

## THE GOD SQUAD

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The Endangered Species Act (ESA) was adopted by Congress and signed by President Nixon in 1973. A little less than two years later, it became the center of a major controversy. In 1975, the snail darter was listed as an endangered species, and a population of the endangered fish was promptly discovered in the Little Tennessee River, smack dab in the middle of the site on which the Tellico Dam was being constructed by the Tennessee Valley Authority (TVA).

Environmental groups immediately sued the TVA, using the ESA as a lever to stop construction of the Tellico Dam. Eventually, the case went to the U.S. Supreme Court, and in June 1978, the Court upheld the injunction stopping the dam. In its finding that the ESA prohibited any federal action that would harm the fish, the Court looked to the plain meaning of the ESA. In unambiguous language, the law prohibited any federal action that would "jeopardize the continued existence . . . or result in the destruction or modification of habitat" of an endangered species. The Court's decision concluded that "Congress intended endangered species to be afforded the highest of priorities." To the delight of environmentalists and many local residents, the dam seemed dead. The \$100 million that had already been spent on construction would be lost to protect a two-inch-long bottom-dwelling fish.

Their judicial options now exhausted, proponents of the dam turned to Congress, asking that it change the law. It did. Within months, Congress amended the ESA to create a special "Exemptions Committee" since known as the "God Squad." This committee was statutorily empowered to declare

projects exempt from the strict requirements of the ESA. The God Squad has at least seven members: 1) the secretary of agriculture; 2) the secretary of the Army, on behalf of the Army Corps of Engineers, which is responsible for permitting dams; 3) the chairman of the Council of Economic Advisors; 4) the administrator of the Environmental Protection Agency; 5) the secretary of the interior; 6) the administrator of the National Oceanic and Atmospheric Administration; and 7) a representative, to be appointed by the president, from each state affected by the project in question.

The God Squad process was straightforward. The committee was charged with holding a hearing and determining whether a particular project should be exempted from the ESA. In order to grant the exemption, five of the seven committee members had to agree to each of the following four findings:

1. There are no reasonable and prudent alternatives to the proposed project or action.
2. The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest.
3. The action is of regional or national significance.
4. Neither the federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section.

In the end, again to the delight of environmentalists and many local residents, the God Squad determined that an exemption was not warranted for the Tellico Dam, largely because of the very unfavorable economics of the project. (The Army Corps of Engineers had ranked the site as one of the least favorable in the entire Tennessee valley system.) Not to be denied, dam proponents went back to Congress, which passed a special law specifically exempting the Tellico Dam project from federal environmental regulations.

## DISCUSSION

The large majority of expert commentators who have examined the Tellico case have concluded that it was a case of political power triumphing over both good economics and good ecology. The Army Corps did not want to build the dam. Local residents and national environmental groups opposed

it. Two very powerful senators promoted it—and got it. It is now known as well that the snail darter thrives in many other habitats: The dam did not threaten its continued existence.

The God Squad still exists but meets only infrequently. On average, it hears fewer than one appeal per year. In part, this is due to the way in which the amendments that created it were drafted, as only a major project can be brought before it. In part, it is a reflection of the infrequency with which officials who administer the ESA are willing to stop federal projects.

## QUESTIONS

Other cases in this volume that raise questions about or under the ESA are Case 5: Yellowstone Wolves, Case 10: The Delhi Sands Fly, and Case 11: Mr. Cone's Woodpeckers.

1. Suppose that economic considerations actually had favored the dam—that it would generate electricity at favorable costs, create local jobs, and so on. Suppose also that building the dam really would have eliminated the snail darter's last habitat. Under these suppositions, the God Squad probably would have approved the project. Should it have? Should economic factors be allowed to override the continued existence of a species? Would it matter whether the species was an insect, a fish, or a primate?
2. Look carefully at the list of officials who make up the God Squad. Does it include all the most relevant decision makers? Does it seem biased either toward or against upholding the ESA? If you had drafted the amendments creating the committee, would you have defined its membership differently?
3. All seven committee members are presidential appointees, although only one is chosen by the president for the specific purpose of serving on the God Squad. Should one person have so much influence over this process?
4. The development projects discussed in Case 10: The Delhi Sands Fly involve municipal, county, and state government actions but no federal government action. Accordingly, the projects cannot be brought to the God Squad. Is it fair that only the federal government can appeal for an exemption from ESA requirements?