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Testimony Before

**The Committee on Resources
United States
House of Representatives**

**on
HR 2933
the
"Critical Habitat Reform Act
of 2003"**

April 28, 2004

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INTRODUCTION

Good morning – my name is Lawrence R. Liebesman, and I am a partner in the Washington, D.C. office of Holland & Knight LLP, a national law firm with offices in 24 cities, and 7 foreign countries. It is a pleasure to be here today to testify in support of H.R. 2933, the "Critical Habitat Reform Act of 2003." I have practiced environmental law for over 30 years including 13 years with the Federal Government at EPA and the Justice Department's Environment Division. I was also detailed to the President's Council on Environmental Quality in the Carter Administration, helping to develop CEQ's NEPA regulations. Over the past 15 years, I have been heavily involved in issues under the Federal Endangered Species Act, including Critical Habitat Designation. I recently co-authored the "Endangered Species Deskbook" with Rafe Petersen of our firm, published by the Environmental Law Institute.* I am also a planning co-chair for the first ALI-ABA Course of Study on the ESA, scheduled for April 2005.

The thirty year history of the Endangered Species Act (ESA) is mottled with a "give and take" between the United States Fish & Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and the federal courts. Disagreements over the substance of the ESA's requirements traditionally has focused on the listing of threatened and endangered species. Unfortunately, increased contention over the species listing process occurred to the detriment of the ESA's critical habitat (CH) designation requirements. Disregard for critical habitat designation reached its apex in the mid-1990's, when the Clinton Administration determined that most potential CH designations were "not prudent" and thus exempt from the ESA's designation requirement.¹ Consequently, the FWS had designated critical habitat only about one-third of the 1200 listed domestic species.²

In the past few years, however, litigants and courts alike have recognized the past neglect over critical habitat designation and the issue has come center stage in the world of environmental litigation. This recognition has produced a steady stream of litigation in which parties bring claims against the FWS alleging its failure to designate critical habitat violates the Act, the agency scrambles to throw together a general designation before the statutory deadline expires, and then subsequent claims are brought by other parties because the hastily-created designations fail to satisfy the ESA's CH requirements. Indeed, last year Assistant Secretary of the Interior, Craig Manson, testified in Senate

* See *The Endangered Species Deskbook*, written by Lawrence R. Liebesman, Rafe Petersen and other Holland & Knight attorneys, and published by the Environmental Law Institute, Washington, D.C. (2003)

¹ United States Fish & Wildlife Service, Critical Habitat – Questions and Answers 1 (May 2003).

² *Id.* See also CRS Issue Brief for Congress "Endangered Species: Difficult Choices," September 1, 2003 at CRS-13.

Committee hearings that "the listing and critical habitat program is now operated in a 'first to the courthouse' mode and, as a result, [CH] budgets into Fiscal Year 2008 are being dedicated to compliance with existing court orders and court-approved settlement agreements."³

H.R. 2933, "The Critical Habitat Reform Act of 2003" will address many of the problems arising over critical habitat. While it may not stop the recent "flood" of litigation, it will provide clear direction by more precisely defining how critical habitat is designated and by setting forth clearer criteria for considering and balancing economic impacts. Most significantly, the bill would especially advance the basic goal of the ESA -- *the conservation and eventual delisting of imperiled species* -- by linking the designation of critical habitat to the approval of recovery plans.

SUMMARY OF COMMENTS ON HR 2933

➤ **Section 2 - (Designation of Critical Habitat Concurrent with Approval of Recovery Plan Standard)**

This section would amend ESA section 4(a) to require the establishment of critical habitat concurrent with the approval of recovery plans under section 4(f). Present law, has often resulted in hastily prepared CH maps without adequately considering overall economic impacts as courts have recognized. Under HR 2933, CH designation will fit into its logical place in the Act - *at the time that the Services approve a recovery plan to eventually remove a species from the list*. There is little evidence that CH designations have aided in species recovery efforts. The only way to reverse this trend is to ensure that CH is integral to the development of a plan which provides "concise and measurable recovery criteria." Further, the bill would provide more discretion to designate critical habitat "to the maximum extent practicable, economically feasible and determinable" as compared to the current law ("maximum extent prudent or determinable"). HR 2933 would allow consideration of factors such as whether it is practicable or feasible to even designate critical habitat as part of the overall recovery planning effort. Section 2(a)(3)(B) also grants discretion not to designate CH if the Secretary determines that either a "substantially equivalent" Habitat Conservation Plan under section 10(a)(2) or a State or federal land conservation program is in place. This recognizes a common sense principle - *it is the substance of the management protections in place, not the formality of a CH designation, that should control a decision whether to designate CH*.

➤ **Section 5 – Clarification of Definition of Critical Habitat**

This Section would define key terms in the CH definition ("geographic area occupied by the species" as meaning "the specific area currently used by the species for essential behavioral patterns" and "essential to the conservation of the species" as "areas absolutely necessary and indispensable to conservation.") This language will help cure one of the problems in the CH process - despite the ESA's direction that CH should not encompass all actual or potential habitat for a species unless the Secretary specifically finds that such designation of unoccupied habitat is essential to the conservation of the species, the Services often appears to "sweep in" unoccupied habitat on the theory that species may

³ *The Designation of Critical Habitat Under the Endangered Species Act: Hearing Before the Subcomm. On Fisheries, Wildlife and Water of the Senate Comm. On Environment and Public Works, 108th Cong. (Apr. 10, 2003) (testimony of Craig Manson, Assistant Secretary of Fish and Wildlife and Parks, Department of Interior).*

have frequented the area at some point in the past and may do so in the future. Often such a conclusion is based on questionable or incomplete data. However, HR 2933's use of "absolutely necessary and indispensable to conservation" language in defining "essential" could be problematic. In the absence of biological criteria, officials at the Services could easily apply value judgments and sweep in larger areas than justified by objective field data - even including unoccupied areas that might some day acquire the Primary Constituent Elements (PCEs) for creation of suitable habitat. *While the language directs agency officials to restrict CH only to very limited "essential" areas, any legislation should provide objective criteria for both the decisionmakers and the public.*

➤ **Section 3 Bases For Determination**

This section would provide the Secretary with more complete and accurate information for determining under section 4(b) if the benefits of exclusion of an area would outweigh the benefits of designation. It would require consideration of information from local governments as well as direct and indirect economic impacts and costs. This language will greatly advance the goal of ensuring that CH decisions are based on the most accurate and up to date technical and economic information. The duty to "seek and consider, if available, information from local governments in the vicinity of the area, including local resource data and maps" should help since there is no consistent approach to seeking and utilizing local information in CH decisions. Many state natural resource agencies have excellent habitat inventory data that could greatly assist in CH decisions and help fill the data gaps. The bill's articulation of the range of scope of economic and cost data that should be considered in CH decisions highlights perhaps the most contentious CH issue and will be consistent with the Supreme Court's interpretation of the ESA in *Bennett v. Spear* that economic considerations are "mandatory" in the CH process. *In my judgment, the bill will lead to a more accurate assessment of the true economic impact of CH designations by looking beyond the mere costs of section 7 consultations and assessing all direct, indirect and cumulative costs including those costs associated with reports, surveys and analyses.* However, in my view, the economic factors in the bill must also be accompanied by FWS addressing the holding of the Fifth Circuit in *Sierra Club v. Norton* - namely, that the "adverse modification" standard under section 7 creates a much lower threshold of potential impacts than the section 7 "jeopardy" standard given that critical habitat is defined as areas "essential to the conservation of a listed species" whereas the focus of the jeopardy standard is the "survival" of the species.

➤ **Section 4- Contents of Notices Of Proposed Designation of Critical Habitat**

This section would provide a key tool for the public to access CH areas maps and data through requiring GIS maps and coordinates to be posted on the Department's Internet page. Internet data is often the primary source for the public to obtain information from the federal government. Under the current system, the public often cannot easily access CH data. Further, this change will also help facilitate meaningful public comment on proposed CH designation by providing the specific Internet page with the proposed designation. In this manner, land owners, local governments and the public will not only be able to better participate in the CH process but will also be able to make better land use decisions based on accurate and easily accessible GIS maps of the CH area.

DETAILED COMMENTS ON HR 2933

Section 2 - (Designation of Critical Habitat Concurrent with Approval of Recovery Plan Standard)

This section would amend section 4(a) to require the establishment of critical habitat concurrent with the approval of recovery plans under section 4 (f). Present law, requires critical habitat designation "concurrent with the listing of a species as endangered or threatened... to the maximum extent prudent or determinable." The Services' failure to designate critical habitat concurrent with the listing decisions has triggered numerous lawsuits imposing court ordered schedules for critical habitat actions. This has often resulted in hastily prepared and poorly drawn CH maps without adequately considering overall economic impacts, as the *New Mexico Cattle Growers*⁴ and other courts have recognized.

Under HR 2933, the CH designation will fit into its logical place in the Act - *at the time that the Services approve a recovery plan to eventually remove a species from the list*. Indeed, the ESA has not worked to recover very many species. A recent GAO report indicates that, as of March 2003, "The Service had delisted 25 threatened and endangered domestic species of the more than 1,200 listed and only 7 delistings resulted from recovery efforts."⁵ However, Critical Habitat has been designated for approximately one third of listed domestic species.⁶ Clearly, there is a disconnect between Critical Habitat designation and recovery of imperiled species. The only way to reverse this trend is to ensure that CH is integral to the development of recovery plans. In fact, as the GAO Report notes, "the Service and others, including the National Research Council, have recommended delaying designations until recovery plans are developed."⁷

Of course, it could be argued that, given the slow pace and extensive resources involved in recovery plans, such delay would leave important habitat unprotected for much longer period than present law allows. Yet, it could also be argued that poor CH designations to meet court imposed deadlines and that are later struck down actually do more harm than good for recovery because they often are done without the benefit of the detailed biological analysis and clear goals of an up-to-date plan, as seen in the court's decision in *Home Builders Ass'n of Northern California v. FWS (HBANC)*, overturning the critical habitat designation for the Whipsnake in Central California⁸ where the draft recovery plan was released in November 2002⁹ more than two years after the final CH designation on October 3, 2000.¹⁰ There, the court faulted the FWS for designating large areas of Alameda, San Joaquin, Santa Clara and Contra Costa Counties in central California as CH for the snake on several grounds including (1) failure to identify specific areas within the geographic area occupied by the snake with physical or biological features essential to species conservation; (2) failure to articulate a reasonable

⁴ *New Mexico Cattle Growers Ass'n v. USFWS*, Civ. No. 02-0461 LH/RHS, slip op. (D.N.M. 2003)

⁵ U.S. General Accounting Office. (Aug. 2003). *Endangered Species: Fish and Wildlife Service Uses Best Available Science to Make Listing Decision, but Additional Guidance Needed for Critical Habitat Designation* (Pub. No. GAO-03-803) at 25.

⁶ CRS Issue Brief for Congress, "Endangered Species : Difficult choices," Sept. 12, 2003 at CRS - 13

⁷ GAO Report at p. 28 and National Research Council' *Science and the Endangered Species Act*, Washington DC National Academy Press, 1995 at 71 - 73

⁸ *Home Builders Ass'n of Northern California v. U.S. Fish & Wildlife Service*, 268 F.Supp.2d. 1197 (E.D.Cal. 2003).

⁹ Draft Recovery Plan for Chaparral and Scrub Community Specific East of San Francisco Bay, California (Reg. 1, USFWS, Portland, Ore.) (Nov. 2002)

¹⁰ Vol. 65 Fed. Reg. 58933 (Oct. 3, 2000)

basis for including disputed areas despite information indicating that some of those lands were not, in fact, occupied by the snake; (3) including areas where available biological information indicated that essential physical or biological features did not exist; (4) failure to examine the economic effects of CH designation that were co-extensive with those of the listing of the snake as threatened; and, (5) failure to make a finding prior to designation that the area in question might require special management considerations and protections at some time in the future. In particular, the court held that "*if the Service has not determined at what point the protections of the ESA will no longer be necessary for the whipsnake, it cannot possibly identify the physical and biological features that are an indispensable part of bringing the snake to that point.*"¹¹

H.R. 2033 will help prevent the kind of "disconnect" cited by the *HBANC* court. Assuming sufficient funding in the budget, the linkage in HR 2933 will create incentives for more rapid development and revisions of recovery plans. The bill should also help facilitate more meaningful public comment by providing clear context for channeling public comment to address how critical habitat will advance specific recovery goals.

Further, the bill would provide more discretion to the Services to designate critical habitat "to the maximum extent practicable, economically feasible and determinable" as compared to the current law ("maximum extent prudent or determinable"). Under current law, courts have largely rejected FWS "prudent or determinable" arguments and imposed unworkable deadlines for designation. HR 2933 would allow the Secretary to consider a host of factors such as whether it is practicable or feasible to even designate critical habitat as part of the overall recovery planning effort. For example, in certain cases, the recovery goals could be achieved through other methods such as seen on coastal Long Island (Westhampton, NY) which has seen record piping plover numbers in due largely to local property owner stewardship.¹² In other cases, insufficient biological data may not even be available for such designation. HR 2933 would defer to the informed expertise of the Secretary in making these judgments.

Section 2(a)(3)(B) would also grant discretion not to designate CH if the Secretary determines that either a "substantially equivalent" Habitat Conservation Plan under section 10(a)(2) or a State or federal land conservation program is in place. This language recognizes a common sense principle - *it is the substance of the protections in place, not the formality of a CH designation, that should control a decision whether to designate CH.* The recent Mexican Spotted Owl decision is an example of one court elevating form over substance in mandating CH for large land areas in Arizona despite the existence of a comprehensive management plan.¹³ Congress has also recognized this principle under section 4(a)(3) of the Defense Authorizations Act of 2004 prohibiting the inclusion of military lands within CH if there is an Integrated Natural Resources Management Plan in place that provides substantial benefits to the species. Just as Congress included certain criteria for such a plan to be "substantially equivalent" so too

¹¹268 F. Supp 2d. at 1212.

¹² U.S. Fish & Wildlife Service, *Piping Plover: Charadrius Melodus*, available at <http://endangered.fws.gov/i/B69.html> (site visited on April 13, 2004). Following 1992 storms, a beach nourishment project was constructed with the approval of the FWS requiring the Village to implement predator control and other measures. The plover population then flourished to a level of 26 pairs along just two miles of the beach. In 1997, these plovers made up 14.4% of the breeding pairs located in the State of New York. See American Coastal Coalition "Beach Nourishment and the Coastal Environment".

¹³ *Center for Biological Diversity v. Norton*, 240 F.Supp 2d. 1090 (D.Az. 2003)

should Congress consider similar criteria here for sanctioning a decision not to designate.¹⁴

Section 5 – Clarification of Definition of Critical Habitat

This section would define certain key terms in the critical habitat definition ("geographic area occupied by the species" as meaning "the specific area currently used by the species for essential behavioral patterns" and "essential to the conservation of the species" as "areas absolutely necessary and indispensable to conservation.") This language will help cure one of the real problems in the CH process - despite the ESA's direction that CH should not encompass all actual or potential habitat for a species unless the Secretary specifically finds that such designation of unoccupied habitat is essential to the conservation of the species. The Services often appear to "sweep in" unoccupied habitat on the theory that species may have frequented the area at some point in the past and may do so in the future. Often such a conclusion is based on questionable data.¹⁵ This "blurs" the distinction between ordinary and critical habitat and diverts resources away from protecting those areas that are truly necessary for species recovery. Indeed, courts have held that the ESA envisions a narrow application of CH, reasoning that "even though more extensive habitat may be essential to maintain the species over the long term, critical habitat only includes the minimum amount of habitat needed to avoid short-term jeopardy or habitat in need of immediate intervention." *Northern Spotted Owl v. Lujan*.¹⁶ HR 2933 would force the Services to ensure that FWS has the most accurate and current data for CH designation because it must demonstrate that an area is "currently used" for "essential behavioral patterns." It would also force the Secretary to better justify including unoccupied habitat by requiring her to provide a detailed and specific biologically-based rationale for why inclusion is necessary for species recovery - all tied to the development of recovery plans.

However, HR 2933's use of "absolutely necessary and indispensable to conservation" language in defining "essential" could be problematic. Those terms are vague.¹⁷ In the absence of biological criteria, officials at the Services could very easily apply their own value judgments and sweep in larger areas than might be justified by objective field data - even including unoccupied areas that might some day acquire characteristics for creation of suitable habitat (known as Primary Constituent Elements (PCEs)). While the language certainly directs agency officials to focus on limited areas, it should be further modified to provide objective criteria for both the decision-makers and the public.

Section 3 Bases For Determination

This section would provide the Secretary with more complete and accurate information for determining under section 4(b) if the benefits of exclusion of an area would outweigh the benefits of designation. It would do so by requiring consideration of information from local governments as well as direct and indirect economic impacts and costs as a consequence of the designation. This language will greatly advance the goal of

¹⁴ National Defense Authorization Act for Fiscal Year 2004, H.R. 1588' 108th Cong. § 318 (P.L. 108-136) (2003).

¹⁵ See court's analysis in the Whipsnake case, *Home builders Association of Northern California v. FWS*' 268 F. Supp. 2d. 1197 (E.D. Cal. 2003)

¹⁶ 758 F. Supp. 621, 623 (W.D. Wash. 1991).

¹⁷ For example, "indispensable" is defined as "that cannot be dispensed with or neglected." (Webster's New World Dictionary).

ensuring that the CH decisions are based on the most accurate and up to date technical and economic information.

The duty to "seek and consider" if available, information from local governments in the vicinity of the area, including local resource data and maps should help cure a significant problem because currently there is no consistent approach to seeking and utilizing local information in CH decisions. As the recent GAO report on ESA listing and CH decisions stated, "Experts and others we spoke to explained that the amount of scientific information available on a species habitat needs often may be limited, affecting the Service's ability to adequately define the habitat area required."¹⁸ Local land use agencies often assemble good area-wide and site-specific natural resource data that could be of great use to the Services in defining habitat limits. Such data often is included in the development of County area-wide plans. Without question, use of such data will advance the scientific accuracy of CH designations, given the expert opinion reflected in the GAO Report about the general scarcity of habitat data. Moreover, the agencies should also seek out relevant state data as well. Many state natural resource agencies have excellent habitat inventory data that could greatly assist in CH decisions and help fill the data gaps that exist at the federal level.

The bill's articulation of the scope of economic and cost data that should be considered in CH decisions highlights perhaps the most contentious CH issue - a question that has been heavily litigated over the past few years. The Supreme Court in the *Bennett v. Spear* decision recognized that, in adopting the ESA, Congress not only declared an overall goal of species conservation, but also a mandate to pursue that goal without creating unnecessary economic impacts. As the Court stated, "*we think it readily apparent that another objective (if not, indeed, the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives.*"¹⁹ The *Bennett* court also stressed that under the ESA there is a "categorical requirement" to "*take into consideration the economic impact and any other relevant impact*" in designating CH.²⁰ Yet, historically the Service has essentially ignored this mandate by relying on the "incremental baseline" theory to minimize the economic impact of CH designation over listings. This approach has been strongly rejected by *New Mexico Cattle Growers*²¹ (NMCG) and other courts. The Service has attempted to comply with that decision in taking voluntary remands in several cases but has not issued any regulations or guidance addressing the true economic costs of CH designations. Indeed, a recent study of economic analyses since NMCG by Prof. Amy Sinden of Temple Law School²² found "in the vast majority of the thirty five or so critical habitat designations completed since the Cattle Growers opinion was issued, FWS has answered this question (that the costs of inclusion outweigh the benefits for any particular area of critical habitat) in the negative. In most instances, the basis for this conclusion has been FWS's finding that the 'critical habitat impacts' - or the cost figure derived from the original baseline - are 'not significant'." She further states that "in the

¹⁸ U.S. General Accounting Office. (Aug. 2003). *Endangered Species: Fish and Wildlife Service Uses Best Available Science to Make Listing Decisions, but Additional Guidance Needed for Critical Habitat Designation* (Pub. No. GAO-03-803) at 27.

¹⁹ 520 U.S. 154, 176 - 177 (1997)

²⁰ *Id.*

²¹ *New Mexico Cattle Growers Ass'n v. FWS* 248 F.3d 1277' 1280 (10th Cir. 2001).

²² Amy Sinden, *The Economics of Endangered Species: Why Less is More In the Economic Analysis of Critical Habitat Designations*, 28 Harv. Envtl. L. Rev. 129 (2004).

final analysis, FWS's economic analysis continues to turn on the same critical habitat baseline that the Tenth Circuit held invalid in *Cattle Growers*.²³ These findings give greater force to the GAO report's conclusion that, "it is imperative that (the FWS) clarify the role of Critical Habitat and develop guidance for how and when it should be designated and seek regulatory and/or legislative changes that may be necessary..."²⁴

In my judgment, the factors identified in the bill will lead to a more accurate assessment of the costs and economic impact of CH designations by looking beyond the mere costs of section 7 consultations and assessing all direct, indirect and cumulative costs including those costs associated with reports, surveys and analyses required to be undertaken as a consequence of the designation. As the recent study by Prof. David Sunding entitled "*The Economic Impacts of Critical Habitat Designation*" states "The economic effects of CHD go well beyond these costs (of development by making it more difficult to obtain necessary permits and to reduce the size of individual projects)...If land is set aside or if the scale of projects is reduced by the CHD there may well be market and regional effects from this designation."²⁵ Significantly, he notes that the Service "emphasizes only the most obvious costs, namely the direct out-of-pocket expenditures needed to complete the section 7 process, and ignores the potential for regional market impacts.... Thus, the Service seriously underestimates the impacts of critical habitat designation (in some cases by more than 90 percent) and also mischaracterizes their incidence."²⁶

However, in my view, the economic factors in the bill must also be accompanied by FWS addressing the holding of the Fifth Circuit in *Sierra Club v. Norton* – namely, that the "adverse modification" standard under section 7 creates a much lower threshold of potential impacts than the Section 7 "jeopardy" standard since critical habitat is defined as areas "essential to the conservation of a listed species" whereas the jeopardy standard focuses on the "survival" of the species. As the *Sierra Club* court stated, "Conservation is a much broader concept than mere survival."²⁷ Indeed, as Prof. Sinden suggests, "FWS should revise its definitions so as to give independent meaning to the concept of adverse modification." She notes that such a change would reflect the "real world" consequences of CH designations - that the direct and indirect costs for "adverse modification" exceeds the costs of avoiding "jeopardy." She even cites the example of where, after the court vacated the 731,000 acre CH designation for the endangered ferruginous pygmy-owl in the Tucson area but kept the listing in place, the "Corps and the EPA promptly responded by terminating Section 7 consultations with FWS on several major development projects within the former critical habitat area... Thus in this instance, critical habitat designation seems to have made a significant difference for the pygmy-owl, imposing added restrictions on development and, therefore, economic costs over and above those imposed by the listing."²⁸ This is but one example of the greater

²³ *Id.* at 163.

²⁴ U.S. General Accounting Office. (Aug. 2003). *Endangered Species: Fish and Wildlife Service Uses Best Available Science to Make Listing Decisions, but Additional Guidance Needed for Critical Habitat Designation* (Pub. No. GAO-03-803) at 36.

²⁵ David Sunding, *The Economic Impacts of Critical Habitat Designation*, Univ. of Cal. Giannini Foundation of Agricultural Economics, vol. 6 n. 6 at 7 (2003).

²⁶ *Id.* at 10.

²⁷ *Sierra Club v. U.S. Fish & Wildlife Service*, 245 F.3d 434, 441 (5th Cir. 2001).

²⁸ Amy Sinden, *The Economics of Endangered Species: Why Less is More In the Economic Analysis of Critical Habitat Designation*, 28 Harv. Envtl. L. Rev. 129, 164 (2004).

direct economic impacts flowing from CH designations, not to mention the indirect impacts.

Section 4- Contents of Notices Of Proposed Designation of Critical Habitat

This section will provide a key tool for the public to access CH areas maps and data through requiring GIS maps and coordinates to be posted on the Department's Internet page. Internet data is often the primary source for the public to obtain information from the federal government. Under the current system, the public often cannot easily access CH data. Under this amendment, it will be easier to access specific CH mapping data by simply accessing the Department's world wide web home page. Further, this change will also help facilitate meaningful public comment on proposed CH designation by providing the specific Internet page with the proposed designation. In this manner, land owners, local governments and the public will not only be able to better participate in the CH process but will also be able to make better land use decisions based on accurate and easily accessible GIS maps of the CH area.

Conclusion

HR 2933 provides an excellent vehicle to address perhaps the most contentious issue under the ESA today. The Critical Habitat debate has spurned extensive litigation and technical and policy scrutiny without any clear guidance from the executive branch. In my judgment, Congressional action is absolutely necessary to clarify the role of critical habitat in achieving the ultimate goal of the Act - the conservation and eventual recovery of imperiled species.

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