadbuilding, and other forest management practices that may affect the northern spotted owl.

Under the Endangered Species Act, an "endangered" species is one in danger of extinction throughout all or a significant portion of its range. A "threatened" species is one likely to become endangered within the foreseeable future. The Endangered Species Act makes it illegal to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect an endangered or threatened animal species, and also prohibits interstate or foreign commerce. Federal agencies are required to consult with the Fish and Wildlife Service to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species.

There are approximately 2,000 known pairs of northern spotted owls (Strix occidentalis caurina) throughout its range from southwestern British Columbia through western Washington, western Oregon, and the coast range area of northwestern California to San Francisco Bay. Populations are not evenly distributed throughout the range. Densities are lowest in northern Washington and southern British Columbia and highest in the Cascades of Oregon and the Klamath Mountains of southwestern Oregon and northwestern California.

In making its determination, the Fish and Wildlife Service found the northern spotted owl is threatened throughout its range by the loss and adverse modification of suitable habitat and the resultant decline in population. Northern spotted owls occur primarily in old-growth and mature forest habitats, but may be found also in some younger forests that have characteristics such as high canopy closure; large overstory trees; numerous large snags or trees with large cavities, broken tops, and other deformities; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly.

-3-

The listing action will be published in the Federal Register and takes effect July 23, 1990.

The listing process was triggered in 1987 when the Fish and Wildlife Service was petitioned to list the species. The Service published a proposal to list the species as threatened on June 23, 1989. A 6-month public comment period on the listing proposal ran through December 1989 and was reopened in March and April 1990. Public hearings were held in Olympia, Washington; Portland and Eugene, Oregon; and Redding, California, and drew an estimated 10,000 participants. The Service received more than 23,000 public comments on the proposed listing.

Interior Secretary Manuel Lujan said today that he and Secretary of Agriculture Clayton Yeutter will announce further information about agency management plans Tuesday, June 26.

-DOI-

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Paper	Options Re: Northern Spotted Owl (3 pp.)	6/20/90	P 5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Spotted Owl (1990) [1]

Open on Expiration of PRA
 (Document Follows)
 By JA (NLGB) on 5/12/05

Date Closed: 12/10/2004	OA/ID Number: 29172-002
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
 P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
 P-3 Release would violate a Federal statute [(a)(3) of the PRA]
 P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
 P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
 P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
 (b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
 (b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
 (b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
 (b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
 (b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
 (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

Northern Spotted Owl
June 20, 1990

*Pacific Northwest
Reforestation
Spotted Owl*

Objectives

1. Pursue a policy that is consistent with the President's desire to find an appropriate balance between the environment and economic growth (jobs).
2. Pursue a policy that adequately reflects the useful recommendations of key elected officials from the Northwest including Gorton, Packwood, Hatfield, Morrison, etc.
3. Ensure that responsibility (both perception and reality) is shared with the Congress, the courts, and the states.

Realities

1. The provisions of the Endangered Species Act and the scientific evidence presented so far require listing the Northern Spotted Owl as a threatened species by June 23.
2. Environmental groups and industry groups will almost certainly challenge in the courts any timber management plan adopted by the Forest Service or the Bureau of Land Management.
3. Employment in the timber industry in the Northwest is declining and will continue to decline due to productivity increases and reduced availability of timber irrespective of the spotted owl decision.

4. The timber management plans adopted by the Forest Service and the Bureau of Land Management in the wake of the listing decision will, however, influence the rate of adjustment (numbers of jobs lost) in the timber industry.

5. Most of the remaining old growth timber is on federal lands. Of the old growth timber on federal lands approximately 80 percent has already been harvested. The debate centers over two issues:

- a. How much of the remaining 20% should be set aside to protect the spotted owl?
- b. How rapidly or gradually do we harvest the portion that is not set aside?

Alternative Approaches to Timber Management

1. Harvest a larger area of forest.

BLM + FOREST + (ESC)

BLOWDOWN —

OCT. 1, REPORT DATE

*SEND TO CONGRESS (LAW IN PLACE)
STOP ECOTERRORISM*

*REPLACE DMB ROBERTSON?
ASST. SEC. Y. FOR
OVRN DMB ROBERTSON*

a. One approach, advanced by Senators Gorton, Packwood and Hatfield, would maintain the current harvest plans of the Forest Service, which already set aside some areas for the owl.

b. Another approach, proposed by the Bureau of Land Management, would alter the pattern of harvests to accord more closely to the Thomas Report, the most recent scientific analysis of the owl's needs. The BLM would not, however, sacrifice as much timber for the owl as would Jack Ward Thomas.

c. The Thomas plan proposes the most limited harvest areas of the alternatives under consideration.

2. Harvest more rapidly. Governor Gardner [and Secretary Yeutter] propose to set aside large areas of land for the owl but to harvest other areas at a rapid rate, thereby maintaining a high level of production and employment in the short run. Advocates of this approach expect that, before the available supply of timber forces reduced harvests, (a) scientific studies will support increasing harvest areas, and (b) affected regions can diversify their economies to maintain economic viability.

Alternative Approaches to Policy Development

1. At the Time of the Listing, Have the Administration Announce a Timber Management Plan. Some, including Senator Gorton, have suggested that, at the time the listing is announced, the Administration should propose a timber management plan, initially for administrative implementation but ultimately for enactment by Congress.
2. At the Time of the Listing, Begin and Policy Making Process To Develop a Timber Management Plan. Others have suggested that a timber harvest plan should be specified by the Endangered Species Committee, which Congress would convene immediately by legislation, or directly by Congress with some level of Administration participation.

Alternative Approaches To Mitigating the Economic Dislocation that Occurs as a Result of the Timber harvest Plan Adopted.

1. Log export ban. Support the provision of the mini-trade bill prohibiting exports of logs cut from State lands.
2. Develop recreational facilities in old-growth forests. The Department of Agriculture proposes to develop new recreational facilities in the old growth forests.

3. Increase state shares of timber receipts. States currently receive 50% of revenues earned from the sale of timber cut from Bureau of Land Management lands and 25% of revenues earned from Forest Service lands. These funds are used to finance schools in the old-growth forests. One suggestion is to increase the States' share of these receipts.
4. Target existing job training and economic development programs to affected regions. Oregon [and Washington] are developing assistance programs, including job training and economic development programs. Some have suggested that the Federal government provide funds from existing programs to support these efforts.

SLADE GORTON
WASHINGTON

730 HART SENATE OFFICE BUILDING
(202) 224-3441

United States Senate

WASHINGTON, DC 20510-4701

COMMITTEES:

AGRICULTURE

ARMED SERVICES

COMMERCE, SCIENCE,
AND TRANSPORTATION

INDIAN AFFAIRS

June 14, 1990

The Honorable John Sununu
Chief of Staff
The White House
Washington, D.C. 20500

RE: Spotted Owl
Pacific Northwest Logging

Dear John:

Yesterday afternoon Dale Robertson, Chief of the U.S. Forest Service, informed the Congressional delegations of Washington and Oregon that the Forest Service intended to adopt and enforce the Thomas Commission report calling for the set-aside of 8.4 million acres of timber land in the Pacific Northwest for the Northern Spotted Owl. In fact, he said he would adopt the report even if the Owl were not listed. That action is likely to take place soon. If Mr. Robertson's decision is carried out, it will be an economic policy and political disaster, the likes of which the Pacific Northwest has not seen since the Great Depression.

On May 16, 1990, I gave you a plan suggesting the outlines of a course of action. A copy of that plan is attached. You responded to it favorably, but that decision does not seem to have percolated down to your staff, including Brian Waidman, Ed Goldstein and Mike Klausner, with whom my staff has been dealing. The decision plainly has not percolated down to the Forest Service.

I urge that the President direct Clayton Yeutter to adopt as an interim protection plan for the Spotted Owl not the Thomas Commission report, but the revised Forest Service plans for the Pacific Northwest. Those plans, if adopted, would result in a setting aside of 5.3 million acres of old growth Spotted Owl habitat, as against the 8.4 million acres in the Thomas plan. 5.3 million acres is a land mass larger than the states of Delaware, Connecticut, and Rhode Island combined. It is also 1.8 million acres more than the acreage already set aside for Spotted Owls in National Parks and Wilderness Areas. It is a set-aside which would have been quite unpopular in the Pacific

John Sununu
June 14, 1990
Page 2

Northwest a year ago, but which now would be regarded as a blessing. It is also the best way President Bush can honor the commitment he made in Portland.

Interestingly, the head of the Bureau of Land Management, Sy Jamison, proposes to modify the Thomas Commission report on the Bureau's lands in Oregon. That will provide some, but insufficient, relief in that state but none in Washington, as the Bureau of Land Management does not control significant timber lands in Washington. He also plans to ask Congress to deem his plan "sufficient" -- the very strategy I have recommended to you.

If the Thomas Commission report is adopted, as apparently the Forest Service intends, Democratic members of the Congressional delegations from Washington and Oregon will lay the entire responsibility for the crisis in Washington and Oregon at the feet of the President. They will claim that the President lied when he promised to "balance" the Thomas plan. The Democrats will escape any responsibility for job losses. The President may receive mild praise from the environmentalists, (although they want even greater set-asides,) but he will gain no new constituency. He will lose his ability to change the politics of Washington and Oregon in his favor, and he will be repudiated even by the Republican Congressional delegations of those two states.

If the President agrees with my suggestion, and follows it up by demanding that Congress formally declare his action to be sufficient, he will have provided a proper balance between human values and environmental values and will reap many benefits for being right.

Time is of the essence. Because a reversal will be impossible once a Forest Service order has been entered, I do not believe the President has beyond next Monday to act.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Slade', with a stylized flourish at the end.

Slade Gorton
United States Senator

SG:ja
enclosure

Date: May 16, 1990

To: Governor Sununu

From: Senator Slade Gorton

Subject: Northwest Spotted Owl Crisis

The Issue

The federal government must not destroy 35,000 jobs for Northwest working families in order to expand the numbers of Spotted Owl pairs on federal lands from 1465 to 2000. President Bush was right when he said "there has to be a middle ground that protects the owl and keeps people working. It's the balance we are seeking."

The recently released interagency Thomas committee report recommends establishment of Habitat Conservation Areas (HCA) for the Spotted Owl which would be set aside from any commercial timber harvesting. The proposed HCAs would comprise 8,444,650 acres in Washington, Oregon and California. Over five million of these acres are currently available for timber harvesting. This plan calls for a 56% reduction in currently available federal timberlands in Washington State.

The Thomas proposal now goes to the Secretary of Interior who must decide, by June 23, whether to list the owl as endangered or threatened. If the Thomas plan is adopted as a "recovery plan" for the Spotted Owl, and all of the proposed lands are set aside, as many as 35,000 working people in the Northwest will lose their job.

Policy recommendation for saving jobs by reducing the owl set asides

I recommend that the President encourage the Secretary of Interior to use his legal authority under the Endangered Species Act to reduce the HCAs by considering "economic factors" in designating "critical habitat" for the owl. Then, the President should place the onus squarely on Congress by proposing legislation to protect this action from immediate and certain legal challenge, by a Congressional declaration that the Secretary's action is "legally sufficient" to meet the Endangered Species Act requirements. (see addendum for legal analysis of Secretary's authority in critical habitat designation).

Without Congressional approval, an inevitable legal challenge to the Secretary's action would stop most Northwest federal timber harvests, potentially for years. Devastating job losses would occur as the courts would freeze timber sales while considering the scientific validity of the Secretary's action. (see addendum for other policy options).

The Politics of the Spotted Owl

The proposed HCAs and resultant potential job losses represent the clearest and most direct impact of a federal policy on the lives of thousands of Northwest individuals, families and communities in memory. The President should not be blamed for carrying out the intent of Congress as expressed in the Endangered Species Act, but many Northwest politicians are already pointing the finger of blame at the President. (see addendum for statements of Northwest Democrats).

Extraordinary events are occurring in traditional blue collar Democratic Northwest communities as people vent their anger at proposed federal action which threatens to put them out of work and change their way of life. Fundamental party realignment is a real possibility. (see addendum for evidence of fundamental political realignment).

Still, most Americans strongly favor environmental protection and will not support a solution that allows the Spotted Owl to become extinct even though they oppose the jobs losses which would accompany the Thomas proposal. (see addendum for results of Washington and Oregon polling data).

a. The President

President Bush has an opportunity to cement his support with traditional northwest Democratic working families as they increasingly understand that their Democratic office holders are willing to sacrifice jobs to please national environmental organizations. Depending in large measure on a concerted effort by the President and other Republicans, this issue can permanently realign Northwest partisan loyalties. Most immediately, Jolene Unsoeld from Southwest Washington could lose her House seat. The President can be seen as the defender of jobs, people, families and communities, as he supports a balanced solution that saves the owl from extinction and saves jobs for workers.

b. Northwest Members of Congress

The President can expect strong support from nearly all northwest Republican Congressmen and all northwest Republican Senators. (see addendum with editorial support from leading northwest newspapers).

Northwest Democrats blame the administration for potential job losses while disclaiming any responsibility to amend the Endangered Species Act. They also point to other related issues, including log export restrictions as a substitute for an adequate supply of federal timber. (see addendum "Related Issues").

Here, good policy and good politics are the same. The President can create a new, strong constituency while saving the Spotted Owl from extinction.

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ADDENDUM

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Purpose

This addendum provides information and data to support the conclusions reached in the attached memo.

1. The Thomas Report

The Northern Spotted Owl is being considered for listing, on June 23, as an endangered or threatened species by the Secretary of Interior under the Endangered Species Act. The interagency Thomas Committee, composed only of wildlife biologists, produced a plan solely designed to optimize the number of Spotted Owls. The committee estimates that 1465 owl pairs exist today on Northwest federal lands. Their report proposes a plan to expand that number to 2000 pairs. It is estimated that the total number of Northwest owl pairs is 6059. (see attachment for owl data).

The Spotted Owl is important scientifically because it is an indicator species showing the health of Old Growth forests. The real debate and focus of environmental groups is on preserving Old Growth trees.

The Thomas report recommends establishment of Habitat Conservation Areas (HCAs) which would be set aside from any commercial timber harvesting. The proposed HCAs would comprise 8,444,650 acres in Washington, Oregon and California. Forty percent of these lands are already set aside from timber harvesting in National Parks and Wilderness. The HCAs would take about 5.6 million new acres out of timber harvesting. Of these, 1.1 million acres are on state and private lands. (see attachment for data on land set asides).

The HCAs in Washington State represent 56% of the available federal timberlands.

These set asides would result in a 2.4 billion board foot reduction from the annual Northwest federal timber harvest to preserve owl habitat.

a. What a "Board Foot" means to people

The Forest Service estimates that nine people receive direct employment and nine receive indirect employment when each one million board feet of timber is harvested. The Washington State Department of Employment Security recently concluded that when one direct timber job is lost, 1.6 indirect jobs are lost. Thus, under the Forest Service estimates, for each reduction of a billion board feet in timber harvest, 18,000 people will be put out of work while Washington State estimates that 23,400 jobs will be lost.

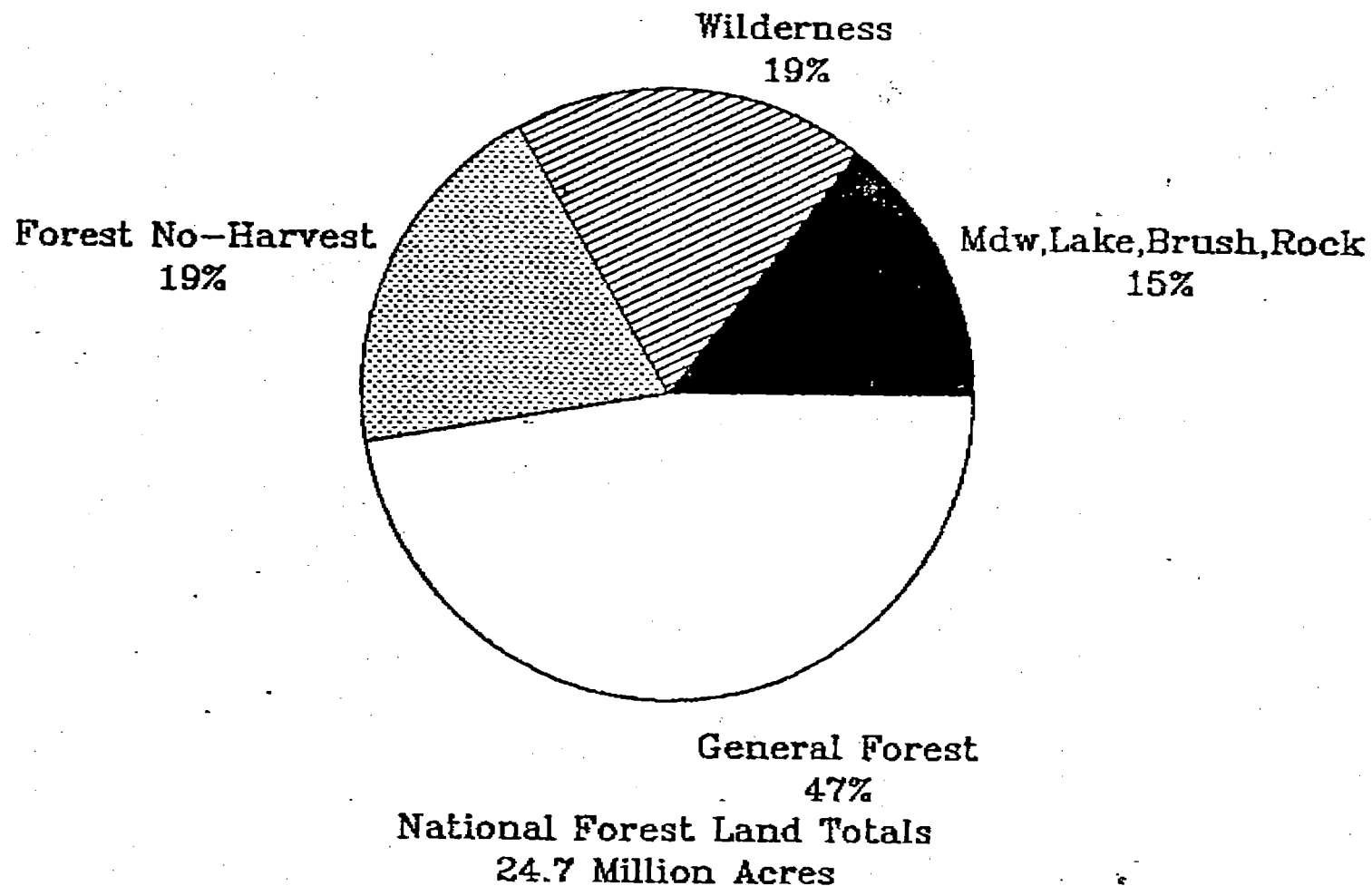
TABLE 3

Current Inventories of Northern Spotted Owls on All Ownerships - 1989

	Total Sites	Total Pairs	Total Owls
USFS (R-6) ^a	3,107	1,287	3,680
BLM ^b	699	343	996
TAC ^c	102	63	284
Pacific Lumber ^d	22	12	36
LP/GP ^e	80	47	138
USFS (R-5) ^f	381 ^g	381 ^g	762 ^g
National Parks ^h	65	65	130
Washington DNR ⁱ	17	10	27
Yakima Indian Reservation ^j	6	4	10
Private Lands - Washington ^k	10	2	12
Private/State Lands - Oregon ^l	18	2	20
Totals	4,699	2,216	6,059

^aUSFS (1989)^bNeitro (1989a), (1989b)^cIrwin et al. (1989)^dKerns (1989)^ePlous (1989)^fRobertson (1989)^hNational Park Service (1989)ⁱWashington Dept. of Wildlife (A.R. XI.F.4) (1989)^jPalmer (1989)^gIrwin et al. (1989)^hCunningham (1989); Forsman (1986)^lMinimum of range of 381-421 pairs

NATIONAL FOREST LAND ALLOCATIONS In The Pacific Northwest



Source: US Forest Service

2. Job Losses

Washington State's Department of Employment Security estimates that the Thomas proposal, if implemented, would result in the loss of jobs for 18,500 working people in Washington State alone. Job losses in Oregon are estimated to be over 15,000. **These potential jobs losses have a special human dimension.** Most people who are threatened with unemployment due to owl set asides do not have a high degree of technical training or job skills. (see attachment for The Seattle Times characture). They will not easily find other work in other fields. In addition, these workers live mostly in smaller rural communities with no other significant economic base. The impact on these people and the Northwest in general will be severe. (see addendum for Forest Service report on social impacts and government revenue losses and job loss estimates).

EXECUTIVE SUMMARY

In response to the findings of the Interagency Scientific Committee that was appointed to study the northern spotted owl, the Secretaries of Agriculture and Interior, through the Chief of the Forest Service and the Director of the Bureau of Land Management, formed an interagency working group. The charge to this group was to analyze the economic impacts of implementing the recommendations of the Interagency Scientific Committee.

ECONOMIC IMPACT

The analysis of economic impacts in Washington, Oregon, and California compares implementation of current plans for National Forests and Bureau of Land Management Districts with implementation of the spotted owl conservation strategy. "Current plans" for the Forest Service are final Forest Plans or draft Forest Plans where plans have not been finalized. For the Bureau of Land Management, the currently planned sale level by District are used.

The analysis considers the dynamics of the timber market economy. The effects of a timber supply reduction on Federal lands in Washington, Oregon, and California were analyzed nationally in terms of changes in price, consumption, trade, and interregional shifts in supply. The resulting effects on regional prices were examined to estimate potential response of private supply.

Changes in prices will also affect revenues to the Federal Treasury and payments to counties in the three affected States. The analysis shows that rising prices will substantially offset reductions in timber volume. However, since the national economic situation in the future is uncertain, an analysis of the effect on revenues to the Treasury and payments to counties if prices remain constant was also done and shown here for comparison.

In summary, the analysis shows:

- o Timber harvest on Federal lands will decline by 2.4 billion board feet by 1995 and remain at that level under the Interagency Scientific Committee recommendations. (Table I).
- o Private harvest increases in response to higher stumpage prices will reduce the effects of the Federal decline by about half in the near term (1995), but this increase cannot be sustained, and by 2000, timber harvest from Federal and private ownerships combined will be 2.7 billion board feet below the current level. (Table II)
- o Current planned Federal harvest levels would support about 53,000 jobs in total; about half of these are direct employment in the forest industry. The loss of jobs by 1995 in response to the Federal harvest volume reduction would be about 25,500 jobs. (Table III)
- o The private harvest response would mitigate the employment effect in 1995 and net job loss would be about 13,300. Private owners will not be able to sustain this higher level of production. By the year 2,000, therefore, job loss as compared with the present will be about 28,000.
- o Rising prices will help offset loss in revenues to the Treasury, but by 1995, implementation of the conservation strategy will mean a decline of \$148 million and by 2000, a decline of \$229 million as compared with revenues from currently planned levels of harvest. (Table IV)

Social and Other Impacts

There are many social and other impacts associated with the reductions in Federal timber harvest analyzed in this report. Most of them are difficult to quantify. The brief discussion here mainly lays out the kinds of impacts to be expected.

The major social impacts of reducing the ASQ for Federal lands is the loss of over 25,000 direct and indirect jobs. This will directly affect the lifestyles of those with timber-dependent livelihoods and perhaps cause localized shifts in populations. The severity of impacts will vary by community, depending on the amount of reduction in timber harvesting and upon the degree to which particular communities are dependent on forest resources.

In rural areas where jobs are threatened, community cohesion will accelerate rapidly for a time as common adversity is confronted in response to the collective perception that jobs and livelihood are being sacrificed to protect old growth timber. This cohesion will likely result in further entrenchment of the belief that the forests are not being fully utilized and that environmentalists are "taking over". In these affected communities, the attitude toward the Forest Service and Bureau of Land Management will decline. They will see these agencies as giving in to the pressures of an elitist society. On the positive side, community cohesion will be useful as individuals struggle to help pull each other through the crisis. They will look to new entrepreneurs with mixed feelings--eager for job opportunities, but resistant to changing their traditional way of earning a living. In communities hit hardest, and after a period of unsuccessful job hunting, community cohesion will likely decline. The decline will stem from a rift in these communities between those who already have found work and those who have not. In severe cases of community dysfunction, increased rates of domestic disputes, divorce, acts of violence, delinquency, vandalism, suicide, alcoholism, and other social problems are to be expected.

In urban areas, a reduction in community cohesion is expected as old growth forests become preserved at the expense of timber harvest. Urban residents' perceptions that the resource use is out of balance will have been addressed. They will have been heard and their wants, needs, and desires on this issue will have been satisfied for a time. Without a common cause, cohesion will diminish, especially among the environmentally oriented

The ability of individuals and communities to adjust is therefore heavily influenced by their geographic location with respect to urban areas. In addition, adjustments are likely to be easier in communities that: (1) are not primarily dependent on a single mill for the bulk of their basic employment and income and (2) have some diversity in basic income, either through business diversification or some other source of economic growth, such as an increase of retirees.

Local effects will also be greatly influenced by the efficiency and determination of existing wood processing and production industries. Some operations may continue to operate profitably on a greater share of the reduced timber supply as less efficient operations close down.

Given considerations as described above, on the maps in Appendix I the cross-hatched areas in the three States may be most vulnerable to social and economic effects resulting from potential reductions in timber supply. The red dots on the maps are those communities where: (1) a large share of employment is in the timber industry, (2) the timber industry is dependent on National Forest and Bureau of Land Management timber for a large share of its log supplies, and (3) other sectors of the economy are not experiencing healthy economic growth. The most vulnerable areas are rural and straddle the Coast and Cascade ranges of Washington, Oregon, and California.

3. Analysis of the politics of the Spotted Owl

a. Washington State polling data

Four weeks ago, before issuance of the likely job loss totals, poll results were published showing that 52% of Washington residents supported a logging ban to save the Spotted Owl, while 38% indicated their opposition to such a logging ban. In the same poll, when asked "what is the most important environmental issue facing Washington State today?", only 13% of the respondents indicated "forest management or wildlife" issues. By comparison, 32% emphasized air pollution and 29% water quality. It can be expected that the people who will vote based on this issue are those whose lives are going to be affected. (see attachment for poll results). Polling data from Oregon indicates that when the size of the economic dislocation becomes known, the general public believes that the Thomas plan goes too far.

b. Oregon polling data

On May 6 the Portland oregonian published a poll showing that 44% of oregonians "disagreed strongly" with a plan for protection of the Spotted Owl that would "stop logging on large tracts of federal timberlands..." 16% "disagree mildly," while 34% either agree "strongly" or "mildly" with a plan to stop logging.

Most people who support a logging ban in the Northwest probably do not consider it to be the most important public policy issue today. People who oppose a logging ban, however, and are faced with job losses because of federal action, unquestionably consider this the most important political question.



EARTH DAY 1970-1990

State residents back logging ban to save old growth

Poll shows emphasis on forests, not jobs

COPYRIGHT, 1990, Seattle Times Company

by Bill Dietrich
Times staff reporter

A majority of Washington residents believe logging should be banned in millions of acres of old-growth forest in the Northwest, a Seattle Times Washington Poll shows.

Earlier this month, a U.S. Forest Service report recommended that about 2.5 million acres of forest be set aside to protect the spotted owl and the old-growth ecosystem. Timber-industry leaders say such a step will cost thousands of jobs, reduce timber-tax revenue and disrupt the log export trade.

Most Washingtonians, however, apparently believe old-growth forests are at a crisis point and need to be saved.

Asked in the poll, "Do you support a logging ban to protect spotted owl habitat?" 52 percent said yes and 38 percent were opposed.

The response was made, even though poll interviewers told those surveyed, "Opponents of the ban say it will cost thousands of jobs in the timber-dependent communities in Western Washington."

The timber industry fared even more poorly when the 403 people polled by Elway Research were asked, "When thinking about logging issues, which of the following considerations do you personally think is the most important?"

In response, 64 percent picked either wildlife habitat or the number of trees left to cut, while only 30 percent picked the state economy or jobs in the timber communities.

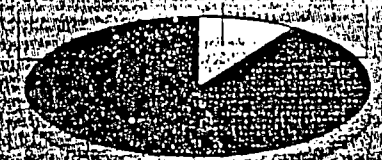
The poll was conducted April 6-11 and has a margin of error of 5 percent.



52 percent favor forest plan

Federal scientists are proposing to ban logging on about 2.5 million acres of old-growth forest in the Northwest. They say this is necessary to protect the habitat of the spotted owl. Opponents say a ban will cost thousands of jobs in timber-dependent communities in Western Washington. Do you favor or oppose such a ban?

52% Favor 38% Oppose 10% Don't know/no answer



When thinking about logging issues, which of the following considerations do you personally think is the most important?

The wildlife habitat 64%
The number of trees left to cut 33%
Jobs in the timber communities 20%
The state economy 10%

On a scale of 1 to 10, with 10 meaning a problem is critical and 1 meaning it is not a problem at all, how would you rate each of these for the state of Washington?

Forest management 6.29
Wildlife protection 6.02
Water quality 5.86
Wetlands protection 5.73

Forest management 6.29
Wildlife protection 6.02
Water quality 5.86
Wetlands protection 5.73

Forest management 6.29
Wildlife protection 6.02
Water quality 5.86
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Water quality 5.86
Wetlands protection 5.73

Forest management 6.29
Wildlife protection 6.02
Water quality 5.86
Wetlands protection 5.73

POLL

continued from Page 1

percent.

Among those polled was Scott Sonnenberg, 27, of Silverdale, who is a yard supervisor at a lumberyard but nevertheless favored a logging ban.

"You have to draw a line someplace," he said. "The most shocking thing for me was flying over the Olympics and seeing nothing left."

He said the issue is the forest and all its species, not just one bird.

"This has nothing to do with the spotted owl," he said. "They (the timber industry) are looking for an excuse." Washington state, he said, "is a nice place to live, and we're losing it really fast."

Sonnenberg also said he would support stricter environmental

lot of familiarity with the forest issue and an understanding of its intricacies. Steve Hindley, 39, a Spokane architect, suggested the fate of owls and old growth is tied to log exports.

"When they close mills, it is not because they don't have wood to cut but because they are shipping wood out of state," he said. "The forest is not a renewable entity in the way it's being managed."

Richard Becker, 49, a sawmill electrician in Sequim who has seen wood-industry friends lose their jobs because of shrinking log supplies, suggested reforming logging practices.

"I am personally glad they are controlling the cutting of old growth," said Becker. "But it has to balance out. They could go in and take out the diseased trees."

"The politicians are running around like chickens with their heads cut off," he said, "jumping on the environmental bandwagon."

While concern about old growth and spotted owls was evident, that issue did not rank high when those surveyed were asked, "What is the most important environmental problem facing Washington state today?"

In response, 11 percent emphasized forest-management issues and 2 percent, wildlife. In comparison, 32 percent emphasized air pollution and 29 percent water quality as the top two concerns.

The Times also asked respondents to rank the seriousness of problems on a 1-10 scale, with 10 meaning a problem is critical and 1 meaning it is not critical at all.

Forest management got a 6.29 ranking and wildlife management a 6.02 ranking, on average.

By comparison, toxic waste was the problem most frequently ranked as highly critical, getting a 7.64 average. Puget Sound pollution came next with 7.49 and nuclear waste rated 7.31.

About the poll

This poll was conducted for The Seattle Times by Elway Research of Seattle. Pollsters contacted 403 randomly selected adults across the state by telephone April 6-11.

The geographic distribution of the respondents was reflective of the population statewide.

The poll has a margin of error of 5 percent, meaning that, in theory, results have a 95 percent chance of coming within 5 percentage points of results that would have been obtained had all adults in the state been interviewed.

A copy of the poll results may be obtained by writing to The Seattle Times Washington Poll, P.O. Box 70, Seattle 98111.

laws, even if they threatened his own job. "People say, 'That's your job.' I say, 'I don't care, what's your job if you don't have a place to live?'"

For Catherine Wilkins, 31, of Seattle, a logging ban is inevitable. "It's a question of whether you do it now or do it later when there are no more trees left," she said.

Certainly not everyone agrees. Roberta Johnson, 25, of Sumner, is a recycler at home who is concerned about the environment, but she is also concerned that her friends will lose their jobs.

"My brother-in-law is a logger, and I have friends who are loggers, and I'd hate to have them lose their jobs over the spotted-owl issue," she said.

Those interviewed indicated a

Please see POLL on A 4

Christine E. Cox / Seattle Times

The Sunday Oregonian

PORTLAND, OREGON, MAY 6, 1990

Oregonians deeply split over owl

Most people would resist saving the northern spotted owl habitat at the expense of a great number of timber-industry jobs

By KATHIE DURBIN
Of The Oregonian staff

Most Oregon residents aren't willing to sacrifice large numbers of Northwest timber jobs to protect the northern spotted owl, a new poll by The Oregonian shows.

Judging from a telephone poll conducted for The Oregonian from April 23 through April 27, Oregonians remain sharply divided over how to balance environmental and economic values in managing the Northwest's old-growth forests.

Six out of 10 Oregon residents polled said they disagreed with the statement: "To protect the spotted owl, we would stop logging on large tracts of federal timberland as recommended by the recent federal study, even if it means a loss of jobs."

One-third of those polled said they agreed with the statement, and the rest were undecided.

When the question was worded differently, however, 46 percent of Oregonians said they agreed and 48 percent disagreed that "Forest jobs must be protected, even if it means the loss of spotted owl habitat."

That same question, put to Oregonians in a June 1989 poll, also elicited nearly a 50-50 split — indicating, said Martha DeLong of Griggs-Anderson Research, that feelings about the volatile issue of owls vs. jobs are entrenched.

"There's increased polarization, but overall there aren't any major shifts," said DeLong, a senior researcher at the Portland polling firm. "Public opinion doesn't shift very dramatically. It usually is a slow, evolutionary change. People had time a year ago to have formed some opinions, and they haven't shifted much."

Despite recent highly publicized developments surrounding the issue, many poll respondents may have the attitude that "It's just the owl again," she said.

Mention by pollsters of the federal owl-protection study also could have raised a red flag, DeLong said.

"To some extent, Oregonians do dislike being told what to do," she said. "There's a gut reaction that this is the federal government telling us what to do."

The survey of 600 Oregon residents was conducted

Poll: Results generally vary by region with city people favoring conservation

Continued from Page One

after a sweeping proposal for protecting the owl was unveiled by a federal scientific panel — but before Thursday's release of a study on the plan's economic impacts.

About 14,000 direct timber jobs and 14,000 support jobs in Oregon, Washington and California could be lost by the year 2000 if the plan is fully implemented, the federal analysts said.

As in 1989, residents of Portland and other urban areas tended to favor protecting the owl and other environmental values. Residents of Southern Oregon, Eastern Oregon and the Oregon coast were more likely to support the timber industry — although there were exceptions.

"My feeling is that old-growth timber is a non-renewable resource, because in the past 200 years we haven't allowed any trees to get old," said Joy Hansford, a 33-year-old loan officer and former teacher who lives in Kerby, near Cave Junction.

"The logging industry is going to have to stop logging old growth either now, when we choose to, or later, when the limited amount we have left will be economically unfeasible for them to reach," Hansford said. "I'd rather have them stop now when there's still some around. In 20 years, when all the old growth is gone, the jobs available will require even more retraining and education."

But Jania Puckett, a Mill City accountant whose husband drives a woodchip truck, said her North Santiam Canyon community would have nothing left if its timber industry collapsed from lack of raw material.

"I don't know what else it would be if it weren't timber," she said.

Ed Freese, superintendent of the Marle D.E. Lumber Co. sawmill in Klamath Falls, said he believed many environmentalists were misinformed about how logging is practiced today.

"Trees definitely grow back," Freese said. "We replant what we take. There isn't such a thing as raping the forest anymore."

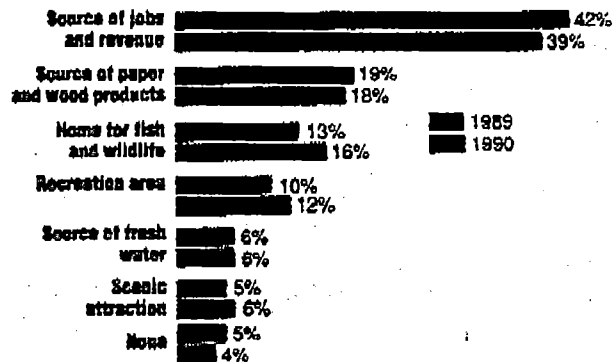
Thomas Ireland of Myrtle Creek, whose company owns 60 log trucks, employs 120 persons and hauls logs throughout Southern Oregon, said that if the owl plan is adopted, "We're just going to close our doors and quit."

"You and I both understand the poor owl is getting blamed for something it has nothing to do with," Ireland said. He said he had been in the business for 44 years and had never heard of a spotted owl until three years ago.

Some attitudes have shifted slightly in the past 10 months. In this year's poll, about 64 percent of Oregon residents opposed an immediate

A LOOK AT THE ISSUES

This is how people responded to the following questions in a poll last year and this year: Which, if any, is the most important use of the state's forest lands to the state as a whole?



Do you agree or disagree with these statements about timber harvesting:

Cutting trees...	% Agree '89 '90		% Disagree '89 '90		% Unsure '89 '90	
Causes serious damage to fish and wildlife	50	51	49	44	1	5
Is a major source of water pollution	25	26	66	66	9	8
Is necessary to keep forests healthy and productive	76	74	23	23	1	3
Should not be allowed near recreation areas	69	66	29	32	2	2
Is a major source of jobs and tax revenues	88	87	11	11	1	1

Source: Griggs-Anderson Research

Note: Percentages may not equal 100 due to rounding

The Oregonian

stop to all logging of old-growth forests, and 33 percent supported such a move.

A year ago, 70 percent of Oregon residents opposed an immediate halt to logging of old growth.

More than 60 percent agree that too much protection is being given to the spotted owl — about the same as last year.

Moreover, the owl, logging and old growth forests appear to be pivotal political issues this year. Nearly three out of four poll respondents said a candidate's position on the issue would affect their vote.

Attitudes were sharply split over whether the timber industry can survive without logging old-growth forests on public lands, but a large majority, even in Southern Oregon, agreed that cutting old growth is only a short-term solution to timber-supply problems.

One issue on which most Oregon residents, urban and rural, concurred is that logging should not be allowed near recreation areas. Sixty-six percent of urban residents and 61 percent of rural residents said they

agreed.

Maralee Buterbaugh, 22, who has lived near Eugene all her life, says some of her favorite places, places she visited as a child and where she would like to take her own children, have been ruined by logging and dam-building.

"Over the years, those places have disappeared," Buterbaugh said. "It just seems like they're cutting too many trees. To me, that's what Oregon is. Oregon means trees."

Several poll respondents said they believed both sides needed to compromise to resolve the impasse over old-growth forests.

"There's extremism on both sides of the issue," said Tom Chambers, manager of Schuck's Auto Parts in Roseburg. "A lot of people who live in this area are very adamant against the spotted owl because their jobs depend on the timber industry. People need to stand back and look at it from a neutral standpoint. Somebody needs to say, 'We need to coexist on this planet.'"

The statewide poll measured the opinions of a random sampling of Oregon residents and interviewed additional residents of Douglas, Jackson, Josephine and Klamath counties to obtain a statistically valid sample, with results weighted to reflect their proportion in the state's population.

The poll had a margin of error of 4 percentage points. That means that in 65 out of 100 cases, the true results should not vary from the poll by more than 4 percentage points, plus or minus.

Please turn to
POLL, Page A25

4-16-90 Oreg

Voters defecting over Demo call for old-growth logging ban, GOP says

By DON HAMILTON
of The Oregonian staff

The new Democratic platform on timber has prompted a few changes in party registration in logging areas this month, and Republicans hope that's a sign of big gains for them in the fall elections.

The Oregon Republican Party has released a survey showing some erosion of support for the Democratic Party in Lane County precincts heavily dependent on timber for jobs.

And in Linn County, an area dependent on timber for jobs, elections officials have noticed that 10

percent to 15 percent of changes in voter registration, which usually involved such things as address changes, have been switches from Democrat to Republican, according to County Clerk Steve Druckmiller, a Republican.

Earlier this month, Oregon Democrats at their Seaside convention approved a platform plank calling for a ban on logging in old-growth forests.

Several prominent Democratic candidates have disavowed the policy, but party Chairman Paddy McGuire said this kind of political pressure can be expected when a party shows leadership on an issue.

**"This issue may
begin to shift the
political alignment in
this state."**

— Craig Berkman,
Republican Party chairman

The party switches in Linn County are because of the Democratic position on timber, Druckmiller said. Voters have voiced their opinions on the issue when they come into the office to switch parties and

have enclosed notes on the subject in registration changes sent by mail, he said. About 70 party switches were noted, he added.

Elections officials in two other counties, Lane and Benton, however, have seen no similar switch — despite the GOP survey in Lane County suggesting erosion of Democratic support. Political discussions are forbidden in the Benton County elections office. Officials consider the office a polling place because absentee ballots are filled out there.

Republican Party Chairman Craig Berkman said these signs show that the issue could have a profound effect on the legislative

elections this fall and could signal a fundamental change in Oregon's political picture in the years ahead.

"This issue may begin to shift the political alignment in this state," he said Friday. He said the Democratic Party used to be known as the party of the working man but has forfeited that designation because of the effect the timber plank would have on jobs.

McGuire, though, chastised the Republicans for failing to draft a new platform on the issue this year. The last official GOP platform was 1988, and conditions surrounding the timber industry have changed radically since then.

"The point to be made here is that the Republicans are being so righteous when they don't have the guts to write their own platform," McGuire said. "We are responding to what's happening now in 1990, not two years ago. Leadership means being out front, taking stands and taking the heat for them."

McGuire said he expects the stance to cause some problems for legislative candidates in some areas but that voters tend to vote for the candidate, not the party platform.

"In some places it has the potential to make things more difficult for some of our candidates," he said. "In some places it will make life easier."

DeFazio says timber workers being used as pawns

Officials deny Bush administration is trying to spark revolt against environmental laws

By ROBERTA ULRICH
of The Oregonian staff

WASHINGTON — Rep. Peter DeFazio, D-Ore., accused the Bush administration Thursday of using the Northwest's timber workers as pawns to provoke a revolt against environmental laws.

At a congressional hearing on long-term solutions to the controversy over the Northwest's old-growth forests, DeFazio said the administration provoked the current timber supply crisis by concealing crucial biological information a year ago.

"I would call this an abdication of management except that it is worse," DeFazio said.

"It is a blatant political maneuver to use timber workers and communities as pawns in a calculated strategy to provoke a revolt against this nation's environmental laws. By deliberately making the timber crisis as bad as it can possibly be, the administration clearly wants to light a prairie fire of rebellion against balanced natural resource management."

DeFazio contended that the administration knew a year ago that the owl was threatened by logging of old-growth trees, but it delayed

appealing injunctions against timber sales because it didn't want to release the information.

In separate interviews during a hearing recess, Cy Jamison, director of the Bureau of Land Management, and George Leonard, associate chief of the Forest Service, denied DeFazio's accusations.

Both said their agencies, along with others, are trying to develop proposals for assuring a long-term timber supply while protecting ecological values. "It's going to take a while for the administration to get its act together," Leonard said.

During the hearing, Leonard said discussions at the White House staff level are under way. He said they began just before the Forest Service and BLM released a report outlining potential economic impacts if the agencies put into effect the recommendations from a panel of scientists for protecting the northern spotted owl.

BLM and the Forest Service are selling timber for harvest this year under a one-year provision in the Interior Department appropriations bill that was designed to untangle the sales from court suits, keep a supply of timber for mills and protect the spotted owl. That provision

expires Sept. 30, and Congress had hoped to have a longer-term program by then.

Thursday's hearing was a first step toward congressional action. The subcommittees involved — from the Agriculture, Interior and Merchant Marine committees — are those that have jurisdiction over forest issues in the House.

Most of the House members and witnesses at the daylong hearing agreed on a few things:

- There is no consensus in the Northwest or in the nation on how the public forests should be managed and which values — economic or environmental — should have the top priority.

- Any solution, even if it is the forest plans developed under current law, will have to have congressional approval in the form of legislation.

- Forest management should be based on total ecosystems, not the benefit of a single species.

"It's the only way we can make management sense," Jamison said.

"We agree the rational way to manage these forests is on an ecosystem basis," Leonard said.

- Regardless of the solution, a reduction in the region's timber harvest is likely.

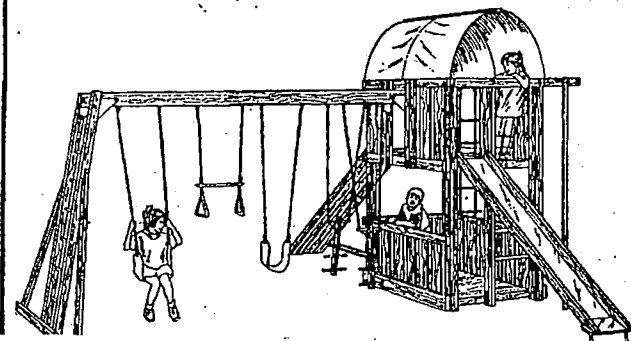
John H. Beuter, Portland, a private consulting forester and a former Oregon State University forestry professor, proposed using the

BLM and Forest Service forest plans as the basis for a long-term solution. Meanwhile, he suggested that cutting of federal forests continue at recent levels for the next five years.

He said sustaining federal forest harvests at a level about 10 percent below those levels would tide the region over until reforested private lands are ready to harvest in about 20 years.

Jerry Franklin, a forest researcher for the Forest Service at the University of Washington, outlined his so-called "new forestry," which would replace clear-cutting with a harvest that leaves 10 percent to 20 percent of the trees and some debris. That permits the forest to regenerate with "old-growth values." The long-term solution is not allocating areas to separate uses, he said.

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Two Democrats Worry Bush is Politicizing Spotted Owl<

By SCOTT SONNER=

Associated Press Writer=

WASHINGTON (AP) Important information about the effects of a plan to save the northern spotted owl from extinction may have been given to the Bush administration at the same time it was denied to Congress, Rep. Jolene Unsoeld said Thursday.

U.S. Forest Service officials scheduled meetings with Northwest congressional representatives on Wednesday to brief them on specific effects that would result from recommendations by a panel of scientists.

But Unsoeld, D-Wash., said the officials changed their minds and did not release the information. They said the information was not yet available, but Unsoeld said she was told by others that the White House wanted to review the material to see how the owl proposals meshed with Forest Service plans for timber sales.

"I was told by other sources that there was an embargo on some of the information, but that it had gone to the White House," Unsoeld told reporters after a Washington delegation breakfast at the Capitol.

"It bothers us because it delays our having the knowledge and information that tells us what we should do."

The scientific panel found that significant reductions in Northwest timber harvests are necessary to save the owl from extinction.

The Forest Service preliminarily projected the plan would result in a 25 percent reduction in harvests on national forests in the region, but Unsoeld said specifics remained undisclosed.

"On the maps you can't tell what has been harvested already. You can't tell where the timber sales are," she said.

Rep. Peter DeFazio, D-Ore., said a Forest Service official also told him he was "not being allowed to give us the numbers."

"There is something afoot here; I'm not sure what," DeFazio said.

"I was astounded when they unveiled the (scientific) report and said they couldn't tell us what the impact would be at that time. Now I'm sort of doubly astounded that two weeks later when they had scheduled a meeting to tell us the impact they still say they can't. ... My understanding is they have had the numbers since the middle of last week."

A Forest Service spokesman Thursday denied the analysis had been completed and that the information had been made available to anyone outside the agency.

"To my knowledge, that is not the case," Forest Service spokesman Jim Sanders said. "We are in the process of analyzing those effects right now. As far as I know, we have not released any

effects figures."

DeFazio said he did not know whether the figures had been given to Bush, but that he was told they had been provided to Agriculture Secretary Clayton Yeutter.

Unsoeld said that if the administration merely wanted to review the numbers she had no great complaint other than "it is an unfortunate delay." But she said Northwest lawmakers would become angry if Bush tried to politicize the issue by revising some of the numbers.

"I believe, in the interest of long-term solutions and an environmentally sustainable timber industry, that playing short-term politics right now would not lead to that sort of a solution," Unsoeld said.

Unsoeld also said Thursday she was drafting legislation that would implement "new forestry" techniques in spotted owl habitat conservation areas.

She said that contrary to current management techniques, the objectives of "new forestry" are to maintain diversity of tree age and species and multi-layered tree canopies. The practice also leaves many dead trees standing or lying on the forest floor.

"For more than a year now it has been my belief that we should practice new forestry and that if we had been doing so for the past couple of decades we would not be in the kind of crisis we are in now," she said.

4. Analysis of policy options

a. Suggested alternative - Critical Habitat. The Secretary of Interior can consider economic factors in determining critical Spotted Owl habitat. What follows is a legal analysis of the Secretary's administrative flexibility in determining critical habitat.

Legal Brief examining Secretary's authority to designate "critical habitat."

Question Presented

Whether the Secretary of Interior can reduce the Habitat Conservation Areas by considering "economic factors" under the Endangered Species Act in the designation of critical habitat for the Spotted Owl.

The Secretary Will Probably List the Spotted Owl as Threatened or Endangered in Some Parts of the Northwest

The purpose of the Endangered Species Act (ESA) is to preserve species from extinction. 16 USCA 1531(b). The ESA requires that the Secretary of Interior consider only the scientific data, 16 USCA 1533 (b)(1)(A), in determining whether the owl is endangered or threatened. Here, the Thomas committee considers that the threatened destruction of significant portions of the owl's range to mean that the owl is imperiled. (Thomas report Page 1). The ESA applies where a species is at risk due to destruction of its habitat. 16 USCA 1533(a)(1)(A). The owl will be listed as endangered if it is in danger of extinction throughout all or a significant portion of its range. 16 USCA 1532(6). A "threatened species" is one which is in danger of becoming an endangered species within the foreseeable future. 16 USCA 1532(20). There is little caselaw indicating what constitutes a "significant portion" of a range. However, in Sierra Club v. Marsh, 816 F.2d 1376 (1987) the court considered 188 acres of wetlands near San Diego to represent a significant portion of the range of the light-footed clapper rail, a bird found in southern California and Mexico.

It is not necessary to agree with the thrust of the Thomas report to recognize that the U.S. Fish and Wildlife Service will consider the report to be the most creditable scientific data on the owl. Since the report opines that the owl is imperiled over a significant portion of its range, there is every probability that the owl will be listed as endangered or threatened.

In Making a Listing Decision, the Secretary May Designate Critical Habitat for the Owl

To the maximum extent possible the Secretary shall, concurrently with listing, designate any habitat that is considered to be critical. 16 USCA 1533(3)(A).

What is Critical Habitat

The critical habitat determination begins with the identification of those areas having biological characteristics essential to conservation of the owl. The Endangered Species Act and Biological Conservation, 57 So. Calif. Law Review 361, 378 (1984). The Thomas report indicates that the owl's preferred habitat is found in old growth and mature second growth Northwest timber. The term "conservation" is vital to understanding the potential reach of critical habitat. Conservation is defined as use of all methods necessary to bring the species to point at which ESA measures are no longer necessary. "Species" includes any distinct population segment of owls. Caselaw indicates that the Secretary must do far more than merely avoid elimination of the owl, the Secretary must act so that the owl can eventually be removed from a protected class. Wildlife v. Andrus, 428 F.Supp 167 (1977).

The Secretary of Interior has administratively construed the term critical habitat to mean any air, land or water, which, if lost, would "appreciably decrease" the likelihood of the owl's survival and recovery or a "distinct element of its population." 43 Fed. Reg. 874 (1978)

The Secretary may Consider Economic Factors in the Designation of Critical Habitat

Following 1978 amendments to the ESA, the Secretary of Interior is directed to designate critical habitat based on the best scientific basis and "taking into consideration the economic impact and any other relevant impact" of specifying an area as critical habitat. The Secretary may exclude any area from critical habitat if the benefits of exclusion outweighs the benefit of inclusion...unless failure to designate will result in the owl's extinction. 16 USCA 1533(b)(2).

The Secretary can exclude from critical habitat designation areas having an overriding economic impact, assuring the maintenance of only those areas essential to avoid losing the owl completely. 57 So. Calif. Law Review at 378 (1984).

There is tension between the ESA's grant of broad discretion to the Secretary to consider economic factors in determining critical habitat and the requirement that the Secretary act to assure owl recovery in all distinct areas and significant portions of the owl's range. There is no caselaw that resolves or addresses the particular tension between economic factors and species protection.

What we know is that a court will uphold an agency decision under the ESA and the Administrative Procedure Act (APA) when it is not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. Pyramid Lake v. Webb, Lexis 3874, No. 88-1650 (9th Cir. March 1990); Friends of Endangered Species v. Jantzen, 760 F.2d 976, 981 (9th Cir. 1985). Any decision by the Secretary to reduce HCAs after consideration of economic factors will be accorded considerable weight. U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).

If a challenge is made to a decision by the Secretary to reduce the HCAs because of economic factors, a court will inquire as to whether the agency considered the relevant factors and articulated a rational connection between the facts found and the choice made. Pyramid Lake v. Webb, Lexis 3874, No. 88-1650 (9th Cir. March 1990); Friends of Endangered Species v. Jantzen, 760 F.2d 976, 981 (9th Cir. 1985).

It is reasonable to present economic data and ask the Secretary to consider all economic factors in determining critical habitat. Then, any decision by the Secretary that includes a showing of a rational relation between the economic factors considered and a reduction of HCA's, assuming that the species will be protected from extinction will be defensible.

Other Policy Options

b. Wait for Congress to pass legislation. The President can ask Congress to pass legislation to address the crisis in the absence of or in concert with any administrative action. (see addendum for Gorton proposal). Legislation providing a long term solution to this crisis will probably not pass this year. Unless Congress sets an adequate harvest level through this year's appropriations process and protects those sales from judicial challenge, the job losses will happen since no timber will be sold in the HCAs and virtually all other federal timber sales will be subject to judicial challenge.

c. Amend the Endangered Species Act. Throughout the country, the Act is destroying jobs. The President could nationalize this issue by drawing together all of the regions affected by endangered critters and attempt a frontal assault on the Act. This effort is unlikely to succeed as the press, environmental groups and Congressional Democrats would oppose this action. Alternatively, the President can solve particular regional problems one at a time with administrative action and targeted Congressional responses which leave the Endangered Species Act untouched. The Spotted Owl crisis can provide a demonstration of the feasibility and value of this approach.

d. The Endangered Species Committee. The so-called "God Committee," composed of six members of the Administration and one individual from each affected State, has authority to grant Endangered Species Act exemptions. This should be a last resort. This approach puts the administration out alone on this issue since no Congressional support is needed to reduce the job losses.

5. Potential Traps

If the President supports any effort to reduce the proposed timber set asides he will be attacked by national environmental organizations. They will respond with a laundry list of specious arguments as to why these lands should be protected from timber harvesting. The President must understand these arguments and his supporters must be prepared with answers to the environmental groups' arguments.

a. Environmentalists statements and Answers

Statement - how can we criticize Brazil for stripping the rain forests when we are cutting our Old Growth trees.

Answer - The Pacific Northwest is not Brazil. When trees are cut in the Northwest new trees are planted. There are more trees growing in Washington State today than in the 1920's. That is because today's forester is a steward of the natural resources.

Statement - "We are about to cut down the last Old Growth/Ancient Forest."

Answer - The Thomas committee says that 40% of the prime Old Growth owl habitat is already preserved forever in Northwest National Parks and Wilderness areas. It will never be cut down and we will always have millions of acres of Old Growth forests, regardless of whether we adopt the Thomas plan.

Statement - "The Thomas plan is necessary to save the owl from extinction."

Answer - The Thomas committee estimates that 1465 pairs of owls exist today on Northwest federal lands. Their proposal to set aside 56% of Washington's National Forests, above and beyond our National Parks and Wilderness, is designed to expand the number of owl pairs from 1465 to 2000. Study's show that there are about 6000 Spotted Owls, in total, in the Northwest.

Statement - "The Northwest is about to run out of harvestable timber anyway so we should just stop cutting now."

Answer - The forestry professors at the University of Washington indicate that at worst we face an 8 to 12% downturn in timber supply for the decade of the 90's and then our supply will outstrip even the levels of the 1980's. The real timber supply problem is not cause by too few trees. The problem will only be caused if the Federal government allows the Thomas plan to be adopted.

Statement - "The best answer to this crisis is retraining of timber workers and economic diversification for rural communities."

Answer - All concerned people favor economic development and diversification for timber communities. Rural communities will benefit by diversification, just as King County benefits by diversification from dependency on Boeing. But no economic diversification could compensate King County for closing

down the Boeing Company. The best answer is to fight to keep a stable supply of timber, because economic diversity and retraining does not occur overnight and people, families, and communities deserve jobs not welfare.

Statement - "If we restrict raw log exports this problem would be solved.

Answer - Federal law prohibits any export of federal timber. Not one stick of raw timber from federal lands is exported to Japan or any other country. Further, Congress is working to pass legislation that will require that all timber from Oregon state lands and at least 75% of timber from Washington State lands be prohibited from export to be domestically processed. Despite these measures the hard fact remains that we simply cannot reduce the Northwest's timber supply by over 2.4 billion board feet per year, to expand the range of the Spotted Owl, and not have major dislocation of workers and their families.

Statement - "I don't like the thought of trees as old as the Mayflower being cut down.

Answer - Elected decisionmakers must weigh that "feeling" against the real lives and futures of 35,000 families and dozens of timber communities. The fact is that this is not an all-or-nothing choice. This must not be a choice between cutting the last Old Growth forest or stopping most logging on the National Forests. Neither of those alternatives is acceptable or necessary. We can and will save the Spotted Owl from extinction but we will not sit by and let over 30,000 families in the Northwest lose their way of life.

Our goal must be to find a balance that protects important environmental values and preserves a stable timber supply from the Northwest's National Forests.

b. The Forest Service

The Forest Service and Bureau of Land Management are gun shy of any controversy. A sound policy defense for Presidential action is that the owl set asides make irrelevant the national forest plans mandated by the National Forest Management Act and finally implemented after eight years of public input.

6. **The Goals for the President**

My hope is that the President will announce his plan for resolving the Spotted Owl debate and that the next day's headline will read "Bush saves thousands of acres from logging and saves thousands of jobs."

The President can assure the continued survival of the Spotted Owl while being seen as the defender of communities, working families and a way of life that is the historic backbone of the Pacific Northwest.

CRS Report for Congress

Endangered Species Act: The Listing and Exemption Processes

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Environment and Natural Resources Policy Division

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May 8, 1990



ENDANGERED SPECIES ACT: THE LISTING AND EXEMPTION PROCESSES

SUMMARY

As passed in 1973, the Endangered Species Act (ESA) had no mechanism for weighing the conflict between the goals of protection of endangered or threatened species and of economic development. Then in the late 1970s, two cases raised this issue. One was the celebrated case of the snail darter and Tellico Dam; the other involved whooping cranes and the Grayrocks Dam and Reservoir in Wyoming. These two controversies led Congress to pass amendments to the ESA to allow for a weighing of economics in a process which could grant an exemption to the Act's requirements for the protection of a listed species.

Since that amendment creating the exemption process and the Endangered Species Committee (ESC) was passed, the ESC has considered only the two initial cases, but abortive attempts have been made in three other instances. In all three, the process was halted before the ESC ever actually met to consider the application for exemption.

This report includes:

- (1) a detailed background on the listing and exemption processes;
- (2) responses to 10 frequently asked questions on the ESA.
- (3) chronologies of the Tellico and Grayrocks cases; and
- (4) a brief narrative of the three other instances in which the exemption process has been attempted.

The exemption process is particularly important because of current controversies in the Pacific Northwest over the proposed listing of the northern spotted owl. Listing of the species as threatened, or protection of it under various other Federal laws may have a substantial impact on the timber industry of the area. Consequently, some have proposed that if the species is listed, an exemption should be sought under the ESA. This report focusses particularly on the exemption process and how it might apply in that controversy.

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ENDANGERED SPECIES ACT: THE LISTING AND EXEMPTION PROCESSES

INTRODUCTION

The Endangered Species Act (the ESA)¹ provides for the listing and protection of species that are currently endangered or threatened with extinction. The listing of a species results in limitations on activities that could affect that species and in penalties for the "taking" of individuals of a listed species. The listing process is based on scientific considerations only, but economic factors may enter into *other* decisions under the ESA. The principal vehicle by which economic factors may be considered is the exemption process whereby a specially convened committee may exempt certain actions from the prohibitions of the ESA. This report discusses the Endangered Species Act and how the listing and exemption procedures work. Figure 1 of this report depicts in graphic form how an application proceeds through the exemption process.

Because of the current controversy surrounding the proposed listing of the northern spotted owl in the Pacific Northwest and possible economic impacts to that region, the report will focus on that species.

Listing of Species

The ESA defines an "endangered species" as any species which is "in danger of extinction throughout all or a significant portion of its range". A "threatened" species is one that is likely to become endangered.

The Secretary of the Interior, and in certain instances, the Secretary of Commerce decide whether to list a species as endangered or threatened. ("The Secretary" in this report means the appropriate Secretary, which in the spotted owl context is the Secretary of the Interior.) Because the ESA defines species as meaning either a species, a subspecies, or, for vertebrates only, a population,² there is some flexibility as to how to provide different levels of protection to less than a whole species. The listing of a species triggers certain duties for Federal agencies and applicants for Federal permits, authorizations, or funding to consult with the Secretary of the Interior (in actual practice, the Fish and Wildlife Service) as to reasonable and prudent alternatives to actions that would jeopardize a species or adversely modify its habitat.³ Listing also results in prohibitions or limitations on certain actions that may be taken if doing so would adversely affect a listed species. Furthermore, the ESA contains penalties for the "taking" of a listed species.

¹Act of December 28, 1973, Pub. L. No. 93-205, 87 Stat. 884, codified at 16 U.S.C. 1531 *et seq.*

²16 U.S.C. 1532 (16).

³16 U.S.C. 1536(a) and (b).

"Taking" is defined very broadly as including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any such conduct.⁴

The determination of whether a species should be listed as endangered or threatened must be based on several scientific factors related to a species and threats to its continuance. The ESA expressly states that listing determinations are to be made "solely on the basis of the best scientific and commercial data available."⁶ The word "solely" was added in the 1982 amendments to the ESA⁶ to clarify that the determination of endangered or threatened status was intended to be made without reference to economic factors:

...The principal purpose of the amendments to Section 4 is to ensure that decisions pertaining to the listing and delisting of species are based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions. To accomplish this and other purposes, Section 4(a) is amended in several instances.

* * * *

Section 4(b) of the Act is amended in several instances by Section 1(a)(2) of H.R. 6133. First, the legislation requires that the Secretary base his determinations regarding the

⁴16 U.S.C. 1532(19).

⁵16 U.S.C. 1533(a)(1) states that the Secretary by regulation shall "determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence."

16 U.S.C. 1533(b)(1)(A) states in full: "The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas."

⁶Act of October 13, 1982, Pub. L. 97-304, 96 Stat. 1411.

listing or delisting of species "solely" on the basis of the best scientific and commercial data available to him. The addition of the word "solely" is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of species and intends that the economic analysis requirements of Executive Order 12291, and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act not apply. The Committee notes, and specifically rejects, the characterization of this language by the Department of the Interior as maintaining the status quo and continuing to allow the Secretary to apply Executive Order 12291 and other statutes in evaluating alternatives to listing. The only alternatives involved in the listing of species are whether the species should be listed as endangered or threatened or not listed at all. Applying economic criteria to the analysis of these alternatives and to any phase of the species listing process is applying economics to the determinations made under Section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in this legislation.

Section 4(b) of the Act, as amended, provides that listings shall be based solely on the basis of the best "scientific and commercial data" available. The Committee did not change this information standard because of its interpretation of the word "commercial" to allow the use of trade data. Retention of the word "commercial" is not intended, in any way, to authorize the use of economic considerations in the process of listing a species.⁷

The Conference report confirms that it was the intent of both chambers that economic factors not play a role in the designation and listing of species for protection.

Section 2 of the Conference substitute amends section 4 of the Act in several ways. The principal purpose of these amendments is to ensure that decisions in every phase of the process pertaining to the listing or delisting of species are based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions.⁸

⁷H.R. Rep. No. 567, 97th Cong., 2d Sess. 19-20 (1982).

⁸H.R. Rep. No. 835, 97th Cong., 2d Sess. 19 (1982).

The Committee of Conference (hereinafter the Committee) adopted the House language which requires the Secretary to base determinations regarding the listing or delisting of species "solely" on the basis of the best scientific and commercial data available to him. As noted in the House Report, economic considerations have no relevance to determinations regarding the status of species and the economic analysis requirements of Executive Order 12291, and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act, will not apply to any phase of the listing process. The standards in the Act relating to the designation of critical habitat remain unchanged. The requirement that the Secretary consider for listing those species that states or foreign nations have designated or identified as in need of protection also remains unchanged.

The Committee adopted, with modifications, the Senate amendments which combined and rewrote section 4(b) and (f) of the Act to streamline the listing process by reducing the time periods for rulemaking, consolidating public meeting and hearing requirements and establishing virtually identical procedures for the listing and delisting of species and for the designation of critical habitat.⁹

In summary, the ESA makes clear that whether a species is endangered or threatened is a scientific question in which economic factors do not play a part. Once this determination is made, however, economics then may be considered in analyzing some possible subsequent actions.

Designation of Critical Habitat

In contrast to the listing process in which economic factors are not to play a part, economic factors expressly may enter into the designation of critical habitat for species. Concurrently with determining a species to be endangered or threatened, the Secretary "to the maximum extent prudent and determinable"¹⁰ is to designate the critical habitat of the species. The reference to the designation of critical habitat being "prudent" reflects the need to take into account whether designating habitat would harm the species, for example by specimen collecting, etc. If the facts relevant to the designation of critical habitat are not yet "determinable", the Secretary may

⁹*Id.*, at 20.

¹⁰16 U.S.C. 1533(a)(3).

postpone habitat designation for an additional year. Eventually, habitat is to be designated to the maximum extent it is prudent to do so.¹¹

If the Secretary designates critical habitat, the Secretary must do so

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. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.¹²

Therefore, although economic factors are not to be considered in the listing of a species as endangered or threatened, economic factors are considered in the designation of critical habitat, and some habitat areas may be excluded from designation based on such concerns, unless the failure to designate habitat would result in the extinction of the subject species.

Pre-listing Activities

The question may arise as to what the responsibilities of the Federal Government are toward a species that is proposed for listing but has not yet been listed. This question could be important because there may be a significant time between the proposal for listing and the actual listing, during which time a Federal agency could be faced with decisions on contracts and management actions of various types. Under current law, an agency must confer with the Secretary of the Interior on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.¹³ The implementing regulations state that the conference is designed to assist the Federal agency and an applicant in identifying and resolving potential conflicts at an early stage in the planning process.¹⁴

¹¹16 U.S.C. 1533(b)(6)(C).

¹²16 U.S.C. 1533(b)(2).

¹³16 U.S.C. 1536(a)(4).

¹⁴50 C.F.R. 402.10.

The *conference* process that applies to species that are proposed for listing is distinct from the *consultation* process that applies to listed species. The conference is intended to be less formal, and to permit the Fish and Wildlife Service to advise an agency on ways to minimize or avoid adverse effects. A Federal agency would have to follow more formal procedures and provide more complete documentation once a species is listed. However, the agency may choose to follow the more complete and formal processes even at the proposed listing stage in order to avoid duplication of effort later.¹⁵

The ESA states that the conference stage does not require a limitation on the irreversible or irretrievable commitment of resources to an agency action which would foreclose reasonable and prudent alternative measures. However, once a species is listed an agency will have definite responsibilities, and an agency might consider it prudent at the proposed listing stage both to avoid harm to a precarious species and to avoid possible liability for compensation arising from agency actions creating private rights which later cannot be exercised. An agency might, for example, choose to avoid holding timber sales in an area containing a proposed species. Congress may wish to provide additional policy and guidelines for the proposed listing stage.¹⁶

Post-listing Activities

The listing of a species as threatened or endangered triggers certain requirements and restrictions under section 7 of the ESA (16 U.S.C. 1536). All Federal agencies are required to consult with the Secretary about proposed actions; to utilize their authorities in furtherance of the act; and to insure that any action authorized, funded, or carried out by the 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 critical habitat unless the agency has been granted an exemption under the ESA.

¹⁵*Id.*

¹⁶Section 1002 of Pub. L. No. 100-478, 102 Stat. 2306 requires the Secretary to implement a system to monitor effectively the status of "candidate" species (species with respect to which a finding has been made that a petition to list a species appears warranted, but as to which listing is precluded or no longer necessary) and to prevent a significant risk to the well being of any such species.

EXEMPTIONS

The exemption process is the principal way in which economic factors are intended to be taken into account under the ESA. There have only been a few instances to date in which the exemption process was initiated, and only one in which an exemption was granted. Figure 1 on p. 14 shows the steps of the process, and the reader may wish to refer to it while proceeding through this part. Also, see Appendices A, B, and C for chronologies and discussions of the five attempts to secure exemptions under the ESA.

As originally enacted, the ESA contained an absolute prohibition against activities detrimental to listed species. When the prospective impoundment of water behind the nearly completed Tellico dam threatened to eradicate the only known population of the snail darter (a fish related to perch), the Supreme Court concluded that the then current "plain language" of the ESA mandated that the gates of the dam not be closed.

"Concededly, this view of the Act will produce results requiring the sacrifice of the anticipated benefits of the project and of many millions of dollars in public funds. But examination of the language, history, and structure of the legislation under review here indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities."¹⁷

After this Supreme Court decision, the ESA was amended to include a process by which economic impacts could be reviewed and projects exempted from the restrictions that otherwise would apply. As originally enacted, the exemption process involved a review board, but has been amended so that it is structured as follows.

The "Endangered Species Committee" (ESC) reviews applications for exemptions. The ESC is composed of the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Council of Economic Advisors, the Administrator of the Environmental Protection Agency, the Secretary of the Interior (who chairs the ESC),¹⁸ the Administrator of the National Oceanic and Atmospheric Administration and one individual from each affected State. Committee members from the States collectively have one vote.¹⁹

¹⁷Tennessee Valley Authority v. Hill, 437 U.S. 153, 174 (1978).

¹⁸16 U.S.C. 1536(e).

¹⁹50 CFR 453.05(d)

Eligible Applicants

A Federal agency, the Governor of the State in which an agency action will occur, or a permit or license applicant may apply to the Secretary for an exemption for an agency action. How an agency action is structured -- whether, for example, it is a separate action or a forest-wide program -- could be relevant to the various findings required under the exemption procedures. The term "permit or license applicant" is defined in the ESA only as a person whose application to a Federal agency for a permit or license has been denied primarily because of the application of the taking prohibitions to the agency action.²⁰ The regulations do not elaborate on who is included within this term.²¹ Agency representatives have indicated that it includes neither a prospective timber purchaser nor a person who holds a current contract. Industry representatives disagree on both of these points.

An exemption application from a Federal agency must describe the consultation process carried out between the head of the Federal agency and the Secretary, and include a statement explaining why the action cannot be altered or modified to conform with the requirements of the statute. All applications must be submitted to the Secretary not later than 90 days after completion of the consultation process if the applicant is a Federal agency, or 90 days from final agency action if the applicant is a permit or license applicant. An application must set out the reasons the applicant considers an exemption warranted. The Secretary then publishes a notice of receipt of the application in the Federal Register and notifies the Governor of each affected State (as determined by the Secretary) so that State members can be appointed to the ESC. The Secretary may deny the application if the preliminary steps have not been completed.

To be eligible for an exemption, the Federal agency concerned and the exemption applicant must have carried out the consultation processes required under section 7 of the ESA (16 U.S.C. 1536) in good faith. They also must have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action that would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of a species. In addition, they must have conducted required biological assessments; and, to the extent determinable within the time provided, refrained from making any irreversible or irretrievable commitment of resources that would foreclose the formulation or implementation of reasonable and prudent alternatives that would avoid jeopardizing the species and habitat. These qualifying requirements were put in place to insure that the exemption process is meaningful and that consideration of the issues

²⁰16 U.S.C. 1532(12).

²¹50 C.F.R. 450.01.

would not be preempted by actions already taken.²² Additional requirements for an application are contained in the relevant regulations.²³

It is important to note that the exemption process begins only *after* a species is listed, consultation has occurred, a finding has been made that the agency action is likely to jeopardize a species, and it is determined that there are no reasonable and prudent alternatives to the agency action.

Secretarial Review

The Secretary is to determine whether an application is qualified within 20 days or a time mutually agreeable to the applicant and the Secretary. Within 140 days of the time the Secretary determines that the applicant is qualified, the Secretary, in consultation with the other members of the ESC, must hold a formal hearing on the application and prepare a report. The purpose of the formal hearing is to collect evidence both favoring and opposing the exemption.²⁴ The Secretary's report reviews whether the applicant has made any irreversible or irretrievable commitment of resources; discusses the availability of reasonable and prudent alternatives and the benefits of each; provides a summary of the evidence concerning whether the action is in the public interest and is nationally or regionally significant; and outlines appropriate and reasonable mitigation and enhancement measures which should be considered by the ESC.²⁵

Committee Determination

Within 30 days after receiving the report of the Secretary, the ESC is to grant or deny an exemption. The ESC shall grant an exemption if, based on the evidence, the ESC determines that

- (i) there are no reasonable and prudent alternatives to the agency action;
- (ii) 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;
- (iii) the action is of regional or national significance; and

²²16 U.S.C. 1536(g).

²³50 C.F.R. 450 *et seq.*

²⁴H.R. Rep. No. 835, 97th Cong., 2d Sess. 28 (1982).

²⁵16 U.S.C. 1536(g)(5).

(iv) neither the federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section [commitments as described above that jeopardize species or critical habitat].²⁶

Mitigation

If the ESC grants an exemption, it also must establish reasonable mitigation and enhancement measures that are "necessary and appropriate to minimize the adverse effects" of an approved action on the species or critical habitat.²⁷ The exemption applicant (whether Federal agency, Governor, or permit or license applicant) is responsible for carrying out and paying for mitigation.²⁸

The costs of mitigation and enhancement measures specified in an approved exemption must be included in the overall costs of continuing the proposed action and the applicant must report annually to the Council on Environmental Quality on compliance with mitigation and enhancement measures.²⁹

Review by Secretary of State

There are certain limits on the ESC's authority. For example, the ESC cannot grant an exemption for an agency action if the Secretary of State, after a hearing and a review of the proposed agency action, certifies in writing that carrying out the action would violate a treaty or other international obligation of the United States.³⁰ This provision is relevant because the spotted owl is listed³¹ as a species protected under the Migratory

²⁶16 U.S.C. 1536(h)(1)(A).

²⁷16 U.S.C. 1536(h)(1)(B).

²⁸16 U.S.C. 1536(l)(1).

²⁹16 U.S.C. 1536(l)(2).

³⁰16 U.S.C. 1536(i). Other provisions not relevant to the spotted owl context require the Committee to grant an exemption if the Secretary of Defense finds that an exemption is necessary for reasons of national security. (16 U.S.C. 1536(j)), and permit the President to make exemption determinations in certain cases involving facilities in a disaster area. (16 U.S.C. 1536(p)).

³¹50 C.F.R. 10.13.

Bird Treaty Act (MBTA),³² which in turn implements the migratory bird treaties to which the United States is a party. The convention between the United States and Mexico ultimately resulted in the addition of two scientific Families of owls to the protection of that treaty.³³ Current regulations list the spotted owl (*Strix occidentalis*) as a protected migratory bird, without any distinction as to subspecies.³⁴

As the ESA is currently written, the Secretary of State is to make this determination within 60 days "of any application made under this section", a time limit which may be unrealistic given the longer length of time the Secretary of the Interior has to prepare the report that will fully describe the agency action to be reviewed by the Secretary of State.

Duration and Effect of Exemption

An exemption is permanent unless the Secretary finds that the exemption would result in the extinction of a species that was not the subject of consultation or was not identified in a biological assessment and the ESC determines that the exemption should not be permanent.³⁵

The ESA expressly states that the penalties that normally apply to the taking of an endangered or threatened species do not apply to takings resulting from actions that are exempted.³⁶

Interaction with Other Laws

The granting of an exemption from the penalties that otherwise would apply under the Endangered Species Act does not necessarily solve all of the problems arising from the destruction of spotted owls and their habitat. For example, the National Forest Management Act³⁷ requires the Forest Service

³²Act of July 3, 1918, c. 128, 40 Stat. 755, codified at 16 U.S.C. 703 *et seq.*

³³Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, 50 Stat. 1311, T.S.No. 912.

³⁴50 C.F.R. 10.13. There are three subspecies of spotted owl, one of which inhabits areas on both sides of the border with Mexico. The northern spotted owl (*Strix occidentalis caurina*) does not migrate. The regulations do not distinguish between the subspecies.

³⁵16 U.S.C. 1536(h).

³⁶16 U.S.C. 1536(o).

³⁷Public Law No. 94-588, 90 Stat. 2949, codified at 16 U.S.C. 1601 *et seq.*

to develop forest management plans that provide for diversity of plant and animal communities",³⁸ and current regulations under that act require that fish and wildlife habitat be managed to maintain viable populations of existing native vertebrate species in a forest planning area.³⁹

Furthermore, criminal penalties apply to the taking of migratory birds under the Migratory Bird Treaty Act,⁴⁰ the act that implements the migratory bird treaties of the United States. As noted above, the spotted owl currently is listed as a protected migratory bird. The penalties of the MBTA apply to non-federal persons, and may apply to Federal personnel as well.⁴¹

The ESA does not address how the exemption process relates to these other statutes.

³⁸16 U.S.C. 1604(g)(3)(B).

³⁹36 C.F.R. 219.19. For planning purposes, a viable population is "one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area."

⁴⁰Act of July 13, 1918, c. 128, 40 Stat. 755, codified at 16 U.S.C. 703-711.

⁴¹This issue arose in connection with the killing of migratory birds as a result of contaminated water in the Kesterson Refuge in California. In a letter from F. Henry Habicht II, Assistant Attorney General to Hon. Marian Blank Horn, Principal Deputy Solicitor, dated October 7, 1985, the Department of Justice wrote that such decisions would be made on a case-by-case basis, but that

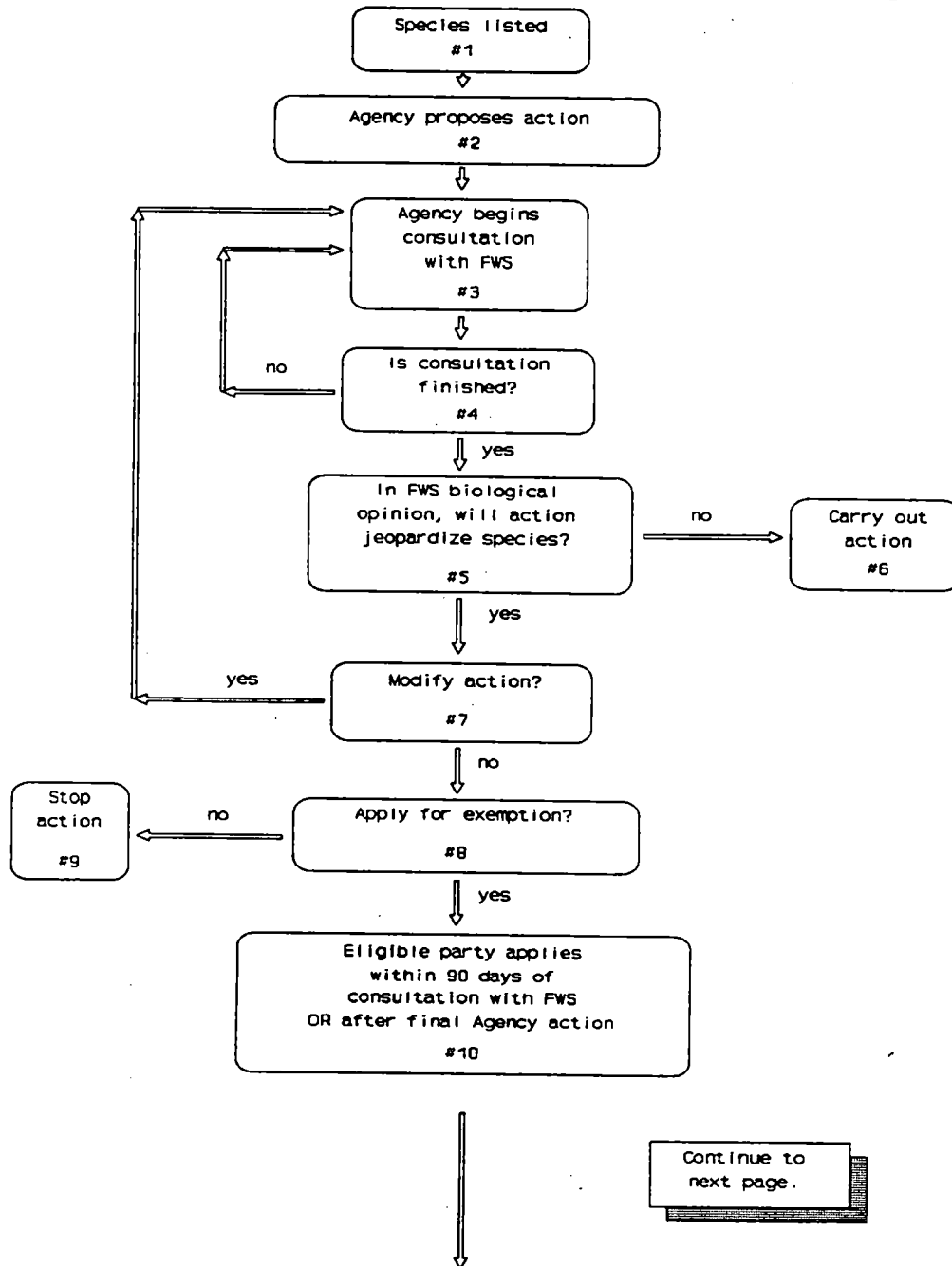
In our view, the MBTA should not be construed to authorize prosecution of federal officials and employees who are engaged in congressionally authorized projects that result in incidental bird deaths, provided that (1) the officials act within the authority granted by Congress and the employees perform their job responsibilities with due care under the circumstances; and (2) they make a good faith attempt to comply, to the extent practicable under the circumstances, with the MBTA.

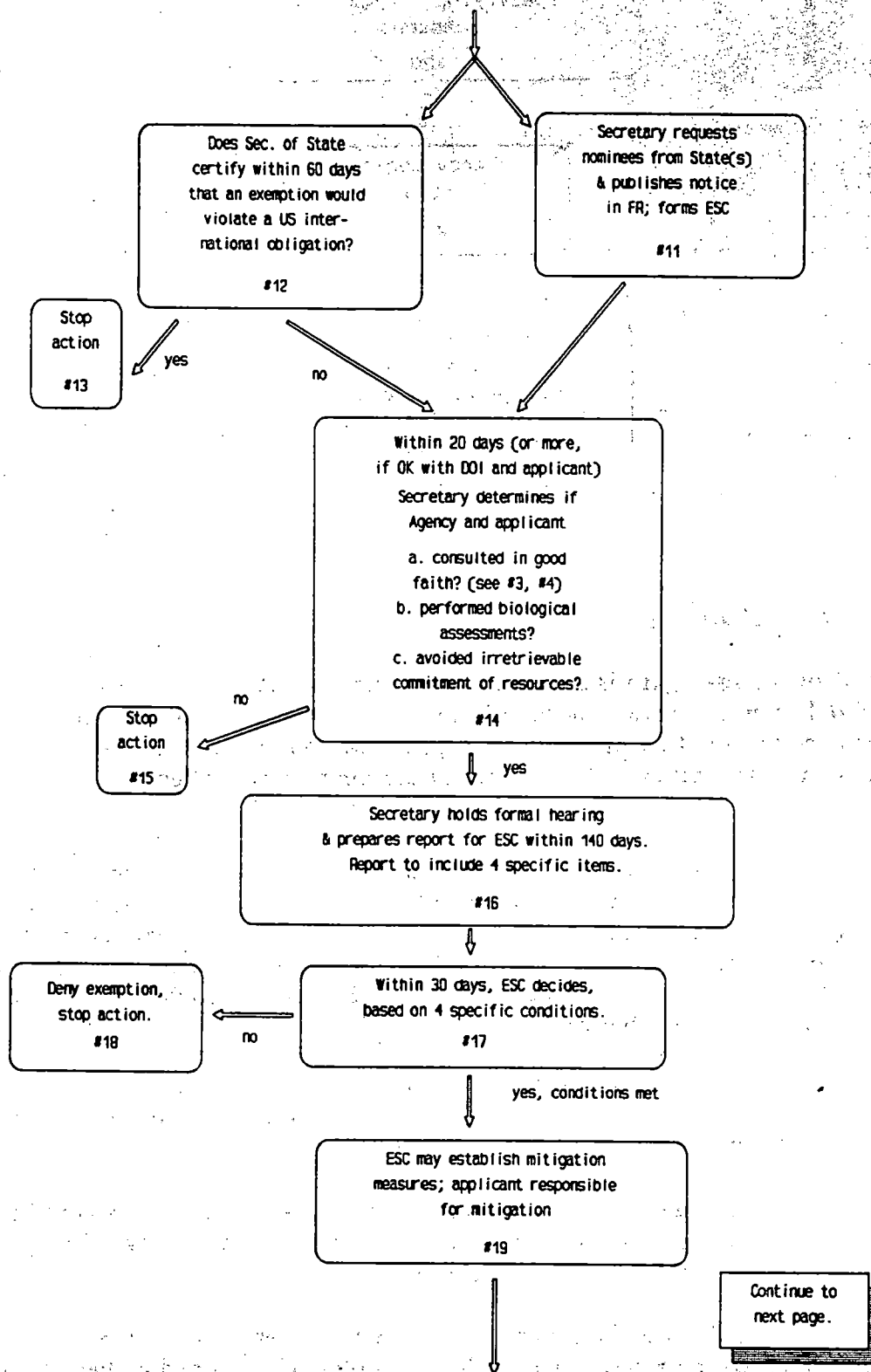
CONCLUSIONS

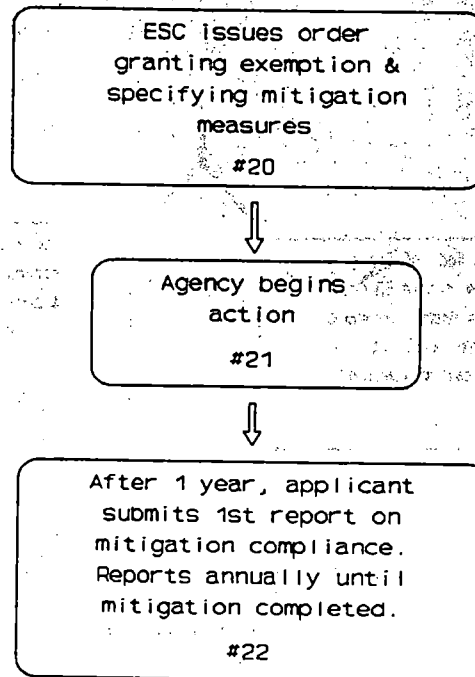
The Endangered Species Act is structured so that the basic decision to list a species as either threatened or endangered is to be based only on scientific information. Once that decision to list is made, however, economic factors are taken into account in two ways: in the designation of critical habitat of a listed species, and in the exemption procedure. However, there has been very little experience with the exemption process, perhaps because the consultation and negotiation stages, also provided for in the ESA, accomplish the purpose of modifying proposed actions early in the planning and development stages so as to avoid harm to listed species.

How the exemption process would work in the spotted owl context is problematic. Before the exemption process is reached an "agency action" must first be structured, there must be consultation and findings that the agency action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat of the species, and that there is no prudent or feasible alternative to the proposed agency action. Subsequently, the ESC would have to make all the required findings on which an exemption rests.

Furthermore, it is not clear how the granting of an exemption under the ESA relates to the duty to protect the spotted owl and its habitat under other laws. These issues await the interpretation of the agencies or further action by Congress.

Figure 1. A Flowchart of the Major Steps in Obtaining an Exemption.





Notes on Figure 1.

This three-page figure is a guide to the issues brought up in the spotted owl and old growth controversy specifically. Consequently, some steps that could be important in other applications (e.g., special requirements if the exemption might involve national security issues) are omitted or condensed.

Box 10. There are three categories of eligible applicants: a Federal agency, a Governor, or a permit or license applicant. If the applicant is attempting to obtain a permit or license, the applicant must await final agency action before applying for an exemption. The Pittston case raised the issue of whether an appeal and an exemption could be pursued simultaneously, and Congress clarified the law on this process.

Box 11. A State nominates representatives, and the President selects one from the State's list. According to regulations, if three States are involved, each representative has one-third of a vote.

Box 12. This issue could be important in the spotted owl controversy, since all North American owls are protected under the Migratory Bird Treaty Act and under a U.S.-Mexico Migratory Bird Treaty.

Box 16. Briefly, the Secretary's report must cover these issues: (a) any alternatives to the project that would still protect the owl and its habitat, and

the benefits of these alternatives and of the proposed action; (b) evidence on the significance of the project and the public interest aspects of the Agency's action; (c) any mitigation or enhancement measures for the ESC to consider; and (d) whether the Agency and the applicant have avoided irretrievable commitment of resources that would foreclose on any of the alternatives to the project.

Box 17. The ESC is to make its determination based on four factors: (a) Is there a reasonable and prudent alternative to the project that would be consistent with conserving the species? (b) Do the benefits of the Agency action clearly outweigh the benefits of the alternatives, and is the proposal in the public interest? (c) Is the agency action regionally or nationally significant? (d) Have the Agency and the applicant avoided irretrievable commitment of resources that would foreclose alternatives consistent with conserving the species?

Box 19. These mitigation measures must be necessary and appropriate. The applicant must pay for these mitigation measures, but may contract with a Federal agency to carry them out on its behalf. Since the law makes no distinction among types of applicants, this provision would apply whether the applicant was a Federal agency, a Governor, or a permit or license applicant.

10 FREQUENTLY ASKED QUESTIONS ABOUT THE ENDANGERED SPECIES ACT AND SPOTTED OWLS

1. *Can economic factors be considered under the ESA?* Under the 1982 amendments to the ESA, Congress made it very clear that "solely" scientific factors could be used in determining whether to list a species. The goal was to make the initial step purely one of determining whether a species needed the assistance of the law. Only after listing are economic factors considered. In effect, the law asks two questions, in this order: (a) Is this species in trouble? (b) If the answer is "yes" and the species is listed, are there alternatives to harming the species, and do the costs of saving it exceed the benefits?

2. *Right now, FWS is considering a proposal to list the northern spotted owl as threatened throughout its range. Is FWS restricted to accepting or rejecting that proposal, or does it have other choices beyond the proposal?* Under the ESA, populations of vertebrate species (animals with backbones) can be listed separately. Since most biologists agree that there are five populations of northern spotted owls (see CRS Issue Brief 89077) it is possible that FWS could decide to list some, all, or none, as threatened or endangered. For example, FWS might decide to list the Olympic and Oregon Coast populations as endangered, the Washington and Oregon Cascade populations as threatened, and the Klamath population as unlisted. Other options are also possible.

3. *After a species is listed, when can economic factors be considered?* Economic factors can be considered in either of two stages: in the designation of critical habitat, or in an application for an exemption. As a practical matter, FWS and the National Marine Fisheries Service have often failed to designate critical habitat for many species, since the process is very costly, subject to much dispute, and is not the section of the law that offers the greatest protection to listed species anyway.

4. *Who is eligible to apply for an exemption?* A Federal agency, the Governor(s) of an affected State(s), and a "permit or license applicant." The law and its regulations do not elaborate on who qualifies as a permit or license applicant.

5. *Is a timber company, for these purposes, considered a permit or license applicant if it wants to buy some timber in the future?* No, according to agency officials; yes, according to some industry spokespersons. *What about a company that has already purchased a timber contract, but hasn't cut it yet?* Here the situation is murky. Federal agency representatives assert that current contract holders are not eligible, either. But industry observers strongly disagree. (This question should not be confused with that of what compensation might be due to a current contract holder who is prevented from harvesting a sale because of the presence of newly listed spotted owls.)

6. *The law states that the ESC can require mitigation as a condition of granting an exemption. Who pays for that?* The applicant is responsible for carrying out and paying for any required mitigation measures. (The applicant may contract with a Federal agency to do the mitigation, but the applicant remains legally and financially responsible for it.) If the applicant promises to carry out mitigation and does not do so, the applicant is open to the civil and criminal penalties specified in the law. There has never been a case in which a Governor has applied for an exemption under ESA. Whether the Governor would pay for the exemption by raising general taxes, putting fees on beneficiaries of the exemption, or diverting current spending from other programs is unclear. The ESA is silent on *how* the Governor should pay, but only specifies that the Governor (when he/she is the applicant) must pay.

7. *How stiff can the mitigation requirements be?* The ESC may require any reasonable mitigation measures that are necessary and appropriate. In theory, these measures might include those described in agency management plans, the Report of the Interagency Scientific Committee, or any other possible options.

8. *In the spotted owl case specifically, what would the exemption application actually be for? A particular sale? An agency's entire timber sale program? Or something in between?* While there doesn't appear to be any legal barrier to using the exemption process on a sale by sale basis, as a practical matter this would probably not be attempted. The agency action could be an entire program. The need for documenting economic and biological factors may drive the type of exemption sought. It might, for example, be impossible to meet the test of a national or regional impact in a single sale. The applicant has the burden of proof in showing that other alternatives (banning log exports, alternative economic development, or whatever) have been considered, and for one reason or another aren't reasonable or prudent. The *Federal Register* of Dec. 5, 1985, contains an instructive list of 15 project-specific questions that another exemption applicant was asked to answer in applying for an exemption. These questions make clear that alternatives that would be beyond the scope of the action agency to carry out on its own must be considered.

9. *Could an exemption be at an intermediate level--say, the timber program in a National Forest, a BLM district, or even in one of the five recognized populations of northern spotted owls?* Nothing like that has ever been attempted, but it may be possible. Note that the exemption would be for the specific program or activity as described in the application. If, for example, the Forest Service applied for an exemption for its timber sales on the Siuslaw National Forest, and actually obtained it, the granting of the exemption would not mean that, say, a new low head hydroelectric project, a nearby housing development, or a new interstate highway in the same area would be exempt from the ESA's protections of the spotted owl or of any other species. In fact, such projects might be subject to even closer scrutiny as a result of the exemption.

10. *If an exemption were granted under ESA, would the applicant be insulated from all other laws which might protect the owls?* Not necessarily. For example, the Migratory Bird Treaty Act (MBTA) protects nearly all bird species in North America, including owls. Depending on the particular activity, it is conceivable that an applicant who had received an exemption could carry out the activity but then face charges of violating the MBTA. Such a violation could carry criminal penalties. The ESA contains a provision which forbids the granting of an exemption in the first place if the Secretary of State certifies that the activity as proposed would violate an international treaty. Moreover, other laws, such as the National Forest Management Act, or the National Environmental Policy Act might still apply. The interaction of the ESA exemption process with other laws is not clear.

APPENDIX A: A CHRONOLOGY OF GRAYROCKS

ISSUE: The Platte River, in its lower reaches in Nebraska, is a major stopover site in the whooping cranes' migration between southern Texas and north central Canada. FWS determined that the construction of the Grayrocks Dam and Reservoir in Wyoming, along with existing projects in the Platte River basin, would have jeopardized the downstream habitat of whooping cranes. Specifically, a reduction in instream flow as a consequence of the project as originally designed could have damaged the cranes' resting sites. (The reduction in the total flow would also have threatened Nebraska irrigation interests.)

CHRONOLOGY

DATE	EVENT
1976	Lawsuits (<i>Nebraska v. REA</i> and <i>Nebraska v. Ray</i> --later consolidated as one case) are filed by the State of Nebraska, the National Audubon Society, and the National Wildlife Federation against the Corps of Engineers and against the Rural Electrification Administration (REA). The suits allege a failure to consult with the FWS under section 7 of ESA, and a possible violation of NEPA.
12/76	The REA grants a loan guarantee to the Basin Electric Power Cooperative for construction of Grayrocks dam.
10/77	Army Corps of Engineers (COE) requests Sec. 7 consultation with FWS. FWS initially replies that a 3 year study is necessary before it can offer a biological opinion on the effects of the project.
03/78	COE issues a Section 404 dredge and fill permit under the Clean Water Act.
05/15/78	FWS designates certain parts of the Platte River as critical habitat for whooping cranes.
07/19/78	Senate passes ESA reauthorization; bill contains an exemption process, which creates an Endangered Species Committee (ESC), but no specific exemption of Tellico or Grayrocks.
09/30/78	Scheduled expiration of ESA authorization.
10/78	Federal district court finds COE and REA in violation of Sec. 7 of ESA. The case is appealed to the 8th Circuit, which stays a lower court injunction.

- 10/14/78 House passes ESA reauthorization; bill contains language with an exemption process, and specific language affecting Tellico and Grayrocks.
- 10/14/78 House and Senate pass ESA conference report for S. 2899. Provisions on Tellico and Grayrocks require that (1) the ESC meet within 30 days of enactment; (2) exemption must be granted if stated provisions are satisfied; (3) decision must be made within 90 days of enactment, or the projects will be automatically exempted. A separate provision, recognizing the possibility of a settlement in the Grayrocks case, states that if FWS renders a biological opinion that the project as then planned would jeopardize the cranes, then REA, DOI, and the Corps must require modifications to insure that the Grayrocks project does not jeopardize the continued existence of endangered species (i.e., whooping cranes).
- 11/10/78 President Carter, despite encouragement from DOI for a veto, signs ESA reauthorization (P.L. 95-632).
- 11/78 FWS concludes that Grayrocks project would jeopardize the survival of whooping cranes. (Note: the date of this opinion is uncertain, but it is *after* 11/10/78.)
- 12/04/78 Parties to *Nebraska v. REA* reach a settlement which would place constraints on operation of the Grayrocks Reservoir and establish a permanent, irrevocable trust fund of \$7.5 million for maintenance of the cranes' critical habitat. But before agreement is finalized, parties agree that 3 conditions must be met:
1. DOI must concur that the implemented agreement and completed project would satisfy the requirements of ESA.
 2. Either the project gets an exemption from ESA or the ESC determines that no exemption is needed.
 3. The Federal appeals court must dismiss the litigation with prejudice (i.e., the plaintiffs cannot file the same suit unless the agreement has been violated).
- 12/08/78 ESC meets to consider exemption.
- 12/08/78 FWS issues biological opinion on the effects of the Grayrocks project.
- 01/08/79 Simultaneous hearings in Cheyenne, WY, and Washington, DC, on exemption proposal.
- 01/10/79 Deadline for any comments for record for ESC deliberations.

- 01/19/79 Staff Report to ESC is issued for their use as background in determining whether to grant an exemption.
- 01/23/79 ESC grants exemption for Grayrocks Dam and Reservoir by unanimous vote. Decision includes specified mitigation measures, which included: (1) limiting maximum annual water use to 23,250 acre-feet/year; (2) making certain releases of water at critical times of year; (3) replacing water withdrawn in an irrigation project in the Platte River watershed; (4) creating a permanent trust fund of \$7.5 million for maintenance and enhancement of critical whooping crane habitat on the Platte River; and (5) other specified measures.
- The exemption is granted on the condition that mitigation and enhancement features are funded concurrently with the rest of the project, paid for by the project, and carried out without regard to the final settlement and compromise signed by the litigants in *Nebraska v. REA* and *Nebraska v. Ray*.
- 02/08/79 If no decision had been made by ESC before this date, the Grayrocks project would have been automatically exempted.

APPENDIX B: A CHRONOLOGY OF TELLICO

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

CHRONOLOGY

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

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

04/76 District court dismisses the cases on the merits; plaintiffs appeal, and the 6th Circuit issues an injunction preventing closure of the dam, but allowing construction to continue.

01/31/77 Appellate Court holds that ESA does apply to Tellico. It grants an injunction that stops the remaining 10% of construction except for structures that would be required even if project is never completed. TVA appeals to Supreme Court.

06/15/78 Supreme Court affirms decision of Appellate Court.

07/19/78 Senate passes ESA reauthorization; bill contains an exemption process, which creates an Endangered Species Committee (ESC), but no specific exemption for Tellico and Grayrocks.

09/30/78 Scheduled expiration of ESA authorization.

10/14/78 House passes ESA reauthorization; bill contains language with an exemption process, and specific language directing an expedited procedure for Tellico and Grayrocks.

10/14/78 House and Senate pass ESA conference report for S. 2899. Provisions on Tellico and Grayrocks require that (1) the ESC meet within 30 days of enactment; (2) exemption must be granted if stated provisions are satisfied; (3) decision must be made within 90 days of enactment, or the projects will be automatically exempted.

11/10/78 President Carter, despite encouragement from DOI for a veto, signs ESA reauthorization (P.L. 95-632).

12/08/78 ESC meets to consider exemption.

01/08/79 Hearings held in Knoxville, TN, and Washington, DC, on proposal for exemption.

01/10/79 Deadline for any comments for record for ESC deliberations.

01/19/79 Staff Report to ESC is issued for their use as background in determining whether to grant an exemption.

01/23/79 ESC rejects exemption for Tellico. The Chair of the ESC, Interior Secretary Cecil Andrus, states "Frankly, I hate to see the snail darter get the credit for stopping a project that was ill-conceived and uneconomical in the first place."

02/07/79 As ex officio Chairman of the ESC, Cecil Andrus signs the decision denying the exemption for Tellico.

- 02/08/79 If no decision had been made by ESC before this date, the Tellico project would have been automatically exempted.

- 06/18/79 Rep. John Duncan (TN) offers amendment to H.R. 4388 (Energy and Water Appropriations for FY80), exempting Tellico from ESA and other laws; the House accepts the language on voice vote, with little discussion.

- 07/17/79 Senate passes an amendment (53 yeas to 45 nays; roll call vote #180) to strike House language exempting Tellico from the requirements of ESA and from other laws. (A vote of "yea" was a vote in favor of the fish, farmers, and Indians; a vote of "nay" was a vote to finish the dam, exempt it from ESA, and proceed with development.)

- 09/10/79 The Senate recedes from its earlier amendment of 7/17, and agrees to the conference language which exempts Tellico from ESA as well as other laws. The vote is 48 "yeas" to 44 "nays"; a vote of "yea" is a vote for the dam and development; a vote of "nay" is a vote for the fish, farmers, and Indians (roll call vote #269).

- 09/25/79 President Carter signs the Energy and Water Development Appropriations (H.R. 4388, P.L. 96-69), expressing regret at doing so.

- 11/29/79 Workers at Tellico close the gates on the dam, allowing filling of the reservoir to begin.

- 07/05/84 FWS reclassifies snail darter as threatened, rather than endangered, based largely on new data on the distribution of the species. The notice also rescinds the designation of the Tellico Dam area as critical habitat, since the species no longer exists in that area. At the time of the notice, the fish was known from small populations at 9 locations in the Tennessee River watershed.

APPENDIX C: THREE ATTEMPTS AT AN EXEMPTION**Pittston Refinery, Eastport, Maine**

The Pittston Company wished to build an oil refinery at Eastport, Maine, in the mouth of the Bay of Fundy, an area with one of the world's greatest tidal fluctuations (over 20 feet). In their biological opinions, FWS held that the refinery would jeopardize bald eagles, and the National Marine Fisheries Service (NMFS, which has jurisdiction over most marine species) held that the project would endanger whales. Initially, EPA denied Pittston's application for a permit to discharge effluent. The company responded with two actions in 1979. First, it administratively appealed the denial. Second, it applied for an exemption under ESA. The company felt it was forced to take the two actions simultaneously because the ESA required an application for exemption to be filed within 90 days of the denial of a permit. In January, 1979, the various parties agreed to suspend the exemption process while a compromise was sought. The effort at compromise was unsuccessful.

Environmental groups sued, asking an injunction to stop the application for the exemption.⁴³ They argued that the case was brought prematurely, before the issue had finished with the administrative appeals process. In effect, they argued that the ESA itself was poorly written, in that it forced the applicant to carry out two procedures (appeal and exemption) simultaneously. The U.S. Justice Department agreed that the law was poorly written, and that the exemption process should not run concurrently with an appeal.

This confusion, and apparent conflict, was addressed by Congress in the 1982 amendments to ESA. These amendments clarified that the exemption process was to be invoked only after the issuance of a final biological opinion, and after other means of compliance had failed. In the case of a permit or license, the exemption process must also wait until after an agency formally denies the permit or license. (16 U.S.C. 1536(g)(2)). The applicant may not simultaneously seek an administrative appeal and an exemption. The court

⁴³See, *Pittston Company v. Endangered Species Committee*, 14 ERC 1257, 10 ELR 20248 (D.D.C., 1980). The court commented that:

The exemption process was designed to resolve endangered species conflicts after other administrative remedies, including consultation have been exhausted. It makes no sense to initiate an exemption process before it has been determined that there is a need for an exemption in the first place. This provision insures exemption applications will be filed, in cases involving permit or license applicants, when the application is ripe for review.

eventually agreed that the exemption process could not begin until the appeals process was finished.⁴⁴

Consolidated Grain and Barge Company, Illinois

This company (CGBC) sought to build a docking area for barges at Mound City, IL, on the Ohio River. The area was habitat for the endangered *Plethobasus cooperianus* (orange-footed pearly mussel). FWS issued a negative biological opinion to the Army Corps of Engineers (COE), which on that basis denied the permit. Initially, the owner of the property agreed to provide funds for the exemption application, although CGBC was not willing to commit similar funds. On Nov. 6, 1985, FWS published a notice of the application in the *Federal Register*.

On Dec. 6, 1985, the FWS published a *Federal Register* notice⁴⁵ of a hearing on Jan. 28, 1986, to be held in St. Louis. The notice indicated that the DOI Secretary agreed that the threshold criteria for calling for the exemption had been met, and set the details for the next stage of the process, i.e., the hearing. The FR notice also reminded interested parties that the applicant had the burden of proof in the proceedings.

At a pre-hearing conference with an Administrative Law Judge on Jan. 8, 1986, CGBC sent no one to represent its interest. A partner in a law firm of the lawyer who was hired by the landowner was present, but said he had limited information concerning the issue, and had no list of witness which CGBC would call. The lawyer asked for a one week extension of the hearing, but before it was held, the application was withdrawn.

Suwanee River Authority, Florida

On July 30, 1986, the consulting engineer of the Suwanee River Authority (SRA) applied for an exemption from the Endangered Species Act regarding a project to dredge Alligator Pass in Suwanee Sound, Florida. It appears that the consulting engineer lacked authority from the SRA to apply on its behalf. The area provided habitat for the endangered manatee. The project needed a permit from COE, which denied it, primarily on the grounds of the presence of manatees.

⁴⁴Since that time, "the issue just disappeared, because Pittston gave up", in the words of one DOI observer.

⁴⁵The notice included a list of 15 specific questions addressed to CGBC that illustrated the types of specific information that would be sought for the record at the hearing. These questions could be very helpful for those seeking a guide to the details of an exemption application.

On August 12, 1986, the board of the SRA refused to ratify the actions of its engineer, and asked that the application be withdrawn. In a letter on his own stationery, the engineer asked that the application be continued. After a further exchange of contradictory letters, the withdrawal still stood.