

The Executive Memorandum

The Heritage Foundation

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H.R. 478: ENSURING THAT HUMANS ALSO ARE A PROTECTED SPECIES

We do know that fear of the [Endangered Species] Act and the related cost and delay associated with threatened environmental issues rising under the veil of the Act have caused serious compromise to most flood control activities in our area.

— *Michael Rausch,
Treasurer of the Upper Mississippi, Illinois,
and Missouri Rivers Association,
before the House Resources Committee,
April 23, 1997*

The House of Representatives soon will vote on H.R. 478, the Flood Prevention and Family Protection Act of 1997, introduced on January 21, 1997, by Representatives Richard Pombo (R-CA) and Wally Herger (R-CA). This bill would exempt certain existing flood-related control activities from the requirements of the Endangered Species Act (ESA) to allow for better maintenance of flood-control facilities and more effective flood prevention. Current law allows the President to suspend the ESA only after there has been a disaster and an official declaration of a disaster area. H.R. 478 allows preventive maintenance and repairs to prevent disasters before they occur.

According to the Federal Emergency Management Agency (FEMA) and the National Weather Service (NWS), floods kill more than 90 people and produce a devastating \$1 billion in property loss every year in the United States. Since 1900, more than 10,000 Americans have lost their lives in floods. Federal regulators are working at cross-purposes, rigidly enforcing ESA requirements that contribute to lengthy delays in necessary repairs and maintenance.

For example, some work on levees and other flood-mitigation efforts has been stopped due to the presence of threatened or endangered species, putting human lives needlessly at risk. As Ken Edwards of the Riverside County Flood Control and Water Conservation District in Riverside, California, recently testified before Congress,

The district has been prevented for more than two years from making critical repairs to the Santa Ana River levees which protect the city of Riverside, because two endangered woolly-star plants were discovered in the river bottom near the proposed work. Survival of a species was not at stake in any of these cases, but we were prevented from taking immediate, appropriate action to protect [human] health and safety.

Some of the more extreme environmental groups, such as the Sierra Club and Defenders of Wildlife, complain that supporters of H.R. 478 have no regard for endangered species. But one might ask: What about humans? Tragically, because of the tunnel vision of many environmentalists, Americans in flood-prone areas of the country are held hostage to an extreme ideology and put at risk of death from floods.

Instead of putting human life and wildlife at odds, H.R. 478 gives Americans exactly what they have been demanding for so long: a way to protect both human life and wildlife by injecting some common sense and flexibility into the federal regulatory system. Members of Congress should remember that both the Supreme Court and the American people have indicated their approval of this approach. On March 19, 1997, for example, the Supreme Court issued a decision affirming the rights of Americans to sue their government when they are harmed by the ESA. The Court pointed out that because the ESA expressly mandated the consideration of economic factors, at least one purpose of the law is to restrict bureaucrats (often driven by environmental extremists) from “zealously but unintelligently pursuing their environmental objectives.”

The reality is that federal agencies sometimes go overboard, and Americans have a right to challenge them when they do. H.R. 478 represents an effort to correct a situation in which federal regulators are acting “zealously but unintelligently” by refusing to grant flexibility in the law so that the protection of human lives and property can be given the same consideration as the protection of other species like flies, shrimp, and rats.

The Supreme Court’s decision also is consistent with the views of a majority of Americans who, in public opinion poll after public opinion poll, have told policymakers that they

- Overwhelmingly support the protection of private property, not government-controlled property;
- Support non-regulatory approaches to species conservation;
- Believe that state or local government would do a better job of protecting the environment than the federal government; and
- Support compensating landowners when environmental regulations prevent them from using their property.

Congress has heard from Americans around the country about how the red tape surrounding implementation of the Endangered Species Act has prevented local communities from acting to prevent or mitigate impending flood disasters. Dozens of Americans will die in floods this year. H.R. 478 is a commonsense proposal that builds flexibility into ESA requirements when human lives and property are at risk.

Is Congress really willing to sacrifice the lives of Americans to protect a fly because it does not have the courage to stand up to special-interest environmental extremists?

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