Committee on Resources

Witness Testimony

STATEMENT OF

DONALD G. WALDON

BEFORE

THE U.S. HOUSE RESOURCES COMMITTEE

FEBRUARY 2, 2000

ON

H.R. 3160 and H.R. 1142

Mr. Chairman, I am Don Waldon, Administrator of the Tennessee-Tombigbee Waterway Development Authority. The Authority is a four-state interstate compact ratified by the U.S. Congress in 1958. Chairmanship of the compact rotates annually among the Governors of the States of Alabama, Kentucky, Mississippi, and Tennessee.

We appreciate the opportunity to appear before you and your committee this morning on a matter of great importance, the Endangered Species Act.

As you know, the endangered species program has greatly impacted the Southern states. Over one-third of the nearly 1200 plants and animals protected by this federal program reside in the South.

We, therefore, have had a lot of experience with the endangered species program, and most of it has been bad. Like your constituents, we have waited patiently since this law expired in 1992 for the Congress to reform the Act and stop the many abuses this program has inflicted on property owners and economic growth.

As an example of this abuse, the Authority, the affected states, and other public and private interests have fought to keep the so-called Alabama sturgeon off the endangered species list for nearly a decade. We have repeatedly demonstrated, along with your colleagues in the Congress, that the proposed listing does not meet the requirements of the endangered species law and federal protection of the fish could

adversely affect nearly 10,000 jobs in our region.

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If this committee is looking for a case study to examine why the endangered species program needs reform, the Alabama sturgeon proposal is an excellent case.

Time does not permit me to describe all the unethical and illegal steps the U.S. Fish and Wildlife Service has taken in its attempt to list the sturgeon. But let me cite just a few:

1. Contrary to the law, Fish and Wildlife refuses to acknowledge the proposal's questionable scientific justification. It has not addressed numerous serious questions raised by at least 10 noted biologists concerning the fish's taxonomy. Fish and Wildlife will also not recognize the results of genetic tests conducted by the agency's own publicly recognized sturgeon expert. These DNA tests which we and the State of Alabama requested, not Fish and Wildlife, found that the so-called Alabama sturgeon is not a distinct species.

2. Fish and Wildlife also refuses to designate proposed critical habitat for the fish although the Endangered Species Act specifically states this must be done at the time of the proposed listing. By ignoring this key provision of the Act, which has been repeatedly upheld by the courts, the agency avoids having to determine the adverse economic impacts of the listing. Fish and Wildlife had hoped to avoid disclosing the potential loss of jobs and other social and economic disruptions to help lessen public alarm and political opposition to the proposed listing. However, the Alabama-Tombigbee Rivers Coalition, an organization that represents business and state agencies, commissioned an economic analysis of the potential impacts. This impact study determined that over 9,000 jobs in the region could be affected and estimated that listing of the fish could result in an economic loss of $15 billion over seven years.

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The Congress has appropriated a total of $1.5 million during the past four years for a voluntary conservation recovery program for the sturgeon. Ironically, the business

coalition and the State of Alabama initiated this program, not the Fish and Wildlife Service. The program is addressing the sturgeon's only current threat, its low population numbers and its inability to reproduce. Fish and Wildlife should have never proposed the listing of the sturgeon until the five year voluntary conservation recovery program is completed. Moreover, the fish will suffer a major setback if it is listed, because the recovery program will lose its present line item funding source and likely be terminated. This would be a travesty and would likely doom the sturgeon to extinction.

4. At the insistence of our Congressional delegation, Interior Secretary Babbitt has recently directed Fish and Wildlife to negotiate with the State of Alabama to develop a formal " Candidate Conservation Agreement with Assurances " for the protection of the fish. As you know, CCAA's is a new program initiative to help preclude what Mr. Babbitt has described as "train wrecks" between conflicting interests by eliminating those threats to a species that would cause it to be listed. We are hopeful these negotiations which began last week and are continuing as I speak will result in a formal agreement before March 26 which is the deadline for a decision on the proposed listing. I must say, however, that I have been disappointed that thus far those representing Fish and Wildlife in these negotiations have not shown the same commitment that we and the State have that a CCAA is a much-preferred alternative to listing because the CCAA will be more beneficial to the sturgeon. The on-going voluntary conservation recovery program will be an integral part of any approved CCAA.

Like so many other similar cases, the long, drawn out battle on the Alabama sturgeon proposal which began in 1991 has regrettably deteriorated into a personal grudge match for Fish and Wildlife. I

believe the agency has lost its objectivity and is blindly determined to list the fish although that decision will be more detrimental to the fish, itself, and will undoubtedly lead to protracted litigation.

Fish and Wildlife does not like to be challenged in its administration of the endangered species program. Most proposed listings are approved with little if any notice by the affected states, property owners and other non-federal interests. Only after the species is listed and years later when the critical habitat is designated and the recovery plan is

developed does the public realize the extent of the adverse impacts of the listing. By then it is too late. This is one reason we have aggressively pressed for designation of critical habitat and a full investigation of the sturgeon proposal's scientific justification at the beginning of the listing process, as the Act presently requires. Congress was wise in making these provisions as requirements of the law, because they clearly result in a much more informed decision.

To challenge a proposed listing can be expensive, and in many cases it is simply beyond the capabilities of those impacted by the decision. Those opposing the sturgeon listing will have spent over $1 million dollars for scientific research, economic studies, legal fees, etc. by the time the final decision is made. This is one of the problems with this heavy-handed federal program. It puts the onus on the general public to disprove the merits of a proposed listing and not on Fish and Wildlife to justify the listing.

Let me close by making some specific recommendations concerning H.R. 3160, which we generally support. We believe the following provisions should be included in the bill to further improve the endangered species program.

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1. Genetics. In light of recent advances in genetic research, Fish and Wildlife should be required to conduct DNA tests on all species proposed for listing to determine if it is a distinct species. Presently, the agency uses DNA tests only when the results support its decision to list, and ignore them when it doesn't prove their points.

2. Critical Habitat. It is vital that the Congress continue to require designation of critical habitat concurrently with the listing decision. This committee should also conduct more oversight hearings to ensure the Interior Department is complying with the law as it now exists. For years, the Fish and Wildlife has flagrantly violated the law, and no one has called their hand except the courts. Out of nearly 1200 species now listed only 113 have critical habitat designations. Only 2 of the 255 species listed since 1996 have met this existing Congressional requirement. Both business interests and environmentalists have been forced to resort to the Federal courts to require Fish and Wildlife to comply with the law. In the past three years, 6 cases have been tried and the courts ruled against the agency in every single case. Secretary Babbitt has publicly acknowledged in testimony before the Congress that the Interior Department has consciously violated this important provision of ESA because it is " not productive

….and it is incendiary". We respectfully urge you not to let the agency continue to ignore this lynch pin of the Act.

3. Candidate Conservation Agreements. The proposed bill should direct Fish and Wildlife to seek to develop CCAA's and other alternatives, such as safe harbor agreements and habitat conservations plans, that will avoid those conflicts caused by a listing. These kinds of agreements with non-federal interests should not only result in the withdrawal of a proposed listing but will provide much greater benefits to the threatened species.

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We also strongly support H.R. 1142, "The Landowners Equal Treatment Act". However, we note the proposed legislation would apply only to those economic losses incurred by landowners affected by the Endangered Species Act. We strongly recommend these provisions also include those private property owners who are impacted by the national policies to protect wetlands embodied in Section 404 of the Clean Water Act. Endangered species and wetland regulations cause more conflicts with private property rights in the South than other federal regulatory programs. Unlike the Western states, most of the impacts of the endangered species program and wetlands protection in the South are on private property, not on public lands. Therefore, the Clean Water Act' s impacts should also be part of H.R. 1142. If not, we recommend that the provisions of H.R. 1142 be incorporated into H.R. 3160 and not left as a freestanding bill.

Mr. Chairman, I had very short notice to prepare for this hearing and I request that I be given the opportunity to furnish more detailed comments and recommendations on these two bills after today's hearings. Thank you again for providing me with the opportunity to share our views on these two important bills. I will be pleased to try to address any questions you may have.

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