

# Committee on Resources

## Witness Testimony

Testimony of  
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before the Committee on Resources  
March 20, 1996

It is a privilege to appear before this Committee on behalf of the MO-ARK Association. MO-ARK is comprised of over 400 member associations, companies, and individuals primarily in Illinois, Iowa, Kansas and Missouri. MO-ARK's purposes are to promote flood control, navigation, irrigation, recreation, fish and wildlife, the environment, conservation and beneficial uses of land and water resources within the Missouri River Basin and the portion of the Arkansas River Basin that runs through Kansas and Missouri.

I am here to promote responsible reform of the Endangered Species Act (ESA). I trust that Congress will not allow debate on the ESA to be limited by the notion that anyone in favor of reforming it is opposed to the environment. Of course, this notion is not true. MO-ARK is interested in improving the ESA, not in scuttling it.

The Midwest has been dealing with a number of issues relating to the ESA. Many of these issues relate to the Kansas, Missouri and Mississippi Rivers and bottom land farms.

With respect to the rivers, the United States Army Corps of Engineers (Corps) is presently preparing a revised draft environmental impact statement (DEIS) for proposed revisions to the Master Manual for the operation of the Missouri River Main Stem System. As you know, the Missouri River rises in Montana and courses through North and South Dakota, forms much of the border between Nebraska and Iowa, and then runs along a portion of Kansas and through the heart of Missouri before it empties into the Mississippi River. The Kansas River flows into the Missouri River at Kansas City, Kansas. The DEIS, called for under the National Environmental Policy Act, is being driven by the endangered interior least tern, the threatened piping plover (birds), the endangered pallid sturgeon and other species that are candidates for listing. The operation of the Main Stem System and its authorized purposes hang in the balance including flood control, irrigation, water supply, navigation, power and recreation.

To understand how endangered species affect the rivers and bottom lands, it is helpful to review the potential impact of the "preferred alternative" that the Corps withdrew under the DEIS. Among other things, it called for a spring rise that would potentially lower the reservoirs in the upstream states, cause interior drainage problems for bottom land farmers and disrupt navigation on the Missouri and Mississippi Rivers. Of course, farmers plant crops in the spring. If their fields are too wet at this time, the growing season is shortened or lost. If the Missouri River is too high, navigators cannot bring the necessary fertilizer upstream in the spring. Such a plan also would have exacerbated spring flooding. The Great Flood of 1993 and flooding in 1995 are recent reminders of the importance of flood control. The Corps intended the spring rise to emulate the natural hydrograph of the Missouri River to benefit native fish species. Much evidence on the administrative record for this plan shows otherwise. The "preferred alternative" also called for reduced fall flows that would have adversely affected navigation on both the Missouri and Mississippi Rivers during the fall harvest when we need it most to ship our nation's grain. As a result, shippers (farmers) would pay more for transportation, if available, and we would be at a competitive disadvantage in the global grain market. Managed wetlands in Missouri also would suffer degradation. As stated, the Corps is currently in the process of revising the DEIS.

A look at the species driving the DEIS will show that the Endangered Species Act is in need of improvement. First, the United States Fish & Wildlife Service (USFWS) has conducted genetic studies of the so-called pallid sturgeon. These studies fail to differentiate it from the more plentiful shovelnose sturgeon. Limitations on the definition of "species" under the ESA would help ensure that we do not misdirect our resources.

Second, the endangered "interior least tern" is the same bird as the "least tern" that is more plentiful at coastal areas. Are we managing a fringe population that would naturally wax and wane with changing conditions? Defining a species "range" in the ESA also would help ensure that our resources are not misdirected.

Third, in 1995 several groups submitted a joint petition to list the sturgeon chub and sicklefin chub (fish) as endangered under the ESA. The petition did not include data on over 105 locations where such species were known to have existed. In addition, the petition ignored an ongoing (now complete) study by the Missouri Department of Conservation on the chubs. The petition caused private groups, including MO-ARK, as well as the State of Missouri to spend money collecting data that was otherwise available to rebut the petition. The process cries out for adding a qualitative component to what constitutes the "best scientific and commercial data available" in the listing process under the ESA. The flow of the Missouri River should not be altered to support specious listings of fish that are not truly endangered.

What is more, we are glad we caught the petition on the chubs. Generally, the public is ill-informed about petitions to list species. The ESA should be amended to increase public awareness of the listing process and of the designation of critical habitat.

With respect to farmland, there is an inherent conflict between bottom land farms and wetlands regulations. The ESA should be amended to ensure that it is not unlawful for a farmer to continue to farm his fields. MO-ARK respectfully requests that this Committee take a hard look at regulatory takings in the context of the ESA. Voluntary buy-back programs including the Big Muddy National Wildlife Refuge (USFWS), the Wetlands Reserve Program (Missouri Department of Conservation), and the Missouri River Mitigation Program (Corps) offer an alternative to regulatory takings of private property. We must remember, however, that farmland is a precious resource as recognized by Congress in the Farmland Policy Protection Act. It is in our national interest to protect productive farmland. Lastly, present regulations under the ESA pose serious consequences for bottom land farmers and their communities in times of flooding. During the Great Flood of 1993, levee districts were delayed in making repairs to breached levees because the areas they had previously designated as a source of dirt (borrow) to repair their levees had become overgrown. While their homes, fields and communities flooded, placing human life in jeopardy, agencies were making determinations about the environmental impact of cutting down trees in such previously designated areas. Wetlands mitigation banking needs to accommodate emergency levee repair. In addition, the definition of what constitutes a "take" of an endangered species should exclude the destruction of habitat on such designated land. Surely, it should be lawful to destroy habitat to protect human life. The members of the MO-ARK Association thank you for this opportunity to convey their concerns to the Committee on Resources. I have submitted supporting documentation to your staff.

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