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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 10:00 A.M. ON
FRIDAY, JULY 20, 1979

STATEMENT OF
HENRY ESCHWEGE, DIRECTOR
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION
UNITED STATES GENERAL ACCOUNTING OFFICE

ASE 62702

BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE
CONSERVATION AND THE ENVIRONMENT
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

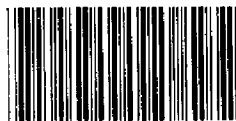
ON

[THE ENDANGERED SPECIES PROGRAM]

MR CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE ARE HERE TODAY AT YOUR INVITATION TO DISCUSS
ISSUES PRESENTED IN OUR REPORT ENTITLED "ENDANGERED
SPECIES -- A CONTROVERSIAL ISSUE NEEDING RESOLUTION"
(CED-79-65, JULY 2, 1979). IN OUR REPORT, WE MADE 16
RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR
TO PROVIDE GREATER PROTECTION TO ENDANGERED AND THREAT-
ENED SPECIES WHILE MINIMIZING THEIR IMPACT ON FEDERAL,
STATE, AND PRIVATE PROJECTS AND PROGRAMS.

IF OUR RECOMMENDATIONS FOR MANAGEMENT IMPROVEMENTS
ARE NOT IMPLEMENTED, EXISTING DEFICIENCIES COULD:



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Testimony
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- JEOPARDIZE THE EXISTENCE OF SOME ENDANGERED AND THREATENED SPECIES OR RESULT IN THE SELECTIVE EXTINCTION OF OTHERS.
- CREATE UNNECESSARY CONFLICTS WITH SOME FEDERAL, STATE, AND PRIVATE PROJECTS AND PROGRAMS.
- DELAY CONSULTATIONS WITH OTHER FEDERAL AGENCIES TO RESOLVE POTENTIAL CONFLICTS BETWEEN SPECIES AND PROJECTS OR PROGRAMS, DELAYING ACTIONS AND INCREASING COSTS.
- LIMIT EFFORTS TO PROTECT AND RECOVER ENDANGERED AND THREATENED SPECIES THROUGH HABITAT ACQUISITION, ENFORCEMENT, ETC.

WE ALSO MADE FIVE RECOMMENDATIONS TO THE CONGRESS. THREE DEALT WITH AMENDING THE ENDANGERED SPECIES ACT; TWO OTHERS DEALT WITH LIMITING FUNDING FOR FEDERAL LAND ACQUISITIONS AND SECTION 7 CONSULTATIONS WITH OTHER FEDERAL AGENCIES TO RESOLVE POTENTIAL CONFLICTS INVOLVING ENDANGERED AND THREATENED SPECIES.

PERMANENT EXEMPTIONS SHOULD COVER ALL FEDERAL PROJECTS AND PROGRAMS

OUR FIRST LEGISLATIVE RECOMMENDATION WOULD AMEND SECTION 7 OF THE ACT TO STATE CLEARLY THAT THE ENDANGERED SPECIES COMMITTEE IS AUTHORIZED TO GRANT PERMANENT EXEMPTIONS FROM THE ACT'S PROTECTIVE PROVISIONS TO ALL FEDERAL PROJECTS AND PROGRAMS.

THE 95th CONGRESS RECOGNIZED THE INFLEXIBILITY OF THE ENDANGERED SPECIES ACT AND ITS POTENTIAL IMPACT ON FEDERAL PROJECTS AND PROGRAMS. THE ENDANGERED SPECIES ACT AMENDMENTS OF 1978 ESTABLISHED A HIGH-LEVEL ENDANGERED SPECIES COMMITTEE TO WEIGH THE IMPORTANCE OF CONSERVING A SPECIES AGAINST THE NEED FOR A FEDERAL ACTION. THE COMMITTEE IS AUTHORIZED TO GRANT EXEMPTIONS FROM THE ACT'S PROTECTIVE PROVISIONS.

WHILE CONGRESSIONAL INTENT WAS FOR PERMANENT EXEMPTIONS TO BE AVAILABLE TO BOTH ONGOING AND NEW PROJECTS, ONE OF THE CONDITIONS FOR A PERMANENT EXEMPTION--THE PREPARATION OF A BIOLOGICAL ASSESSMENT--MAY NOT BE SATISFIED FOR PROJECTS COMMITTED TO OR UNDER CONSTRUCTION AT THE TIME THE 1978 AMENDMENTS WERE ENACTED. FEDERAL PROGRAMS NOT INVOLVING CONSTRUCTION, SUCH AS TIMBER HARVESTING, LIVESTOCK GRAZING, AND RECREATIONAL DEVELOPMENT MAY ALSO BE EXCLUDED FROM RECEIVING PERMANENT EXEMPTIONS. UNLESS THE ACT IS CLARIFIED, THE LENGTHY CONSULTATION PROCESS MAY HAVE TO BE STARTED AND THESE PROJECTS AND PROGRAMS STOPPED EACH TIME AN AFFECTED SPECIES IS LISTED AND A POTENTIAL CONFLICT IS IDENTIFIED.

AN EXAMPLE OF A FEDERAL PROJECT ALREADY UNDER CONSTRUCTION, FOR WHICH THE 1978 AMENDMENTS DO NOT MAKE CLEAR WHETHER A PERMANENT EXEMPTION MAY BE GRANTED, IS THE \$140 MILLION COLUMBIA DAM PROJECT ON

THE DUCK RIVER IN TENNESSEE. THE PROJECT CANNOT BE COMPLETED BECAUSE INTERIOR RENDERED A BIOLOGICAL OPINION THAT THE DAM IS LIKELY TO JEOPARDIZE THREE SPECIES OF MUSSELS LISTED AS ENDANGERED. CERTAIN CONSTRUCTION ACTIVITIES HAVE BEEN HALTED AND WILL NOT START AGAIN UNTIL THE CONFLICT IS RESOLVED OR AN EXEMPTION IS GRANTED. TENNESSEE VALLEY AUTHORITY OFFICIALS ESTIMATED THAT THE DELAY WILL CAUSE THE PROJECT'S COST TO INCREASE BY BETWEEN \$8 MILLION AND \$14 MILLION. NINE OTHER SPECIES (FOUR SNAILS, THREE FISH, ONE MUSSEL, AND ONE PLANT) IN THE AREA OF THE PROJECT HAVE BEEN EITHER PROPOSED FOR LISTING OR IDENTIFIED AS CANDIDATES FOR LISTING BY INTERIOR'S FISH AND WILDLIFE SERVICE. THE PROJECT MAY HAVE TO BE STOPPED AGAIN AND THE LENGTHY CONSULTATION PROCESS INITIATED EACH TIME ONE OF THESE SPECIES IS LISTED AND A POTENTIAL CONFLICT IS IDENTIFIED.

SENATE BILL 1143 TO EXTEND THE AUTHORIZATION FOR APPROPRIATIONS FOR THE ENDANGERED SPECIES ACT THROUGH FISCAL YEAR 1982 AND THE ACCOMPANYING REPORT (NO. 96-151) MAKE CLEAR THAT PERMANENT EXEMPTIONS WOULD BE AVAILABLE FOR ALL FEDERAL PROJECTS AND PROGRAMS. AS SUCH, ENACTMENT OF THE BILL WOULD SATISFACTORILY IMPLEMENT OUR RECOMMENDATION.

PROTECTION TO SPECIES SHOULD BE INCREASED

OUR SECOND RECOMMENDATION WOULD AMEND SECTION 7 TO REQUIRE FEDERAL AGENCIES TO CONSIDER THE IMPACT OF A PROJECT OR PROGRAM ON SPECIES SUSPECTED OF BEING ENDANGERED OR THREATENED, BUT NOT YET LISTED OFFICIALLY. UNLESS CONSIDERED, THE SURVIVAL OF SPECIES ALREADY IDENTIFIED BY INTERIOR'S FISH AND WILDLIFE SERVICE FOR LISTING AS ENDANGERED OR THREATENED COULD BE JEOPARDIZED. ALSO, PROJECTS COULD BE STOPPED AFTER CONSTRUCTION HAS BEGUN IF THE SERVICE FINDS THAT THEY WILL CAUSE THE EXTINCTION OF A SPECIES NOT CONSIDERED IN THE CONSULTATION PROCESS. FOR EXAMPLE, TWO OF THE THREE SPECIES CURRENTLY LISTED AT THE COLUMBIA DAM PROJECT WERE IDENTIFIED FOR LISTING AS ENDANGERED BEFORE CONSTRUCTION BEGAN.

THE SENATE BILL WOULD PARTIALLY IMPLEMENT OUR RECOMMENDATION. FEDERAL AGENCIES WOULD BE REQUIRED TO CONSULT WITH THE SERVICE NOT ONLY WHEN AN ACTION MAY AFFECT A LISTED SPECIES, BUT ALSO WHEN THE ACTION MAY AFFECT A SPECIES PROPOSED FOR LISTING. THE SENATE REPORT STATES, HOWEVER, THAT "MANDATING CONSULTATION ON ALL CANDIDATE SPECIES IS IMPRACTICAL, SINCE THE SERVICE RECEIVES HUNDREDS OF PETITIONS TO LIST SPECIES,

MANY OR MOST OF WHICH DO NOT NEED THE PROTECTION PROVIDED BY THE ENDANGERED SPECIES ACT AND ARE THEREFORE NEVER LISTED."

WE AGREE THAT ALL PETITIONED SPECIES CANNOT AND SHOULD NOT BE INCLUDED IN SECTION 7 CONSULTATIONS AND BIOLOGICAL ASSESSMENTS. WE BELIEVE, HOWEVER, THAT SPECIES FOR WHICH THE SERVICE HAS PUBLISHED NOTICES OF INTENT TO REVIEW IN THE FEDERAL REGISTER SHOULD BE INCLUDED. THESE SPECIES HAVE BEEN REVIEWED BY SERVICE BIOLOGISTS AND OFFICIALS WHO HAVE DETERMINED THAT SUPPORTING INFORMATION IS ADEQUATE FOR THE SPECIES TO BE CONSIDERED FOR LISTING.

ONLY SPECIES WHICH ARE ENDANGERED OR THREATENED THROUGHOUT ALL OR A SIGNIFICANT PORTION OF THEIR EXISTING RANGES SHOULD BE LISTED

OUR THIRD RECOMMENDATION WOULD REDEFINE THE TERM "SPECIES" TO LIMIT THE ACT'S PROTECTION TO SPECIES ENDANGERED OR THREATENED THROUGHOUT ALL OR A SIGNIFICANT PORTION OF THEIR RANGES. THE ACT PERMITS THE FISH AND WILDLIFE SERVICE TO LIST GEOGRAPHICALLY LIMITED POPULATIONS OF VERTEBRATE SPECIES EVEN THOUGH THE SPECIES AS A WHOLE MAY NOT BE ENDANGERED OR THREATENED. SUCH LISTINGS COULD INCREASE THE NUMBER OF POTENTIAL CONFLICTS WITH FEDERAL, STATE, AND PRIVATE PROJECTS AND PROGRAMS.

FOR EXAMPLE, THE FLORIDA POPULATION OF THE PINE BARRENS TREE FROG WAS LISTED AS ENDANGERED IN NOVEMBER 1977, WHEN ITS OVERALL STATUS IN THE FOUR STATES IN

WHICH IT EXISTS HAD NOT BEEN DETERMINED. PRELIMINARY SURVEY DATA, OBTAINED BY THE STATE OF FLORIDA AFTER LISTING, INDICATES THAT THIS SPECIES IS MORE PLENTIFUL THAN ORIGINALLY THOUGHT. THE LISTING MAY CONFLICT WITH LAND DEVELOPMENT AND AGRICULTURE IN WESTERN FLORIDA.

ANOTHER EXAMPLE IS THE BEAVER DAM SLOPE POPULATION OF THE DESERT TORTOISE IN UTAH WHICH WAS PROPOSED FOR LISTING AS ENDANGERED IN AUGUST 1978 BEFORE A SURVEY WAS BEGUN TO DETERMINE THE OVERALL STATUS OF THE SPECIES THROUGHOUT THE SOUTHWESTERN UNITED STATES AND ADJACENT AREAS OF MEXICO. IF THE BEAVER DAM SLOPE POPULATION IS LISTED, BUREAU OF LAND MANAGEMENT LIVESTOCK GRAZING ACTIVITIES IN THE AREA COULD BE ELIMINATED OR FURTHER CURTAILED.

THE SENATE REPORT DID NOT GO ALONG WITH LIMITING LISTINGS TO ENTIRE SPECIES, USING THE BALD EAGLE AS AN EXAMPLE. THE REPORT STATES THAT EXCLUDING ALL DISTINCT POPULATION LISTINGS WOULD REQUIRE THE SERVICE "TO PROVIDE THE SAME AMOUNT OF PROTECTION FOR THE BALD EAGLE POPULATION IN ALASKA, WHICH IS HEALTHY, AS FOR THE BALD EAGLE POPULATION IN THE CONTERMINOUS STATES, WHICH IS ENDANGERED."

THE BALD EAGLE IS LISTED AS ENDANGERED IN 43 OF THE CONTERMINOUS STATES AND AS THREATENED IN THE REMAINING

5 STATES. THE AUGUST 1978 RANKINGS PREPARED FOR THIS SUBCOMMITTEE BY SERVICE BIOLOGISTS SHOW THAT OVERALL THE SPECIES IS FACING A LOW DEGREE OF THREAT TO ITS SURVIVAL. THUS, LIMITING LISTINGS TO ENTIRE SPECIES, TOGETHER WITH OUR RECOMMENDATION TO THE SECRETARY OF THE INTERIOR THAT DEGREE OF THREAT BE USED AS THE PRIMARY CRITERION FOR CLASSIFYING SPECIES, WOULD RESULT IN THE BALD EAGLE BEING LISTED AS THREATENED THROUGHOUT ITS EXISTING RANGE. THE ACT, WHILE SPECIFICALLY PROHIBITING CERTAIN ACTIVITIES FOR ALL ENDANGERED SPECIES, PERMITS THE SECRETARY TO ISSUE ONLY THOSE REGULATIONS NECESSARY TO CONSERVE THREATENED SPECIES. IF THE EAGLE WERE LISTED AS THREATENED EVERYWHERE, FLEXIBLE REGULATIONS COULD BE TAILORED TO PROVIDE IT VARYING DEGREES OF PROTECTION THROUGHOUT ITS RANGE.

LIMITING LISTINGS TO ENTIRE SPECIES MAY, HOWEVER, RESULT IN THE DELISTING OF A FEW LISTED SPECIES, SUCH AS THE GRAY WOLF AND THE AMERICAN CROCODILE, WHOSE RANGES ARE WIDESPREAD AND/OR PRIMARILY OUTSIDE THE CONTERMINOUS UNITED STATES. IF CONGRESSIONAL INTENT IS TO EXTEND FEDERAL PROTECTION TO THESE SPECIES, WE RECOMMENDED THAT THE TERM "SIGNIFICANT PORTION" BE DEFINED AND THAT POPULATION LISTINGS BE LIMITED TO THOSE THAT MEET THIS DEFINITION. WE DEFINE SIGNIFICANT PORTION IN TERMS OF TOTAL NUMBERS, BIOLOGICAL IMPORTANCE,

OR THE NEED TO MAINTAIN THE SPECIES WITHIN THE UNITED STATES. SERVICE OFFICIALS FOUND THIS ALTERNATIVE ACCEPTABLE.

PROPOSED LEGISLATIVE LANGUAGE TO IMPLEMENT OUR THREE RECOMMENDATIONS TO AMEND THE ACT ARE INCLUDED AS APPENDIX VII OF OUR REPORT.

LAND ACQUISITIONS NOT CONSISTENT WITH SERVICE POLICIES AND PROGRAM CRITERIA

TWO OF OUR OTHER RECOMMENDATIONS TO THE CONGRESS WOULD LIMIT INTERIOR'S EXPENDITURE OF FUNDS. WE RECOMMENDED THAT THE CONGRESS NO LONGER FUND ENDANGERED SPECIES LAND ACQUISITIONS WHICH ARE INCONSISTENT WITH FISH AND WILDLIFE SERVICE POLICIES AND PROGRAM CRITERIA. THE SERVICE HAS CONTINUED TO OBLIGATE FUNDS TO ACQUIRE ADDITIONAL LAND FOR SPECIES WHOSE DEGREE OF THREAT HAS DIMINISHED OR WHERE VIABLE, LESS EXPENSIVE ALTERNATIVES TO FEDERAL ACQUISITION EXIST.

FOR EXAMPLE, IN A NOVEMBER 1, 1978, LETTER TO THE SECRETARY OF THE INTERIOR (ATTACHED) WE STATED THAT THE PLANNED ACQUISITION OF KEALIA POND ON THE ISLAND OF MAUI, HAWAII, FOR APPROXIMATELY \$6.4 MILLION, WAS NOT CONSISTENT WITH SERVICE LAND ACQUISITION POLICIES. THE POND'S LOCATION WITHIN A STATE ZONED CONSERVATION DISTRICT PROTECTS IT AS HABITAT FOR THE TWO ENDANGERED WATERBIRDS, THE COOT AND THE STILT, AND REPRESENTS

A VIABLE ALTERNATIVE TO FEDERAL ACQUISITION. ACTUAL AND PLANNED AQUACULTURAL DEVELOPMENT IN THE POND AREA IS COMPATIBLE WITH A WILDLIFE REFUGE AND HAS ACTUALLY SERVED TO ENHANCE THE POND AS A WATERBIRD HABITAT BY PROVIDING NEEDED WATER DURING THE DRY MONTHS. BEFORE THE AQUACULTURE FARM WAS ESTABLISHED, THE POND WAS DRY DURING THE WATER BIRDS' MATING SEASON. THE INTERAGENCY COOPERATION PROVISIONS (SECTION 7) OF THE ENDANGERED SPECIES ACT PROVIDE AN EFFECTIVE MEANS FOR PROTECTING THE POND IF THE STATE OR PRINCIPAL LANDOWNER WAS TO PROPOSE CONVERTING IT TO A BOAT HARBOR OR MARINA.

THE SERVICE'S POSITION IS THAT THE POND MUST BE SECURED "IN PERPETUITY," AND THAT IT WILL ONLY CONSIDER ALTERNATIVES THAT WILL GUARANTEE THE POND'S PERMANENT PROTECTION. SUCH ALTERNATIVES ARE LIMITED TO STATE ACQUISITION OR A LEGALLY BINDING, OPEN-ENDED AGREEMENT WHICH STATE OFFICIALS BELIEVE, HOWEVER, WILL NOT BE ACCEPTABLE TO THE PRINCIPAL LANDOWNER. THE SERVICE IS NOT WILLING TO CONSIDER A STATE PROPOSAL TO NEGOTIATE A LEGALLY BINDING COMMITMENT WITH THE PRINCIPAL LANDOWNER THAT WOULD INCLUDE LONG-TERM PROTECTION OF THE POND (20-25 YEARS), ITS ENHANCEMENT AS A WATERBIRD HABITAT, AND LIMITED COMPATIBLE AQUACULTURAL DEVELOPMENT IN THE POND AREA.

KEALIA POND IS THE ONLY LOCATION ON THE ISLAND OF MAUI THAT CAN BE UTILIZED FOR THE CONTINUATION OF AQUACULTURAL RESEARCH AND DEVELOPMENT PROGRAMS TO DETERMINE THE ECONOMIC FEASIBILITY OF LARGE SCALE OPERATIONS. FEDERAL ACQUISITION OF THE POND WILL SEVERELY IMPEDE MAUI'S EFFORTS TO DEVELOP AN AQUACULTURE INDUSTRY.

LAND PURCHASES SHOULD BE LIMITED TO SITUATIONS WHERE NO ALTERNATIVES EXIST AND ACQUISITION HAS BEEN JUSTIFIED BECAUSE THE SPECIES IS FACING HIGH DEGREE OF THREAT TO ITS SURVIVAL AND THE LAND IS NEEDED FOR ITS RECOVERY.

INCREASED FUNDING FOR
CONSULTATION NOT JUSTIFIED

FINALLY, WE RECOMMENDED THAT THE CONGRESS NOT INCREASE FUNDING FOR CONSULTATIONS WITH OTHER FEDERAL AGENCIES TO RESOLVE POTENTIAL CONFLICTS BETWEEN ENDANGERED AND THREATENED SPECIES AND FEDERAL PROJECTS AND PROGRAMS UNTIL THE FISH AND WILDLIFE SERVICE DEMONSTRATES THAT IT NEEDS THE RESOURCES. THIS RECOMMENDATION IS NEEDED BECAUSE THE SERVICE RECEIVED OVER \$2.1 MILLION IN INCREASED FISCAL YEAR 1979 FUNDING BASED ON INFLATED PROJECTIONS OF THE NUMBER OF CONSULTATIONS ANTICIPATED AND ASSOCIATED COSTS.

WITHOUT MAJOR MANAGEMENT IMPROVEMENTS,
DEFICIENCIES WILL CONTINUE IN THE LISTING PROCESS

WE ALSO MADE EIGHT RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR TO IMPROVE THE PROCESS USED TO SELECT SPECIES FOR REVIEW AND LISTING AS ENDANGERED OR THREATENED. DEFICIENCIES IN THE LISTING PROCESS--THE CORNERSTONE OF THE ACT--HAD THREATENED EFFECTIVE IMPLEMENTATION OF THE ENTIRE ENDANGERED SPECIES PROGRAM.

EXISTING POLICIES AND PROCEDURES
SHOULD BE APPLIED CONSISTENTLY

THE MOST SERIOUS DEFICIENCY WAS THAT EXISTING POLICIES, PROCEDURES, AND PRACTICES USED TO LIST SPECIES WERE NOT BEING CONSISTENTLY APPLIED. THIS COULD JEOPARDIZE THE EXISTENCE OF SOME SPECIES WHILE INCREASING CONFLICTS WITH STATE AND PRIVATE PROJECTS AND PROGRAMS.

IN ONE CASE, NINE SPECIES IDENTIFIED IN A MARCH 30, 1977, MEMORANDUM BY THE FISH AND WILDLIFE SERVICE DIRECTOR AS BEING DIRECTLY OR INDIRECTLY JEOPARDIZED BY COMPLETION OF THE COLUMBIA DAM PROJECT ON THE DUCK RIVER IN TENNESSEE HAD NOT BEEN LISTED. THREE SPECIES OF MUSSELS IN THE AREA OF THE DAM ARE LISTED AND THE ENDANGERED SPECIES COMMITTEE MAY BE REQUESTED TO DETERMINE IF AN EXEMPTION SHOULD BE GRANTED. SINCE THE SERVICE HAS NOT LISTED THE NINE OTHER SPECIES, THE COMMITTEE WILL BE PRECLUDED FROM FULLY CONSIDERING THE BENEFITS OF CONSERVING THE SPECIES IN ITS EXEMPTION DELIBERATIONS.

INTERIOR OFFICIALS CONTEND THAT, BY THEIR NATURE, ENDANGERED AND THREATENED SPECIES ARE UNIQUE ORGANISMS IN UNIQUE SITUATIONS AND THAT IT IS IMPOSSIBLE TO DEVELOP PROCEDURES THAT WILL BE APPROPRIATE FOR ALL, OR EVEN MOST SPECIES LISTINGS. THEY STATED THAT THE SERVICE HAS BEEN PARTICULARLY CAREFUL IN EVALUATING DATA FOR LISTING SPECIES WHERE POTENTIAL CONFLICTS WITH FEDERAL PROJECTS AND PROGRAMS EXIST, BUT HAS NOT REFRAINED FROM LISTING ANY WELL-DOCUMENTED SPECIES BECAUSE THEY ARE CONTROVERSIAL. HOWEVER, LISTED SPECIES WHICH DO NOT CONFLICT WITH FEDERAL ACTIONS, DO IN SOME CASES, CONFLICT WITH STATE AND PRIVATE PROJECTS AND PROGRAMS AS EVIDENCED BY THE PLANNED ACQUISITION OF KEALIA POND. BY APPLYING MORE STRINGENT POLICIES AND PROCEDURES TO LISTING SPECIES WHERE POTENTIAL CONFLICTS WITH STATE AND PRIVATE ACTIONS EXIST, CONFLICTS STEMMING FROM THE ACT'S PROTECTIVE PROVISIONS AND LAND ACQUISITION AUTHORITIES MAY BE REDUCED.

WE RECOMMENDED THAT THE SERVICE APPLY THE SAME LISTING POLICIES AND CRITERIA TO ALL BIOLOGICALLY ELIGIBLE SPECIES, INCLUDING THOSE WHOSE LISTINGS MAY CONFLICT WITH ONGOING OR PLANNED FEDERAL PROJECTS AND PROGRAMS.

LISTED SPECIES SHOULD BE DELISTED
OR RECLASSIFIED WHEN WARRANTED

ANOTHER DEFICIENCY IN THE PROCESS WAS THAT THE FISH AND WILDLIFE SERVICE HAD NOT PERIODICALLY REVIEWED LISTED SPECIES OR ESTABLISHED ADEQUATE CRITERIA TO DETERMINE IF THEIR STATUSES HAD CHANGED. CONSEQUENTLY, SPECIES COULD CONTINUE TO BE LISTED IMPROPERLY, CREATING UNNECESSARY CONFLICTS WITH FEDERAL, STATE, AND PRIVATE PROJECTS AND PROGRAMS AND RESULTING IN RESOURCES BEING SPENT NEEDLESSLY FOR RECOVERY EFFORTS ON THESE SPECIES.

FOR EXAMPLE, THE AUGUST 1978 RANKINGS PREPARED FOR THIS SUBCOMMITTEE SHOW THAT AT LEAST 95 SPECIES, INCLUDING THE COOT AND THE STILT, OR 48 PERCENT OF THE 197 U.S. SPECIES LISTED AS ENDANGERED, ARE NOT FACING HIGH DEGREE OF THREAT TO THEIR SURVIVAL. BASED ON DEGREE OF THREAT, THESE SPECIES COULD BE RECLASSIFIED AS THREATENED. CERTAIN ACTIVITIES, SUCH AS CONTROLLED HUNTING AND FISHING, EXPORTATION FROM THE UNITED STATES, INTERSTATE COMMERCE, AND SALE, WHICH ARE SPECIFICALLY PROHIBITED FOR ALL ENDANGERED SPECIES, MAY BE PERMITTED FOR THREATENED SPECIES. THUS, CONFLICTS INVOLVING STATE AND PRIVATE PROJECTS AND PROGRAMS COULD BE MINIMIZED BY LISTING THESE SPECIES AS THREATENED.

WE RECOMMENDED THAT THE SERVICE

--ASSIGN A HIGH PRIORITY TO THE REVIEW OF LISTED SPECIES;

- REQUEST FUNDS FOR STATUS SURVEYS AND MAKE THEM A BUDGETARY LINE ITEM; AND
- PROMPTLY DELIST AND RECLASSIFY LISTED SPECIES WHEN THEIR FUTURES ARE REASONABLY SECURE OR WHEN THEIR STATUSES HAVE IMPROVED, USING DEGREE OF THREAT AS THE PRIMARY CRITERION.

PETITIONS SHOULD BE SYSTEMATICALLY IDENTIFIED AND ACTED ON

ANOTHER SERIOUS DEFICIENCY IN THE LISTING PROCESS WAS THAT THE FISH AND WILDLIFE SERVICE HAD NOT DEVELOPED ADEQUATE PROCEDURES TO IDENTIFY, REVIEW, AND ACT ON PETITIONS FROM INTERESTED PERSONS, ALERTING THE SERVICE TO BIOLOGICALLY VULNERABLE SPECIES. WE IDENTIFIED 154 PETITIONS THE SERVICE HAD RECEIVED THROUGH JUNE 30, 1978. THIS WAS 45, OR 41 PERCENT, MORE THAN THE SERVICE HAD RECORDED AS BEING RECEIVED. CONVERSELY, SOME PETITIONS THAT HAD BEEN RECORDED COULD NOT BE FOUND. FOR EXAMPLE, ONE PETITION NOT ONLY WAS NOT RECORDED BUT THE ATTACHMENT IDENTIFYING THE SPECIES TO BE LISTED COULD NOT BE FOUND.

ADEQUATE CONTROL OVER PETITIONS IS A PREREQUISITE TO COMPLIANCE WITH THE STATUTORY PRIORITY GIVEN SUCH PETITIONS AND IS NEEDED TO IDENTIFY AND LIST THOSE SPECIES WHICH ARE BIOLOGICALLY VULNERABLE. WE RECOMMENDED THAT THE SERVICE DEVELOP THE NECESSARY PROCEDURES TO IDENTIFY, REVIEW, AND ACT ON PETITIONS.

A PRIORITY SYSTEM SHOULD BE USED AS A
GUIDE IN SELECTING SPECIES FOR LISTING

FINALLY, EVEN THOUGH THE FISH AND WILDLIFE SERVICE ESTIMATED THAT 20,000 U.S. SPECIES MAY BE ENDANGERED OR THREATENED AND IDENTIFIED OVER 250 UNLISTED SPECIES FACING HIGH DEGREE OF THREAT, IT HAD NOT IMPLEMENTED A PRIORITY SYSTEM TO SERVE AS A GUIDE IN SELECTING SPECIES FOR REVIEW AND LISTING. SOME LISTING DECISIONS HAD BEEN BASED PRIMARILY ON FACTORS OTHER THAN DEGREE OF THREAT, SUCH AS PERSONAL PREFERENCES OF THE SERVICE BIOLOGISTS AND INTERIOR OFFICIALS, AND PUBLIC PRESSURES.

WE RECOMMENDED THAT THE SERVICE IMPLEMENT A PRIORITY SYSTEM BASED ON DEGREE OF THREAT TO SELECT SPECIES FOR REVIEW AND LISTING, AND ALLOCATE STAFF AND FUNDS ACCORDINGLY.

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MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT.
WE SHALL BE GLAD TO RESPOND TO ANY QUESTIONS.



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

IN REPLY
REFER TO:

B-118307

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

NOVEMBER 1, 1978

The Honorable Cecil D. Andrus
The Secretary of the Interior

Dear Mr. Secretary:

The General Accounting Office, during its review of the implementation of the Endangered Species Act of 1973, (16 U.S.C. 1531 et seq.) found that approximately \$6.4 million has been appropriated for the Department of the Interior to acquire Kealia Pond on the Island of Maui, Hawaii. This action is part of a recovery plan approved by the Director of the Fish and Wildlife Service (FWS) on June 19, 1978, to protect the habitat of two endangered Hawaiian waterbirds, the coot and the stilt. However, our review has shown that the acquisition of Kealia Pond is not consistent with FWS's land acquisition policies or program criteria and should be discontinued.

BACKGROUND

Kealia Pond is one of two suitable habitats for the coot and the stilt on Maui. The other, Kanaha Pond, is probably the best area in the State for waterbirds and is the primary nesting and feeding habitat for both the coot and the stilt. Kanaha Pond and surrounding land are owned by the State of Hawaii, which has designated it as an endangered wildlife sanctuary and has improved the habitat to increase its potential for waterbirds.

Privately owned Kealia Pond is one of the largest lowland ponds in the State. It is within a zoned conservation district and also has been designated by the State as a wildlife sanctuary. The pond, which was dry during the waterbirds' mating season, has been enhanced by the establishment of a small aquaculture farm. Water from the farm drains into the pond, providing needed water during the dry months. Kealia Pond complements Kanaha Pond by providing a feeding area for both the coot and the stilt and a nesting habitat for the coot. Improvements to the pond area could also expand the nesting habitat of the stilt.

CED-79-6
(14337)

B-118307

ACQUISITION NOT CONSISTENT WITH
FWS POLICIES AND CRITERIA

FWS's land acquisition policies dated August 8, 1977, state that land will be acquired "only when other means of achieving Program goals and objectives are no longer available and/or effective." All alternatives for protecting the habitat must be exhausted before resorting to acquisition. Condemnation can be used only "when specific tracts present management problems or after failure of reasonable negotiations."

During our review, we visited Kealia Pond and found that the acquisition through condemnation of 500 acres of land containing the pond does not meet FWS's land acquisition policies. The pond's sanctuary status and its location within a State conservation district preclude uses that are not compatible with a wildlife refuge and represent an available alternative to Federal acquisition. However, State and county officials informed us that continued State protection of the pond was never considered a viable alternative by FWS.

According to the Hawaiian waterbirds recovery team, appointed by the Director of FWS, they are concerned that pressures to convert Kealia Pond to a medium draft harbor or marina will lead to rezoning. Therefore, the team has recommended including the pond in FWS's National Refuge System. FWS officials told us they have recognized the potential value of Kealia Pond as a waterbird habitat for many years and support the recovery team's concern and recommendation.

State and county officials informed us that they have made every effort to stop the Federal condemnation proceedings. They stated that commercial development of Kealia Pond was discussed about 8 years ago but that the only development currently planned for the area is expansion of the aquaculture farming. They also pointed out that State law requires a lengthy review process prior to any rezoning, including preparation of a State environmental impact statement and public hearings, and that development of a harbor or marina would require a permit from the Army Corps of Engineers. FWS would have ample opportunities for comment and time to reinstate condemnation proceedings, if required. Further, the county and State will consider improving the pond to enhance its potential as a waterbird habitat if Federal acquisition does not occur. The principal landowner agrees that there are currently no plans to commercially develop Kealia Pond and is willing to negotiate with the State and county regarding its future use.

B-118307

The acquisition of Kealia Pond is also not consistent with FWS's criteria relating to the endangered species program. A criterion that must be met before habitat can be acquired for an endangered or threatened species is that the species must be in a high priority category based on FWS's endangered species recovery priority system. However, both the coot and the stilt are in a low priority category based on this priority system because the degree of threat to their survival is low and their recovery potential is high.

Data in the approved recovery plan support these rankings. The plan establishes a population objective of 2,000 for each of the two species. The 1977 estimated statewide populations were 2,500 coots and 1,500 stilts as compared to the previous 10-year January census average of 966 coots and 701 stilts. These figures show that the coot has already surpassed its population objective and that the stilt is well on the way to recovery without the acquisition of Kealia Pond.

Interior officials responsible for FWS land acquisitions stated that when the decision to acquire Kealia Pond was made in fiscal year 1974, the degree of threat to the species' survival appeared to be high, and that land acquisition was recommended to improve their recovery potential. However, the officials admitted that changes in the species' status have not been monitored, and that the initial decision has never been reevaluated.

CONCLUSIONS AND RECOMMENDATIONS

The acquisition of Kealia Pond through condemnation is not consistent with FWS's land acquisition policies or program criteria. The pond's location within a zoned conservation district and designation as a wildlife sanctuary by the State represent a viable alternative to Federal acquisition. Actual and planned development in the pond area are compatible with a wildlife refuge and have actually served to enhance the pond as a waterbird habitat. The State, county and principal landowner have also indicated a willingness to further improve the pond to enhance its potential for waterbirds. Therefore, we recommend that you:

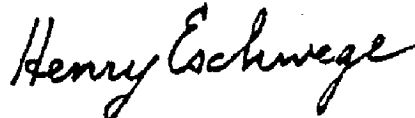
- Discontinue acquisition of Kealia Pond.
- Monitor State and county actions to assure that the pond remains a waterbird habitat.

B-118370

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of this letter and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of this letter.

We are also sending copies of this report to the Chairmen of the following committees: Senate Committee on Environment and Public Works, House Committee on Merchant Marine and Fisheries, and House Committee on Public Works. Copies are also being sent to the Director, Office of Management and Budget and your Director, Office of Audit and Investigation.

Sincerely yours,

A handwritten signature in cursive script that reads "Henry Eschwege".

Henry Eschwege
Director