

# Committee on Resources

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## Witness Statement

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**TESTIMONY OF**  
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**NATIONAL MARINE FISHERIES SERVICE**  
**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**  
**U.S. DEPARTMENT OF COMMERCE**  
**ON REAUTHORIZATION OF THE ENDANGERED SPECIES ACT**  
**BEFORE THE**  
**COMMITTEE ON RESOURCES**  
**U.S. HOUSE OF REPRESENTATIVES**  
**MARCH 1, 2000**

Mr. Chairman and members of the Committee, I am pleased to be here today to discuss with you the views of the Administration regarding H.R. 3160, a bill to reauthorize and amend the Endangered Species Act of 1973. H.R. 3160 significantly reduces our ability to protect and ultimately recover species. The Administration strongly opposes H.R. 3160, and the Secretary of Commerce would recommend that the President veto the legislation if it were presented to him.

The National Marine Fisheries Service (NMFS) is a partner with the U.S. Fish and Wildlife Service in implementing the Endangered Species Act (ESA). Together, we have made a concerted effort to administer the ESA efficiently and consistently. NMFS is responsible for over 50 listed species that are, for the most part, wide-ranging, highly migratory and cover millions of square miles in the oceans and thousands of miles of U.S. rivers, streams and coastline. The breadth of our challenge in recovering salmon, sea turtles, whales, seals, sea lions and other marine and anadromous species is so great that we cannot do this important job without cooperating with non-Federal landowners such as states, Tribes, counties, and private entities. At the same time, we could not recover species without the cooperation of the Federal agencies which under the Act have a duty to use their authorities to conserve species and to ensure that their actions are not likely to jeopardize the continued existence of listed species or result in the adverse modification of designated critical habitat.

Our responsibilities under the ESA have grown substantially since the listings of salmonids in California and the Pacific Northwest in the early and mid-1990's. We are challenged to ensure the survival and recovery of

salmon across a geography that spans the Pacific coastline from the Canadian border to Los Angeles. In addition, the highly migratory nature of Pacific salmon places them in many areas in numerous states, impacting large numbers of stakeholders, many of whom are Federal agencies, but also States, Tribes and private citizens who hold large tracts of land valued as both commercial property and salmon habitat.

We have been successful in providing both flexibility and certainty for private landowners under the current Act, and any bill to reauthorize the ESA should build on the Administration's constructive efforts over the past seven years. The Administration's improvements have allowed us to work with our partners without compromising the needs of listed species. It is unlikely that we would have Habitat Conservation Plans that cover close to 2 million acres of salmon habitat in California and the Pacific Northwest without the current Administration reforms.

NMFS supports reauthorization of the Endangered Species Act, but we agree with the U.S. Fish and Wildlife Service that there are basic principles that any reauthorization must include to gain our support. They include a scientific-based listing process and acceptance of responsibility by both Federal and non-Federal entities for activities that adversely affect listed species. Any significant amendments to the law must preserve the full force and effect of the restrictions set out in Sections 7 and 9, and include the Administration's reforms that provide certainty and flexibility to private landowners.

H.R. 3160 does not maintain the essential conservation thrust of the existing Act, nor does it include many of the Administration's reforms or accurately represent the Administration's policies.

Parts of H.R. 3160 are contrary to the fundamental goals of the existing law and program and would undermine the protection and recovery of endangered and threatened species. Federal agencies' direct responsibility for the conservation of listed species has been an underlying principle of the Endangered Species Act since 1973. H.R. 3160 amends Section 7 to shift the burden to the Services to demonstrate the impact of other Federal agencies' actions on listed species and allow a project to proceed if the Secretaries have not completed consultation within a given time, thereby undermining this fundamental principle. Both the current law and S. 1180, a bill drafted by Senators Chafee and Kempthorne in the 105<sup>th</sup> Congress and supported by the Administration, retain the responsibility of a Federal action agency to ensure that a project it authorizes, funds, or carries out will not jeopardize listed species. Both also affirm the responsibility of Federal agencies to develop programs for the conservation of listed species. H.R. 3160 deletes the responsibility of Federal agencies to ensure that any activity they authorize, fund, or carry out will not jeopardize listed species.

H.R. 3160 adds layers of unnecessary non-scientific requirements to the listing process beginning with the initial petition. In some cases, this bill completely denies the protection of the ESA to certain species. For example, some species will no longer qualify for listing because the bill narrows the current definition of "subspecies."

H.R. 3160 requires a social and economic analysis at the time of listing a species. This kind of analysis introduces a time-consuming, costly process without any apparent purpose, except to slow down the listing process. It would impede our ability to identify species in need of the Act's protection.

H.R. 3160 would allow for exceptions from implementation of the Endangered Species Act for a long list of activities that might pose serious harm to listed species. These exceptions would undermine the responsibility that each Federal agency currently has to protect and recover endangered and threatened species. The exceptions are broad enough that they could seriously undermine our ability to recover listed

species and pose significant obstacles to our administration of the Act.

The exception for Federal agencies includes routine operation, maintenance, repair, and replacement of a Federal or non-Federal facility. Also, Federal agencies would be required to use their authorities to further conservation of species only to the extent consistent with their primary mission, a loophole that would allow many projects to proceed without any consideration for listed species. Without Section 7 as written in the existing law, we would not be able to protect thousands of sea turtles along the eastern and Gulf coast from dredging operations conducted by the Army Corps of Engineers. Combined with conservation measures promulgated by NMFS to protect sea turtles in fisheries, we are seeing an increase in nesting sites, especially for the endangered Kemp's Ridley.

The exemptions for "taking" listed species under Section 9 of the Act further erode our ability to recover species. The exemptions are so numerous that in many situations non-Federal activities that might injure species could proceed without an incidental take permit. According to a report of the Nature Conservancy, over half of the currently listed species have 80 percent of their habitat on private lands. Recovering species has to be shared by both Federal and non-Federal entities. Neither can do it alone.

Mr. Chairman, thank you for the opportunity to appear before the Committee today. I will be happy to respond to any questions.

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