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STATEMENTS OF MR. CULVER, MR. BAKER, MR. RANDOLPH, AND MR. WALLOR ON INTRODUCTION OF S. 2899

By Mr. Culver (for himself, Mr. Baker, Mr. Randolph, Mr. Wallor, Mr. Gravel, and Mr. Hodges):

S. 2899. A bill to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that act should be granted for such actions; to the Committee on Environment and Public Works.

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. Culver. Mr. President, the authorization for the Endangered Species Act of 1973 expires at the end of fiscal year 1978 and reauthorization legislation must be reported by the Committee on Environment and Public Works by May 15. Accordingly the Subcommittee on Resource Protection has scheduled hearings for this Thursday and Friday to consider the need for extending this program.

There is another matter which the subcommittee should address during these hearings—whether flexibility should be added to section 7 of the act. Section 7 requires each Federal agency to assure that it neither conducts nor assists any action which adversely affects an endangered or threatened species or habitat that is critical to the existence of such species. Over the last year this provision has come under considerable public discussion as construction of at least one major project—the Tellico Dam in Tennessee—has been stopped because of a conflict with the act.

In order to provide a vehicle for these discussions, I am cosponsoring today with Senator Randolph, Senator Baker, and other colleagues from the Committee on Environment and Public Works an amendment to the 1973 act which would designate a mechanism whereby such conflicts could be resolved. Our amendment would set up a seven-member Endangered Species Interagency Board composed of the Secretaries of the Interior, Agriculture, the Army, Transportation, the Administrator of the Environmental Protection Agency, and the Chairman of the Council on Environmental Quality, and the Secretary of the Smithsonian. When a Federal agency believes it has a conflict with the act which cannot be resolved through consultation with the Fish and Wildlife Service (FWS) under provisions of section 7, it would petition the Board for relief. The FWS would have 30 days to respond to this petition. After reviewing the petition and providing an opportunity for a formal public hearing, the Board would decide whether the project should be permitted to proceed as planned with modifications or terminated.

In order to exempt an activity from the requirements of the Endangered Species Act, five of the seven agency heads under this provision would have to determine: first, that the project is of regional or national significance; second, that there is no reasonable or prudent alternative; and third, that the benefit of completing the project clearly outweighs the benefits of conserving the species. In addition,

the Board must have the assurance that the project agency has taken all reasonable steps to mitigate damage to the species and its habitat.

Mr. President, the assumption behind this proposal is that the interagency consultation process developed by the Fish and Wildlife Service and the National Marine Fisheries Service should remain strong and that it will, in the vast majority of cases, be successful in resolving these conflicts. In those few instances where consultation cannot resolve the problems, however, I believe that this proposal provides a reasonable mechanism of balance.

The amendment would also extend the authorization for appropriations for the Endangered Species Act for fiscal years 1979, 1980, and 1981 at a level of \$23 million, \$25 million, and \$27 million for the Secretary of Interior and \$2.5 million, \$3 million, and \$3.5 million for the Secretary of Commerce, respectively.

Mr. President, let me emphasize that this proposal is by no means out in stone, but is merely meant to serve as a focus of discussion during this week's hearings.

Mr. Baker. Mr. President, I am today cosponsoring along with a number of my colleagues a bill that reauthorizes the Endangered Species Act. This act and the protection it provides for certain species of fish, wildlife, and plants has added a very important and heretofore ignored perspective to our national conservation efforts. At the time of the act's original passage the Congress had begun to recognize the tremendous pressures which a growing society imposes on our dwindling wildlife resources. In my opinion, the Congress by approving the Endangered Species Act, expressed the intent that whenever reasonably possible in accomplishing development activities we should avoid deleterious impacts to endangered species or their critical habitats. I do not believe, however, that Congress intended that the protection or management of an endangered species should in all instances override other legitimate national goals or objectives with which they might conflict. The present interpretation of the act, however, has and will continue to lead to just such results. The bill before you today addresses this problem. I hope my colleagues will find that the provision directed at this issue is both balanced and reasonable.

This new provision is intended to provide a format for discussion of this important issue in hearings before the Senate Environment and Public Works Committee's Subcommittee on Resource Protection. These hearings will be held on April 13 and 14.

Let me briefly explain the problem being experienced under the present implementation of the act and what the proposal in our amendment does to resolve it. Under the current interpretation of the act the Fish and Wildlife Service is charged with the care and protection of an extremely broad and continually expanding number of endangered species. As part of the mandate the Service under section 7 of the act must review all Federal or federally assisted programs to assure that no deleterious impacts to endangered species or their critical habitats occur as a result of these programs. In carrying out this mandate the Service has created a consultation process designed to help other agencies seek modifications to projects and thus help avoid conflict with the act. This consultation process has, in many instances, been effective in helping Federal agencies find approaches to carrying out their developmental responsibilities in a manner that avoids destructive im-

pacts on endangered species or their critical habitat. There are, however, instances in which a Federal activity, if it is to achieve its stated purpose, simply cannot avoid a direct impact to a species or its critical habitat. Because the objective of the Endangered Species Act and that of the other Federal program are in direct conflict, even consultation cannot resolve the impasse. The present interpretation of the law provides no flexibility to balance other legitimate national goals and priorities with the need to protect and manage a particular species. Our amendment would allow such a balancing of interests and if it is decided that the Federal activity is of more importance than the protection of a particular species, the action may proceed.

This decision on whether a particular Federal action should be exempted from the requirements of section 7 would be made by a Federal interagency committee. This committee would have the authority to examine only those Federal actions which had completed the consultation process and were still found to be in irresolvable conflict with the act.

I believe this is a useful and needed addition to the Endangered Species Act and hope that in the next few weeks as the Endangered Species Act is considered in committee it will receive constructive criticism and support. The discussions in committee should address the concept and the structure of the interagency committee and what the best criteria for resolution of conflicts under the act should be. It is only through a thorough discussion of these and other issues that the committee can design a process that fully addresses the problems that have arisen under the act. Hopefully the bill we introduce today will stimulate and provide a vehicle for these discussions.

Mr. RANDOLPH. Mr. President, when the Endangered Species Act was passed by Congress in 1973, it was hailed as landmark environmental legislation. It established the United States as a world leader in the international effort to bring back from the brink of extinction hundreds of unique plant and animal species.

One of the most important provisions of that statute is section 7 which requires each Federal agency to assure that it neither conducts nor assists any action which adversely affects an endangered species or its critical habitat. This provision declares a national policy that the Federal Government is committed to the conservation of these fish, wildlife, and plants and will not knowingly contribute to their demise.

Over the last year this provision has become the subject of controversy as a result of the U.S. 6th Circuit Court of Appeals opinion in Hill versus TVA. In its decision, the court enjoined TVA from completing construction of the \$116 million Tellico Dam on the Little Tennessee River, because the impoundment would destroy the critical habitat of the snail darter, an endangered species of fish.

This situation has caused considerable concern among some who fear that some environmentalists, armed with section 7, will be able to literally shut down Federal construction programs by finding a remote species of mussel, snail, or fish at any project site.

This appears to be an over-reaction based on information developed during oversight hearings on the act by the Environment and Public Works Subcommittee on Resource Protection last July. I feel that section 7 as presently drafted may be too inflexible. Conflicts between the Endangered Species Act and Federal activities should be re-

solved in favor of the species when possible. There may be, however, instances where the project is of such national importance that it should be permitted to continue.

This bill would provide needed flexibility for the endangered species law by enacting an exemption mechanism allowing a balancing judgment where conflicts develop between two Federal objectives. I stress that this is not a final proposal. It is an important step in resolving problems which have arisen. Committee members will seek a broad public discussion of the provisions contained in this measure. However, as a concept it is a reasonable approach which will serve as a well reasoned basis for further consideration.

Mr. WALLOR. Mr. President, I would like to add some remarks to those of my distinguished colleagues about the amendment to the Endangered Species Act which I am cosponsoring today.

My office and a number of other offices have recently received many letters from constituents who truly want to protect wildlife, especially endangered or threatened species, and who are asking me to fight any amendments to the Endangered Species Act. In the past I have asked them if they want me to fight any amendments which might strengthen the act, which usually draws a surprised look. I do not mean to be facetious, but what I would like to do is ask everyone concerned about this important conservation law to consider the merits of this particular approach. I personally believe that it is a carefully thought out and sensitive solution to a problem we should recognize and deal with positively. There are those who will say it is too tough an amendment, and who may attempt to weaken it. I would prefer to fight for the present law than weaken it as some have suggested. While this amendment may not be perfect, I do believe it offers a reasonable vehicle for discussion, and I for one will be willing to consider other strong alternatives which address some of the problems we are facing but do not gut the act.

I am proud to be from a State where abundant wildlife is one of our finest and most cherished treasures. Few States in our union contain the diversity of wild animals which Wyoming boasts, from the delicate trumpeter swan to the wide-roaming grizzly bear. I have the deepest respect and appreciation for every creature, for we share this earth and a common quality of life. Every species, be it a snail darter, woadfin, whooping crane, or grizzly bear, is important in the chain of life and an indicator of the health of our planet. What former National Park Service Director George Hartzog said of our national parks can be easily applied to our wildlife: the species of this world, like our parks, are comparable to the canary in the miner's cap; a stilled voice signaling the presence of death in the mine shaft air. Wildlife are our early warning system. The pressures on them are the same pressures that threaten our overall environment. Species perform essential biological services to maintain a balance of nature in the total environment, and enhance the esthetic and scientific world as well. We are obliged to preserve them and their habitats or we will in short order lose more than we can afford.

The Endangered Species Act of 1973 went beyond the acts of 1966 and 1969 to provide the kind of management tools needed to act early enough to save vanishing species. One of its most important provisions directed Federal agencies to consult with the U.S. Fish and Wildlife

Service whenever a major Federal action might threaten any endangered or threatened species or its critical habitat. Because the U.S. Fish and Wildlife Service has worked hard to insure compliance, and because most agencies have cooperated in the full spirit of the law, we have been able to modify projects in many ways and proceed with ordered developments and preservation of species. Everyone who has worked to fulfill the law should be commended. For consultation is the key to early detection of wildlife-project conflicts, and with cooperation and consultation in the future we can hopefully learn to avoid future project-species conflicts like the one at Tellico Dam. In the meantime the Resources Protection Subcommittee of the Senate Environment and Public Works Committee is considering other ways to address this problem. At present we are considering a bill which will enable States to inventory elements of natural diversity in the natural world in a comprehensive fashion. This information on wildlife habitat and other biological features should enable Federal and State Government, communities, and private interests to identify and plan for significant wildlife habitats and other elements of the natural world in a way not now possible in many States. I hope the committee can address this legislation shortly.

The Endangered Species Act is a strong law, but because it is so strong it is ripe for attack and, unfortunately, for misuse. To my mind the greatest threat to it all along has not been that it so strongly supports wildlife over every other national priority, but that its provisions can be used by well-intentioned individuals to stop Federal projects as a primary goal and in a way never intended by Congress. The potential for abuse of the law exists, and that potential has aroused considerable consternation in Congress and elsewhere. In order to understand the problem, one must understand the complexity of speciation to some extent. While I am no expert on the topic, I was most interested to hear some of the country's finest scientific experts discuss speciation during overnight hearings on this law last year. Speciation is a complex issue over which even the finest minds disagree. However, one fact which seems clear is that species and their subspecies (which the act protects) exist by the millions the world over. We have barely begun to identify all species, and species and subspecies appear and disappear naturally constantly. Extinction, like the appearance of new species, is a normal life process; man has unfortunately accelerated it to a dangerous and irresponsible level.

However, the terms of the Endangered Species Act provide that no Federal agency may take any action which would adversely impact an endangered species or its habitat. With new species unique to a particular locality coming and going naturally all the time, this is a considerable mandate. What it provides is a good opportunity for an individual or group opposed to a particular Federal project to find one of those millions of species and have its critical habitat protected not for the sake of the species, but to prevent the project. Certainly discovering an endangered species is not the easiest thing to do, but it is very possible that a good scientist with enough desire may be able to find an endangered species or subspecies on the vast areas often impacted by a Federal project. I do not deny many of the projects are poor, and probably should not be constructed. However, I do say that the temptation to misuse the Endangered Species Act to stop them remains great.

Major projects throughout this Nation already are being affected by this law. Environmental advocates feel that the stringent provisions of section 7 will force agencies to find a way to modify the projects, and any balancing mechanism will provide a "chink in the armor" of the act and a way for agencies to maneuver for their projects to the possible detriment of species. However, I think we are being blind if we do not recognize the number of potentially irresolvable project-species conflicts which will probably greet Congress in the near future. It seems inevitable to me that congressionally authorized projects undertaken in the name of national and regional interests must and will be stopped by the Endangered Species Act. One example I have seen is the proposed listing of the Virgin River in southern Utah as critical habitat for a fish called the wounldm. This listing could well stop the proposed La Verkin Springs desalter and one other desalination project in the Colorado River Basin, designed to implement salinity levels mandated by the Water Pollution Act of 1972. I am not familiar enough with the merits of the La Verkin Springs plan or the entire salinity control project to judge its merits, and there may be better ways to control salinity. However, this is one example which points out the possibility of having two national goals in conflict.

The Endangered Species Act makes Congress the final arbiter in such cases. I submit that Members of Congress have neither the time nor the expertise to resolve many of these issues. If we do not consider other ways to address this problem which will inevitably arise, I fear that we may lose the entire act and the protection for species and their habitats. I suspect there are indeed Members of Congress who would like to permit development to the detriment of species, who might want to "gun" the act in order to permit other national goals to proceed. By taking this initiative and proposing a stringent examination process in clear cases of project-species conflict, I believe we can keep the teeth in the law and provide a fair arena for flexibility when confronted by no other alternatives.

This amendment, as has been described, creates an Endangered Species Commission of the secretaries from seven agencies. Those agencies have been carefully chosen and include the Departments of Agriculture, Interior, Transportation, along with the Council on Environmental Quality, the Environmental Protection Agency, Smithsonian Institution, and Army. Federal agency heads would be allowed to petition the Commission for exemptions from the act for projects. If the Commission found that the consultation process has occurred and an irresolvable conflict exists, it may grant a project exemption if it determines that there is no reasonable and prudent alternative to such action, and the benefits of such action clearly outweigh the benefits of conserving the species. The exemption would have to be approved by a vote of five or more agencies.

I have agreed to cosponsor this proposal, because I believe we need to act now to avert a wave of future amendments designed to weaken the act and which are not carefully thought out. This is a tough amendment, with tough criteria for any exemption. I am not inflexible in this matter, and hope everyone will recognize this proposal as only a vehicle for discussion and not an iron-clad solution impossible to change. If others can suggest better ways to solve the problems we will encounter with this law, I will study them carefully. As I have noted before, the Endangered Species Act is one of this Nation's finest conservation laws, but only if we manage it sensibly, guard it from misuse, and let biological facts and reason guide our perspective.