

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

R-9

REPLY TO: 2630 Habitat

April 20, 1979

SUBJECT: Endangered Species

TO: Forest Supervisors and RO Staff Directors

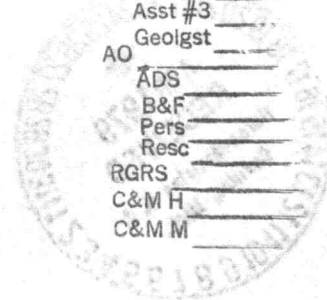


Attached for your information is a copy of the draft comparison between the 1973 Endangered Species Act and the 1978 amendments as prepared by Fish and Wildlife Service, Region-3.

for H. PETER WINGLE, Director
Recreation, Range, Wildlife
and Landscape Management

Enclosure

NO. RECD _____
SUPV _____
D. SUPV _____
E. I&E _____
Hydrigst _____
Soils _____
TM _____
Sales _____
Silv _____
Survy _____
Wldlf _____
ENGR _____
Proj Eng _____
Fleet _____
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COMPARISON BETWEEN THE 1973 AND (AMENDED) 1978
ENDANGERED SPECIES ACTS

1973 Act

Allows the listing of populations of all species except plants

There are no mitigating measures and Federal Agencies could not jeopardize the continued existence of a species or adversely modify critical habitat

The time frame of consultations was set by regulation

The Service could provide alternative actions to a Federal agency only when requested to do so

FWS could recommend a biological assessment be undertaken

If a species was listed at any time during construction of a project, the agency was to re-evaluate its actions

All Federal Agencies were subject to Section 7

Section 9 (taking, import, export, etc.) applied to all captive endangered species

1978 Act

Limits the listing of populations to vertebrate fish and wildlife

An agency can get an exemption to Section 7 & therefore jeopardize the continued existence of a species and/or adversely modify critical habitat

Time frames are set by law

The Service will provide alternatives to Federal actions that will prevent adverse impacts upon species or habitats.

Federal agencies are required to develop a biological assessment on construction projects to determine species present

If an exemption has been granted, the exemption is in effect for newly listed species or other species newly found within the project area (unless the project would totally eliminate the new species)

Exemptions shall be granted to Dept. of Defense for reasons of national security or to the President in a Disaster area

Certain exemptions have been granted for raptors (falcons) and antiques

1973 Act

Tellico dam was not exempt from the Act

Persons could be prosecuted under civil penalties for knowingly and criminally for willfully committing a violation

Species and habitats were listed by publication in the Federal Register

Listings of species or habitats could be done on the basis of lack of knowledge

There was no mechanism for taking a species or habitat from the proposed status other than a notice in the FR (which was never used)

Critical habitat was to be based upon biological data only

Listings took effect 30 days following publication in the Federal Register

Proposed species had no legal status

1978 Act

The Committee established by the Act is to consider exemption

Individuals can be prosecuted under civil penalties for committing violations and criminal penalties for knowingly violating

In addition to the FR, regulations will be published in local newspapers if the listing has critical habitat or if listing a species, a public meeting will be held

Listings are to be based upon "the best" scientific data available

If a proposed regulation is not final within a 2-year period, the species, habitat or action loses its proposed status

The economic impact of listing critical habitat (and other relevant impacts) is to be considered

Listings take effect 60 days after publication

Proposed species must be identified for Federal agencies following their initial information request

PRELIMINARY

DRAFT