States Housing Act of 1937, deregulate the public housing program and the program for rental housing assistance for low-income families, and increase community control over such programs, and for other purposes, had come to no resolution thereon.

FLOOD PREVENTION AND FAMILY PROTECTION ACT OF 1997

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 142 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 142

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 478) to amend the Endangered Species Act of 1973 to improve the ability of individuals and local, State, and Federal agencies to comply with that Act in building, operating, maintaining, or repairing flood control projects, facilities, or structures. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Resources. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Resources now printed in the bill. Each section of the committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Georgia [Mr. LINDER] is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentlewoman from New York [Ms. SLAUGHTER], pending which I yield myself such time as I might consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 142 is an open rule providing for consideration of H.R. 478, the Flood Prevention and Family Protection Act of 1997. This rule provides for 1 hour of general debate divided equally between the chairman and the ranking minority member of the Committee on Resources.

House Resolution 142 makes in order the Committee on Resources amendment in the nature of a substitute as an original bill for the purpose of amendment.

□ 1400

The rule also provides that the Committee on Resources amendment in the nature of a substitute shall be considered as read.

Mr. Speaker, this rule continues the approach of according priority in recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD. It is not a requirement, but I believe it will facilitate consideration of amendments.

Finally, House Resolution 142 provides for one motion to recommit with or without instructions, as is the right of the minority Members of the House.

Mr. Speaker, this is a standard open rule and the Rules Committee has ensured that all Members who wish to modify the bill through the amendment process have every opportunity to offer their amendments.

The legislation that this rule brings to the floor will amend the Endangered Species Act of 1973 to improve the ability of individuals, local, State, and Federal agencies to comply with the act in building, operating, maintaining, or repairing flood control projects, facilities, or structures. In short, H.R. 478 will simply allow flood control experts the ability to repair and maintain existing man-made flood control structures in order to help protect American citizens and their homes, businesses, and farms from the destruction of rising flood waters.

Let me be very clear. We all support species protection, and the Endangered Species Act has been instrumental in the preservation of a number of threatened species since becoming law. However, in some cases the programs of the Endangered Species Act have had an effect which is opposite the intent, and they often have a detrimental impact on the affected communities. It is also compromising human lives.

This is one such case in which we should make a small modification where human lives are at stake. Unfortunately, the rigidity of current law has placed obstacles in front of those who wish to repair and maintain flood control structures.

We heard testimony in the Committee on Rules of the opportunities to avoid flood tragedies that were lost because bureaucratic redtape delayed necessary levy repairs. Rather than taking the proactive endeavors that would repair levees, State and local officials were bogged down in studies and mitigation requirements that have resulted in levee failures, significant economic damage, and the loss of human life.

It is my hope that this modification in the Endangered Species Act will save lives, safeguard property, protect species whose habitats are near flood control structures, and significantly reduce the demand for massive annual appropriations for emergency relief.

H.R. 478 was favorably reported out of the Committee on Resources by the vote of 23 to 9, and the open rule was unanimously approved by the Committee on Rules. I urge my colleagues to support the rule so that we may proceed with general debate and consideration of the merits of this very important bill.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Georgia for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this open rule and urge my colleagues to support it so that all our alternatives and potential improvements to this legislation may be considered.

The bill made in order by the rule, however, concerns me a great deal. Even the name of the bill, ''the Flood Prevention and Family Protection Act'' is misleading. This legislation will neither prevent floods nor will it protect families from floodwater. Instead, it takes political advantage of the recent tragedies associated with flooding in various States and uses them to attack one of our Nation's landmark environmental laws, the Endangered Species Act.

This bill is overbroad, and would open a gaping hole in the Endangered Species Act. It would permanently exempt the reconstruction, operation, maintenance, and repair of all dams, hydroelectric facilities, levees, canals, and other water-related projects from the safeguards and protections of the Endangered Species Act, whether these projects are Federal or non-Federal. There are literally thousands of dams and other structures nationwide that have flood control as a purpose. Under this ill-advised legislation, almost all water-related projects, from repairing levees to operating massive hydroelectric facilities, would be exempt from the Endangered Species Act, meaning that no consultation whatsoever would be required regarding those projects' potential effects on endangered species or their habitats.

Moreover, the bill is unnecessary. The Endangered Species Act is already flexible enough to allow expedited review for improvements or upgrading to existing structures in impending emergencies. And, most important, the act already allows exemptions for the replacement and repair of public facilities in Presidentially declared disaster areas. And the Fish and Wildlife Service has already issued a policy statement clarifying that flood-fighting and levee repairs are automatically exempted from the Endangered Species Act if they are needed to save lives and property.

However, it is important for us to point out that the Endangered Species

Act did not cause floods. I believe that is an act of nature.

If there are burdens that are imposed by the Endangered Species Act on landowners, we should look for ways to reduce the burdens without compromising the protection of our vanishing wildlife. But legislation that reduces those burdens by eliminating the protection of endangered species is not reform; it is repeal.

I had hoped that after last year's disastrous attempts to gut our Nation's landmark environmental laws, that bills like H.R. 478 would be put to rest, but I was wrong. Now it appears that the American people will witness a more insidious repeat of the 104th Congress, one in which back-door attempts to chip away at environmental protections are brought to the floor under the guise of protecting families.

Mr. Speaker, while I do not oppose this open rule, I strongly urge my colleagues to defeat the bill that it makes in order.

Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. I thank the gentlewoman for yielding me this time.

Mr. Speaker, I have no disagreement with the rule, but I do strongly disagree with the direction that this bill takes in terms of its representations and action fundamentally undercutting seriously the Endangered Species Act, an act which should be reauthorized and dealt with on its merits as opposed to these single shots and, I might say, a broad attempt here today to suspend the application of the Endangered Species Act to a wide range of regular activities dealing with the repair, the reconstruction, the maintenance, and even the operation of various water projects.

Mr. Speaker, we are aware that when water projects are put forth and justified, they are justified on the basis of a series of different criteria and purposes. One of those purposes is flood protection, another might be for navigation, it may be for power production and certainly for recreation and the enhancement of the natural features, the wildlife and other flora and fauna that might be present in the project areas.

What we see here is that in the reconstruction, in this whole series of operation and other activities, that this would be completely suspended. We would not look at one of the significant factors that are involved in such project. Under the Endangered Species Act, there have literally been 25 to 40,000 consultations. This suspends any consultation with the Fish and Wildlife Service as to the aspects of that impacting the flora and fauna that may be endangered, may be threatened, or may be candidate species, we would not have a consultation with them, we would not have conferencing, and, finally, we would suspend the provision if they in fact do damage, what we call takings within the Endangered Species Act, would also be null and void.

Doing this under the auspices of somehow protecting safety and health and life, in fact I think that the supposition that somehow that the Endangered Species Act is responsible for the flooding and the loss of life in California has not been demonstrated. In the hearings on this matter, there was evidence that they had an 11-year project and that this segment was the last phase of the project that was not rehabbed and constructed for a whole variety of reasons, some of which were financing and other activities. There was a determination on how they would proceed with this. It is true that it does take time to discuss and to talk about the impacts of replacing or building flood control projects, but it hardly was the basis in which a natural phenomenon, a hydrological event in terms of rainfall, a hydrological-meteorological event, I might say, that heavy rainfall and snow melt which occurred and caused that particular catastrophic event. We have seen this happen over and over again recently by the House in recent years. Very often in fact if the environmental rules were followed with regard to how we treat watersheds and wetlands, we would see a lot less of this flooding and a lot more capacity of an area to absorb that type of a natural event that occurs. The effort to use the endangered species as the scapegoat and responsible for this problem is wrong. This measure being proposed is not just for emergency situations. This would be a permanent exemption by amending the Endangered Species Act, as I said, for a broad range of activities, for dredging, as an example, and that occurs in the Mississippi water basin, it occurs in Florida, all of those activities. The endangered species would be exempt in those instances, there would be no consultation, there would be no protection of the endangered or threatened species or candidate species in those instances.

Mr. Speaker, we will have an opportunity during the debate to vote for the Boehlert-Fazio amendment which will provide a temporary exemption which will sunset when the emergency is gone, which will deal with the aftermath, the floods, and other types of damage that may be done to water projects so that we are not under the necessity to have the rules and regulations when there is a legitimate emergency or crisis situation, we can deal with it. This bill, of course, in its current form, the administration has reported that they are going to veto it. All of the major environmental groups across this country are opposed to it.

Mr. Speaker, this harkens back to the last Congress when repeatedly we were on this floor with a multitude of environmental bills that attempted to repeal the bipartisan heritage of environmental policy that has been developed in the last 30 years. This is the first opportunity that Members have had to stand up and to say no to that type of head-in-the-sand operation with regard to environmental legislation. I hope Congress will say no today on the major bill and vote for the Fazio-Boehlert amendment which will be offered to make this a reasonable targeted attempt at policy with a sunset.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. ROGERS). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 415, nays 8, not voting 10, as follows:

[Roll No. 107]

YEAS—415

Abercrombie	Chabot	Everett
Ackerman	Chambliss	Ewing
Aderholt	Chenoweth	Farr
Allen	Christensen	Fattah
Archer	Clayton	Fawell
Armey	Clement	Fazio
Bachus	Clyburn	Flake
Baesler	Coble	Foglietta
Baker	Coburn	Foley
Baldacci	Collins	Forbes
Ballenger	Combest	Ford
Barcia	Condit	Fowler
Barr	Conyers	Fox
Barrett (NE)	Cook	Frank (MA)
Barrett (WI)	Cooksey	Franks (NJ)
Bartlett	Costello	Frelinghuysen
Barton	Coyne	Frost
Bass	Cramer	Gallegly
Bateman	Crane	Ganske
Bentsen	Crapo	Gekas
Bereuter	Cubin	Gephardt
Berman	Cummings	Gibbons
Berry	Cunningham	Gilchrest
Bilbray	Danner	Gillmor
Bilirakis	Davis (FL)	Gilman
Bishop	Davis (IL)	Gonzalez
Blagojevich	Davis (VA)	Goode
Bliley	Deal	Goodlatte
Blumenauer	DeGette	Goodling
Boehlert	Delahunt	Gordon
Boehner	DeLauro	Goss
Bonilla	DeLay	Graham
Bonior	Dellums	Granger
Bono	Deutsch	Green
Borski	Diaz-Balart	Greenwood
Boswell	Dickey	Gutierrez
Boucher	Dicks	Gutknecht
Boyd	Dingell	Hall (OH)
Brady	Dixon	Hall (TX)
Brown (CA)	Doggett	Hamilton
Brown (FL)	Dooley	Hansen
Brown (OH)	Doolittle	Harman
Bryant	Doyle	Hastert
Bunning	Dreier	Hastings (FL)
Burton	Duncan	Hastings (WA)
Buyer	Dunn	Hayworth
Callahan	Edwards	Hefley
Calvert	Ehlers	Hefner
Camp	Ehrlich	Herger
Campbell	Emerson	Hill
Canady	Engel	Hilleary
Cannon	English	Hilliard
Capps	Ensign	Hinojosa
Cardin	Eshoo	Hobson
Carson	Etheridge	Hoekstra
Castle	Evans	Holden

Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McDermott
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
Meehan
Meek
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Molinari
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schumer
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Tierney
Torres
Towns
Traficant
Turner
Upton
Velazquez
Visclosky
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (AK)
Young (FL)

NAYS—8

DeFazio
Filner
Furse
Hinchey
Kennedy (RI)
McNulty
Stabenow
Vento

NOT VOTING—10

Andrews
Becerra
Blunt
Burr
Clay
Cox
Gejdenson
Reyes
Schiff
Taylor (NC)

□ 1434

Mr. MCNULTY changed his vote from ''yea'' to ''nay.''

Mr. MARTINEZ changed his vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. ROGERS). Pursuant to House Resolution 142 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 478.

□ 1437

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 478) to amend the Endangered Species Act of 1973 to improve the ability of individuals and local, State, and Federal agencies to comply with that act in building, operating, maintaining, or repairing flood control projects, facilities, or structures, with Mr. HASTINGS of Washington in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California [Mr. POMBO] and the gentleman from California [Mr. MILLER] will each control 30 minutes.

The Chair recognizes the gentleman from California [Mr. POMBO].

Mr. POMBO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, at this time I would like to point out to the Members that we are beginning debate on what is a very important bill. It is very important to my district, it is very important to the Central Valley of California, but it is also very important to the Nation as a whole.

We are undertaking an effort to put some common sense into the maintenance, management of our flood control system. It is not a broad-based bill; it does not go after all of the problems that we would like to fix with the Endangered Species Act, but it does go after one specific problem that we have had, and that problem is that the routine maintenance of our levee system has not been allowed to continue, has not been allowed to happen on a timely basis because of the implementation of this act the way that it is being implemented in California today.

Mr. Chairman, I yield 4 minutes to the gentleman from Alaska [Mr. YOUNG], chairman of the full committee.

Mr. YOUNG of Alaska. Mr. Chairman, the bill before us is H.R. 478, the Flood Prevention and Family Protection Act of 1997.

The Committee on Resources reported the bill to the House on April 10 by 29 votes, including 6 Democratic votes.

As my colleagues know, in the last Congress I made the reauthorization and reform of the Endangered Species Act a top priority of my committee. I am one of the few Members, in fact probably the second Member of this whole body, who voted for the Endangered Species Act in 1973.

I have supported the goals of the Endangered Species Act throughout my 25 years in Congress. However, as an early supporter I can tell my colleagues that today, 24 years later, I am sorely disappointed in the way that this law, with its good goal, has been abused by environmentalists, both in and out of our Government, who use this law not to protect wildlife and endangered species, but to control the use of lands. I believe the professional environmentalists have taken an extreme position on this bill, favoring beetles and their habitat over the protection of human life, property, and environment.

May I stress that in California, the big flood break that started there is because we were trying to mitigate where the Corps of Engineers said it had to be fixed, an area that had beetle habitat. And after 6 years they finally said: Yes, you can repair. After $10 million, we can repair the levee next summer. Guess what? The levee broke, as the Corps said it would break. Right here, right here is the statement, 6 years later the levee did break. We lost three lives and millions of dollars of damage done to private property and the agricultural base of California. Guess what? We even lost the elderberry bush. So what did we accomplish? Nothing.

Now, I am going to suggest to my colleagues that H.R. 478 by the gentleman from California [Mr. POMBO] and the gentleman from California [Mr. HERGER] is a solution to a problem. All it does is give us the authority to in fact maintain levees, maintain levees. My colleagues will hear later on today about an amendment that says great things but does nothing. In fact, it makes it worse than it is right now.

So I am asking all of my colleagues in this room to keep in mind my position. First, the process, the committee process, and second, do we truly cherish human life, do we cherish the property, and should we put up roadblocks under an agency with a law that cherishes beetles over human life? We lost the elderberry bush, we lost lives, in fact, we lost great amounts of tax dollars.

The amendment later on to be offered by the gentleman from New York [Mr. BOEHLERT] says yes, we can repair the levee after the break or we can repair the levee or work on it if it is in imminent danger right now. No one defines who spells that out. Nor in fact will it give us an opportunity to maintain a levee prior to.

I come from an area in California, originally born there, and I went through four floods. I am going to suggest respectfully, for those that say that this bill is gutting the Endangered Species Act, I ask my colleagues, did they vote for the Endangered Species

Act? No. The gentleman from California [Mr. MILLER] did not vote for it; the gentleman from California [Mr. FARR] did not vote for it; the gentleman from New York [Mr. BOEHLERT] did not vote for it. I did.

I went through the hearing process. I knew what was intended. What we are trying to do is fix a small part of the Endangered Species Act and make it more logical and it can be applied to the protection of human life and property that must be protected. That is our responsibility.

Mr. Chairman, I urge a ''no'' vote on the amendment offered by the gentleman from New York [Mr. BOEHLERT] and very frankly a big ''yes'' vote on H.R. 478.

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. BOEHLERT].

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, I rise in strong opposition to this bill which would gut the Endangered Species Act. Make no mistake about it. The bill would, and I quote, exempt any maintenance, rehabilitation, repair, or replacement of a Federal or non-Federal flood control project, facility or structure, and it goes on and on.

□ 1445

H.R. 478 bears no resemblance to the benign, narrow bill its sponsors describe. H.R. 478 is advertised as a targeted response to an emergency situation. Yet, this bill would exempt from the Endangered Species Act any work at any existing flood control facility, even if there was no conceivable threat to public safety. Is a blanket exemption to the Endangered Species Act necessary to respond to or to prevent emergency? Obviously not.

H.R. 478 is advertised as a way to provide relief to communities that have suffered or will suffer from disasters. Yet, this bill is so broad that it would never be signed into law. Can a bill that never becomes law help a single person? Obviously not.

H.R. 478 is advertised as being pro-environment. Yet, this bill is vehemently opposed not only by every environmental group, but by such sportsmens' group as Trout, Unlimited, and by conservative wildlife management groups such as the International Association of Fish and Wildlife Associations. Would a pro-environment bill be opposed by the entire environmental community? Obviously not.

H.R. 478 is advertised as striking a balance between human needs and the preservation of wildlife, yet this bill would prevent any wildlife consideration from being taken into account in managing such areas as the Everglades or the Columbia River Basin, or the Colorado River. Can a bill simultaneously do away with wildlife considerations and provide any protection for endangered species? Obviously not.

The deficiencies in this bill are, indeed, glaringly obvious. We cannot ignore them simply because this bill is being proposed in the wake of tragic floods. This bill has little to do with responding to floods and everything to do with using them as political cover.

However, we must not be distracted by shouting ''flood'' in a crowded congressional Chamber. Does this mean that the Endangered Species Act does not need to be reformed? No. But today's debate is about emergency measures, not about comprehensive reform. Does this mean that Congress does not mean to make any changes to the Endangered Species Act in response to floods? No. But we respond with moderate, targeted, sensible solutions to real problems.

Mr. Chairman, we have to respond with moderate, targeted, sensible solutions to real problems, solutions that can get signed into law. I will offer a substitute that fits that description, a measure that will work as advertised.

Mr. Chairman, I urge my colleagues to read H.R. 478 to understand its expansive impact. We must not allow legitimate concerns about flooding to wash away 25 years of effort to preserve endangered species. We have better ways to protect human lives and property, the goal we all share. I ask my colleagues to oppose H.R. 478 and to support the Boehlert substitute.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from North Dakota [Mr. POMEROY].

Mr. POMEROY. Mr. Chairman, I come to the well as an expert in what can happen when levees are not sufficient to withstand raging flood waters. Three weeks ago the city of Grand Forks went under. We have a city of 50,000, the second largest city in my State, which sustained hundreds of millions of dollars of damage. In fact, the Federal Reserve Board of St. Paul has estimated that the damage in Grand Forks and through the Red River Valley, the property damage alone is $1.2 to $1.8 billion.

Mr. Chairman, I believe an ESA exemption sufficient to address levee repair, where necessary to protect human life or prevent substantial property damage, only makes very basic sense. This body must evaluate and weigh conflicting priorities on critical issues like the one before us. Clearly we have to come down on the side of protecting human life. We have to come down on the side of preventing major property damage. We have to protect levees. Let us pass this bill, as amended by the gentleman from California [Mr. CAMPBELL].

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. FARR].

Mr. FARR of California. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, we are here as lawmakers. I will not disagree with anything that has been said by the previous speakers, but I think they have failed to read the law that they are asking the Members to adopt. That law as it comes to the floor says that consultation conferencing is not required for any agency for the reconstruction, the operation, the maintaining or repairing of Federal or non-Federal flood control projects, facilities, or structures. Then it lists the reasons why. But it also says it will also apply when it consists of maintenance, and including operation of a facility in accordance with previously issued Federal license, permit, or other authorized law.

What this says is that you no longer have to consult or confer with people when you are going to build a dam, when you are going to operate a dam, when you are going to build any kind of structure. Why is this consultation important? It does not say just in floods. It says any time, any time. It could be just clear, beautiful, sunny weather; ignore the endangered species, ignore the species, because endangered species goes into looking at all species.

I happen to represent a lot of fishermen. Their fish depend on water quality and water flows. What this is saying is that the farming interests here or the interests of those who maintain levees should supersede the rights of those who benefit from the water.

That is not what this Congress wants to do. The problem with this bill is not the intent, because I think the intent is supportable. The problem with this bill is the way it has been drafted and comes to the floor. It makes a hole so wide that nobody in their right mind would want to have these broad exemptions.

Mr. Chairman, I have been through those floods that the gentleman from Alaska [Mr. YOUNG] talked about. I am a fifth generation Californian. I was through the floods of 1986 in the Sacramento Valley, and nobody raised this issue. There was as much water in 1986 as there was this year.

I was through the floods in 1995, in the Salinas Valley. Do you know what? People said the river was not dredged because of the Endangered Species Act, but then they went back to the record and could find no proof there was ever any issue there with the Fish and Wildlife Service of any endangered species.

The water has something to do with floods. I do not think we an ought to blame it all on the species, and some of those species we use for commercial purposes, particularly the fishermen. I stand in opposition to this bill, in support of a strong commercial fishery industry, in support of a balanced approach to problem-solving.

If Members remove this, I will tell them what is going to happen. People are going to enter the opposition through lawsuits. The consultation process is to avoid lawsuits. It is to essentially mitigate disputes before they happen. If we want to exempt that in emergency purposes, then do it for emergency purposes, not just for all time, forever.

Therefore, the bill in its present state is just too broad. It needs to be

amended. It needs at this time to be defeated.

Mr. POMBO. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon [Mr. SMITH], chairman of the Committee on Agriculture.

Mr. SMITH of Oregon. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, now I remember why I retired 2 years ago. It has to do with the exaggeration of this place, and at times, the exaggeration of the issues. It seems to me reasonable people ought to come to reasonable concerns about the past, at least, and learn from them.

In 1996 there was devastation in California with floods, and the Corps of Engineers and others said, come forward here, look at what we must do. We must repair and maintain these canals, or we are going to lose people, lives, and property. That did not occur for many of the reasons that we have heard from the gentleman from California [Mr. POMBO] and others.

What happened? We had the devastation of another flood. We will have another one in the future. So I suggest to all of us here, we ought to take a look at the past and learn from it, allow us to maintain these canals. Why do we not think about human life, as well as we think of snakes and beatles, especially if we have somebody telling us we have human life at stake here. Hey, who are we protecting in this body, anyway, if we have the choice? We are going to protect more endangered species by this bill than we do without it. Why? What happens when we have a tragic flood? It is like what happens when you have a tragic fire. It burns everything, floods destroy everything. How many endangered species do Members think were lost in this flood of 1996? I recommend much more, many, many more than we would have protected had they given us this bill.

This bill saves lives, it saves endangered species, and it saves property. I thought that is what we were all about.

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from Washington [Mr. DICKS].

Mr. DICKS. Mr. Chairman, I rise today in strong support of the Fazio-Boehlert amendment. I supported this amendment in the Committee on Appropriations, and I think this is a real commonsense amendment. Basically, what it says is that any activity that is needed for the repair of flood control projects is exempted from the consultation process of ESA. But this amendment goes far beyond that. It says we are going to exempt any project anywhere in the country that is involved in flood control. That is an overreach. It is not what we should be doing here today.

Mr. Chairman, I happen to believe, I am a strong believer in the Endangered Species Act, even though up in my State we have had terrible problems with the marbled murrelet, the northern spotted owl, and salmon. But what we have done is worked with the Fish and Wildlife Service. We have had consultation, and we were able to work out solutions that protect the environment, that protect species. The Fish and Wildlife Service has already, in California, exempted the work that has to be done to fix the levees and do the repairs. Mr. Chairman, the underlying bill, frankly, is unnecessary.

Second, what in essence we are doing here today with the Boehlert-Fazio amendment is putting into statute what the Fish and Wildlife Service has already done, and which this administration strongly supports. That is going out there and doing the fixes that are necessary to help the people that are hurt.

This amendment goes beyond that and says any flood control project in the entire country is exempted from the Endangered Species Act. I am ashamed of the other side who presents this, because they tried this same thing last year and they were defeated when many Republicans, Republicans who would support the Endangered Species Act, deserted and stood with those of us in the House who believe we should have some concern about species.

We are a specie. The health of the ecosystem is important not only to the species, but also to the humans. In our long-term best interest, I think we are in better shape when we work with the agencies and come up with rational solutions. So let us not overreach, let us not try to use the floods in California to gut the ESA, let us legislate today carefully and competently. Let us accept the Fazio-Boehlert amendment, which gets to the heart of what needs to be done, without overreaching.

Mr. POMBO. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. HERGER], the author of the bill.

□ 1500

Mr. HERGER. Mr. Chairman, today I wish to speak on behalf of my legislation, H.R. 478, the Flood Prevention and Family Protection Act of 1997. This legislation addresses a critical need that can be found in virtually every district in the United States. Not one area of this country does not possess some structure created for the sole purpose of flood control.

Levees and other flood control structures work well to preserve human life and animal habitat when they are properly designed, constructed, maintained, and repaired. If left unrepaired or improperly maintained, these structures have the potential of failing during flood events and imperiling human life and the environment.

This year alone, floods have devastated areas across the United States. Rising waters have taken lives and destroyed property in California, Nevada, Oregon, Washington, North Dakota, Minnesota, and the entire Ohio River Valley. Controlling these floods is a national responsibility that requires a national solution.

It amends the Endangered Species Act to allow flood experts to repair and maintain existing man-made flood control structures. The ESA was never intended to compromise human life, yet that is exactly what happens each time a levee or other needed flood control project is postponed or delayed due to extensive and costly regulations mandated by the ESA.

Since 1986, after devastating floods weakened levees along the Feather River in my northern California district, flood control officials near the community of Arboga, CA, attempted to repair and reconstruct their failing levee system. In 1990, a U.S. Army Corps of Engineers report determined repairs should occur on the Arboga levee as expeditiously as possible, stating, ''Loss of life is expected under existing conditions, without remedial repairs, for major flood events.''

Despite this acknowledgment, more than 6 years of mitigation passed before permission was finally granted to begin repairs in the summer of 1997. Unfortunately, it was too late for the residents of Arboga. Levee officials were required to spend 6 years, and on January 2, at 12:20 a.m., the levee broke in the very location predicted 7 years earlier.

We have a photo of that. As you can see by this photo, a levee failure is a traumatic event. Homes are lost, property is destroyed, and critical habitat is irreparably damaged. More importantly, human lives are put in jeopardy and often lost.

The levee break at Arboga took the lives of three people. The first was 75-year-old Claire Royal, a retired elementary school teacher who had taught school for 20 years at Far West Elementary School and Beal Air Force Base.

The second was 55-year-old grandmother Marian Anderson. Marian was also the wife of levee manager Gene Anderson, who, ironically, was out inspecting other portions of the levee when his wife was drowned.

The third person that drowned that night was World War II veteran Bill Nakagawa. Bill had served in World War II with the famed and distinguished Japanese-American 442d Combat Team of the U.S. Army in the European Theater. He was found in his home one-quarter mile away from the broken Arboga levee.

Thirty-two thousand other people were driven from their homes, 25,000 square miles of property and critical habitat were flooded, and more than 600 head of livestock, cows and horses, were drowned.

If H.R. 478 had been in place, this tragedy could have been avoided. Repairs would have been allowed to begin back in 1990 when the critical nature of the levee's condition was first noticed. Instead of proceeding directly with construction, however, officials were required to spend 6 years and more than $10 million on studies and delaying mitigation that was eventually washed away in the January 2 floods.

This example occurred in my district in northern California, but the same thing could happen virtually in every other district across the United States. All it takes is a flood control structure and a listed species. Necessary and require repairs and maintenance will be delayed.

I urge Members' support of this legislation.

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. SAXTON].

(Mr. SAXTON asked and was given permission to revise and extend his remarks.)

Mr. SAXTON. Mr. Chairman, I thank the gentleman from California for yielding me the time.

Mr. Chairman, I think all of the Members in the Chamber to one extent or another believe in the provisions of the Endangered Species Act. Whether you think that it is exactly right or whether you think it is mostly right, most of us do agree that there is a need to protect certain species that are either threatened or endangered.

The problem with the bill of the gentleman from California [Mr. HERGER] is that those projects which it exempts tend to be where many endangered species live. That creates a very difficult situation for those of us who would like to maintain a balance in the endangered species area, simply because the exempted projects and the exempted parcels of land are the home for many of these species. So that makes it very difficult.

I know my good friend, the gentleman from California [Mr. CAMPBELL], has some language which he will offer later in the form of an amendment which moves toward changing the situation somewhat. He adds the language that says that the exemption will be in effect where necessary to protect human life and to prevent the substantial risk of serious property damage.

I wish I could support the Campbell amendment. However, by the very nature of the location of flood control projects, they are built to protect from the risk of substantial damage to property, life, and limb. And so I would suggest to my friend, the gentleman from California [Mr. CAMPBELL], that his language simply maintains the status quo as contained in the Herger bill and does not really have the effect that I know he intends it to have.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. SAXTON. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, my amendment would apply to the broadest part of the Herger-Pombo bill. What it would do is to take it from, I think, a very broad and too broad expansion down to the specific case, ''where necessary to protect human life or to prevent the substantial risk of serious property damage.'' In that sense I believe it is really quite limiting. I confess, although it might have been because I did not hear all of the gentleman, though I tried, that I do not understand his point, in what sense my amendment was inadequate.

Mr. SAXTON. I contend, Mr. Chairman, that flood control projects are built only where there is a risk of significant loss of property, life, or limb. Therefore, the gentleman, by exempting only those projects which fall under that category, by nature of the definition exempts all of the projects that the gentleman from California [Mr. POMBO] exempts in his original bill.

Mr. POMBO. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

(Mr. TAUZIN asked and was given permission to revise and extend his remarks.)

Mr. TAUZIN. Mr. Chairman, I represent the State of Louisiana, which drains about 43 States. The district I represent sees the water coming through every year. Every year the water in the Mississippi River alone rises above the level of the inhabitants of the city of New Orleans by about 17 feet, 17 feet below sea level. In the case of a hard flood, hurricane conditions, we are told we could expect 27 feet of water in New Orleans if we do not protect our levees.

The choice you will face today will be a choice between making sure that the very precious funds available for the reconstruction, maintenance, and repair of existing levees and facilities designed to protect human lives, that those precious funds are in fact spent to do that. Or the choice will be to adopt the California solution.

This is the California problem. This is the set of regulations that levee maintenance people have to undergo in California in order to repair a levee. Testimony after testimony was heard at our committee of levee managers, both those who represent the State and local levee boards and those on Federal projects, who tell us that time and time again the precious dollars available to repair those levees had to be spent on mitigation projects demanded by the Fish and Wildlife Service and the Interior Department, projects that took those precious dollars away and, more important, took the time away from those necessary repairs. The gentleman from California [Mr. HERGER] read us the results: human lives lost, massive flooding.

Let me put it as clearly as I can to my colleagues. We will have a choice between an amendment that seeks to give America the California problem, the Boehlert amendment will simply codify this Federal solution in California and give it to Louisiana and the rest of the Nation, or a choice to say very simply that endangered species, yes, ought to be protected but not with levee board funds, not with funds designed to repair and rebuild and fit levees to protect human lives.

Whether we are for protecting animals and plants and the endangered species or not, and I think we all are, we ought to be for the proposition that when precious dollars and time is available to save precious human lives, that it ought not be spent on other worthwhile things. That money ought to go to build levees and repair them and keep people safe. If we vote today to put this California problem in place for the rest of America, we will be condemning citizens of this country to death and property to destruction all over this country.

We in Louisiana depend upon levees. Every Member of our delegation, Democrat and Republican, has signed onto the Pombo bill. Every member of our delegation, Democrat and Republican, urban and rural, understands how critical maintenance of levee construction projects, maintenance of levee facilities are to the health and safety of our communities.

The city of New Orleans today is protected by something called a Bonne Carre spillway. It is a set of gates that open up water from the Mississippi River and spills it out into Lake Pontchartrain. Do we like doing that to the lake? No. We do it to keep the water levels down because in New Orleans today, if you go to our fair city, you will see ships plying the Mississippi above the level that people live. We need to pass the Pombo bill, defeat the Boehlert amendment.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon [Mr. BLUMENAUER].

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentleman's courtesy. I do agree with my colleague the gentleman from Oregon [Mr. SMITH], that we ought to learn from the past. But I am afraid that debate here today is largely beside the point.

First and foremost, the bill today addresses something that simply is not a problem. The information I have received from my State, and we know something about flooding; if it is not wet, if we are not under water, we are wet in Oregon. We have had lots of flooding. But we have had our experience that the opportunities under the ESA right now, the emergency consultation, do provide adequate provisions in dealing with problems. To the extent that we think that it needs clarification, the amendment offered by the gentleman from New York [Mr. BOEHLERT] and the gentleman from California [Mr. FAZIO] here will address that.

But I think the arguments that we are hearing today are reinforcing a tragic notion that somehow we are going to engineer our way out of the flooding. We have spent billions of dollars treating our water systems as machines and there is the notion, the false notion, that somehow by passing more levee construction, more money, that we are going to stop it. The fact is there are only three things that we should do to try and learn from the past, that will make a difference.

First and foremost, we should stop having people build in harm's way and help move people who are there out, rather than spending money time and time again to rebuild where God does not want them.

Second, we have to stop relying on building new dams and levees which simply make the problem worse, move the problem downstream. Why has the State of California had three floods of the century over the last 111 years? It is not getting better after $38 billion.

And, last but not least, when we have paved 53 percent of the wetlands in the lower 48 States, you do not have any place for this water to go. It still comes down and we have floods. For heaven's sake, people who have simplistic ideas that we can go ahead and continue to pave our wetlands are sadly mistaken. Without changes in our thinking, we are going to continue to be wasting lives and money and coming back year after year with these sad, sad presentations.

I urge adoption of the amendment offered by the gentlemen from New York and California.

□ 1515

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. DOOLEY].

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, I rise in support of the Pombo-Herger legislation and in opposition to the Fazio-Boehlert amendment.

I believe very strongly that we have an opportunity to make a responsible modification to our Endangered Species Act to ensure that we can establish that balance in terms of how do we protect the health and safety of people and the economic livelihood of many of our communities, at the same time not unduly endangering many endangered species.

A lot of people have to keep in mind that a lot of these flood control projects and levies were established, they had to go through a NEPA process, had to be developed in accordance with the Endangered Species Act, had to provide mitigation at that time. And now all too often we are finding for them to do the ongoing maintenance of these projects is that Fish and Wildlife, unfortunately, is asking them for additional mitigation just to maintain the projects that were built according to the NEPA and according to our environmental laws. What we are asking here is just, I think, a responsible step forward.

I would also point out that I think this is actually going to result in environmental enhancement, because if we have a flood control district and a levy district that knows that they can maintain their levies, that they will not be threatened if they allow for habitat to be established, they do not have that incentive to go out and sterilize these.

I think the Pombo-Herger legislation is a responsible step forward, and I urge its passage.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from Colorado [Ms. DEGETTE].

Ms. DEGETTE. Mr. Chairman, I rise today in opposition to H.R. 478, a bill which would gut the Endangered Species Act and which would be disastrous to imperiled species and ecosystems.

It is inconceivable to me how blame has been placed so readily and so callously on the Endangered Species Act for causing and aggravating the recent flooding in California. This is simply not the case. Rather, a shortage of funds, design flaws, and water management practices all contributed to this flood damage.

This bill exempts the reconstruction, operation, maintenance, repair, rehabilitation or replacement of any flood control facility from the requirement to protect endangered species at any time. Any activity related to a flood control facility, such as dredging, would be exempted from these requirements.

It is here, however, that the legislation's true effect is revealed. The ESA exemption to flood control facilities is permanent. As a result, the exemption would not have to be examined within the wider context of the total ESA provisions.

Currently, protection for endangered species is distributed equally among all parties which impact that species. This bill would remove flood control activities from the responsibility and shift it to others. That is why I support the substitute amendment. I urge my colleagues to do so, and I urge them to oppose this inaptly named legislation.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Chairman, I want to engage the gentleman in a colloquy to clarify the intent of the amendment to section 7(A)(5)(B) and sections 9(A)(3)(B), which allows maintenance, rehabilitation, repair, or replacement of a Federal or non-Federal flood control facility, including operation of the facility in accordance with a previously issued Federal license, permit or other authorization.

Would it be the gentleman's understanding that these types of facilities are operating under authorizations which were granted after passing environmental reviews necessary at the time of the project, facility or the structure was built?

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, I would say to the gentleman that, yes, that is my understanding.

Mr. LEWIS of California. With regard to that same language, is it the gentleman's intent that when these licenses or permits expire these types of facilities will be fully subject to the provisions of the Endangered Species Act just as any other similar facility seeking a license, permit or authorization?

Mr. POMBO. Yes, that is my intent.

Mr. LEWIS of California. With regard to the reconstruction, repair, operation and maintenance of flood control facilities, is it the gentleman's understanding that replacement work would not extend beyond the physical footprint of the original project, facility or structure?

Mr. POMBO. Yes, that is my intent.

Mr. LEWIS of California. Mr. Chairman, I appreciate the gentleman clarifying that.

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. FAZIO].

Mr. FAZIO of California. Mr. Chairman, I thank my colleague for yielding me this time.

After the disastrous floods of this winter I came back to Congress not only intent on finding the funds in the supplemental appropriations bill to deal with the needs of the constituents that those of us in the Central Valley of California represent, but to deal with the Endangered Species Act so that we could put the system, the complex flood control system, back in place by next winter.

I took an approach which was consistent with the advice I was given from the chairman of the Committee on Appropriations, the gentleman from Louisiana [Mr. LIVINGSTON], and the chairman of the Subcommittee on Energy and Water Development, the gentleman from Pennsylvania [Mr. MCDADE], and that was to come up with an amendment that would not be controversial and in some way impede the passage of the supplemental appropriations bill.

We drafted language that dealt with the emergency up through the end of next calendar year and provided, in addition, for special procedures if imminent danger to life and property were to occur. That language was adopted unanimously by the Committee on Appropriations after some fine-tuning. It was expanded to cover the entire country at the request of the gentleman from Louisiana [Mr. TAUZIN] and the gentleman from Mississippi [Mr. PARKER].

I now find we are having a vote on a separate standing authorization bill, which I believe is really a vote on what language will ultimately be added to the appropriations supplemental when it finally comes to the floor, probably next week. There is no real hope of this separate bill going to the President.

The language that the gentleman from California [Mr. POMBO] is advocating has explicitly been opposed by the administration and a veto has been threatened. Just today, after a number of weeks of conversation, we were told they would accept the language that the Committee on Appropriations passed unanimously that the gentleman from New York and I bring forward today.

I want to deal with the art of the possible. I want to deal with the immediate problem that our constituents face, and that is to get the flood control system they have helped pay for over a long period of time—along with the Federal taxpayer—back to a point where they can feel protected.

I understand the need to thoroughly review the Endangered Species Act. I would like to see it brought to the floor in totality. I would like to see us work our will on changes that are required in it, not just single-shot changes like this one. I hope that can be accomplished in this Congress. But I do not want this very hot issue, where emotions are obviously boiling over, to impede the approach that I have taken, which will be signed as part of the supplemental, which will help the people that I represent just as the two gentlemen from California, Mr. POMBO and Mr. HERGER, and others do.

If this Boehlert amendment that has come from the Committee on Appropriations, which it passed unanimously, can pass this floor, it will be signed into law. But if the Pombo bill that is before us today is somehow to survive this process and go to the President as part of the supplemental appropriations effort it will bring down the entire bill; not a result that helps the people of California who have been victimized by this flooding. I, therefore, support the Boehlert substitute.

Mr. POMBO. Mr. Chairman, I yield 1 minute and 15 seconds to the gentleman from California [Mr. RADANOVICH].

Mr. RADANOVICH. Mr. Chairman, I rise to support of H.R. 478, the Flood Prevention and Family Protection Act of 1997.

Flood control is a necessity, not a luxury, and unfortunately opponents of the measure see the world much differently. A recent letter from the environmental lobby, which is opposed to this legislation, stated:

> H.R. 478 would give dam-managing agencies * * * carte blanche to destroy aquatic wildlife in the name of flood control.

Does anybody really believe this is what these local decisionmakers have in mind? This kind of extreme rhetoric is a symptom of the controversy surrounding the current environmental debate. If we are ever going to address today's environmental problems, we can no longer rely on yesterday's solutions.

The proponents of the status quo, I believe, are less concerned about protecting endangered species than they are in giving up Federal control of environmental decisionmaking to local authorities. How many species survived the recent levy washout in California? How much habitat was destroyed? How many people died?

The proponents of H.R. 478 are not opposed to species protection; they are simply opposed to policies that undermine our ability to protect people from the dangers of floods.

This bill makes a commonsense change in the Endangered Species Act to help prevent flooding before it occurs, not just in dealing with it after. I urge my colleagues to support H.R. 478.

Mr. MILLER of California. Mr. Chairman, I yield 4 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Chairman, I thank the gentleman for yieldin me this time.

I would like to list a number of things here. Everyone here wants to save the lives of people, and everyone here wants to put people out of harm's way, and I would assume that everyone here wants to understand the natural mechanics of the flow of water and the mechanics of creation, how things work.

No. 1, this area in California is already exempted as a result of section 7 of the Endangered Species Act from consultation. This area declared a disaster is exempted from the Endangered Species Act.

No. 2, the amendment of the gentleman from New York, [Mr. BOEHLERT], goes a little bit further than already existing law to ensure that repairs are made at least by December 1998, and it can be extended beyond that.

I am going to amend the Boehlert substitute by ensuring that we have some sense of understanding as far as what maintenance means and the cost of mitigation.

Now, the present bill on the floor, whether it is the present bill or whether the present bill is amended by the gentleman from California, [Mr. CAMPBELL], exempts in a blanket manner the Corps of Engineers from ESA consideration in the following areas: Dams, reservoirs, erosion control, beach replenishment, levies, dikes, walls, diversion channels, channel operations, draining of agricultural lands, you name it, the list goes on and on and on.

Now, the issue here is an emergency. We are dealing with an emergency with the present law. With the Boehlert amendment we will ensure that what we see here will be repaired. But I want my colleagues to take a close look at what they see here. We see levies, we see when levies fail they cause great problems in the other picture.

The problem is, as far as I am concerned, and we are missing the mark in this debate, is that we are dealing with, at least, a 500-year-old engineering design. That design is called levies. Most of the levies in the area of California were built 100 years ago. In 1997, we have better engineering skills. Levies, by their very nature, increase the level of the water and increase the speed of the water. Levies exacerbate upstream and downstream flooding. Levies fail because they conflict rather than conform to the natural processes of the water.

A gentleman earlier, from Oregon, said that if we had more areas where the water could meander into, more wetlands, then we might have nuisance flooding every once in a while, but the problem is when we channel that water and speed up that water and we raise the level of that water, not only do we have flooding, we have major flooding. And not only do we have major flooding with this faulty design of levies, we have human misery.

So, it is about time that we have some sense of understanding as to the construction of these levies. My fear is that if we pass the bill in its present form or even with the Campbell amendment, we will once again give people the false impression that levies will protect their lives and property, and that simply is not true.

Levies, by their very nature, the design of levies are going to fail, whether they have been maintained or whether they were some of the best levies and they met all the standards. I think if we look at the levies in this picture they look like they are pretty well maintained, the grass is cut, we do not see a lot of bushes. Whether this was the best maintained levy in that district of California or whether it was the worst maintained levy in that district of California, levies are designed to fail, and if we bring the people of this country some tranquil sense that we are going to protect them, this bill will not do it.

□ 1530

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL. I thank the gentleman from California [Mr. POMBO] for yielding time.

The bill that was offered before us will be amended in a manner that has been described by a number of speakers. I would like to take a moment and say what my amendment does. It limits the Herger-Pombo bill to those existing projects, so it is not for all new projects as has been said; it has to be for existing projects only, that previously have received a Federal license, and then this qualification: ''where necessary to protect human life or to prevent the substantial risk of serious property damage.''

I do not know what sort of a project my colleague would like to delay where its purpose is to protect human life and to prevent substantial risk of serious property damage. That is a very narrowing amendment. It makes Herger-Pombo much more constrained to a real case of need. I just cannot see who would be opposed to letting a project go ahead where it fits those criteria, necessary to protect human life, or to prevent the substantial risk of serious property damage.

Finally, on the Boehlert amendment, which we will vote on in a bit, bear in mind that that amendment only applies to imminent threats. Oftentimes we know the river is going to rise, but it is not rising yet. For that reason we need Herger-Pombo as amended by my amendment.

Mr. MILLER of California. Mr. Chairman, I yield 1 minute to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Chairman, H.R. 478 is an extreme and environmentally dangerous bill that expands the waiver of the Endangered Species Act requirements to a broad range of non-emergency situations. This bill would allow for an ESA waiver for the daily routine maintenance and repair of any existing flood project anywhere in the Nation. This exemption would apply to all projects, Federal and non-Federal, at any time regardless of flood threat.

H.R. 478 would subject large tracts of land to environmental hazards and damage by denying them the protection of the ESA. The Boehlert-Fazio substitute is a bipartisan substitute that is in response to this excessive measure. The substitute allows for ESA exemptions to true emergencies including prospective emergencies. H.R. 478 proposes extreme sweeping changes to the ESA legislation, changes which I cannot endorse. The Boehlert-Fazio substitute allows us to address emergency repairs and gives us the opportunity to debate broader ESA issues at a later date. I am very much in support of the Boehlert-Fazio substitute for this reason.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. THORNBERRY].

Mr. THORNBERRY. Mr. Chairman, there are lots of Americans who work hard every day to make ends meet and spend their weekends with their kids or work in the yard who are searching for a little bit of common sense to come into government programs. I do not know if there is a clearer example of where a dose of common sense is needed than in this bill. There are levees that need to be fixed. Many of them will not be fixed without this bill, at least not fixed in time to stop the devastation. If they are not fixed, then not only are people's homes destroyed or lives lost, but the habitat is also destroyed of the animals and plants that we are trying to protect.

The base bill, I think, is the least that we can do that will make a difference in people's lives. If we wait under the Boehlert amendment until the water comes rolling down the canyon, it is too late at that point to do anything to save them. It makes sense to maintain the levees to prevent the flooding, to begin with, rather than wait until it gets into that situation and then try to run in and come to the rescue. This is a dose of common sense, and it is the least that we can do to save this badly flawed legislation.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from Oregon [Ms. FURSE].

Ms. FURSE. Mr. Chairman, I am from a State that was very hard hit by flooding this past winter. As a result, I am very concerned about anything that might be responsible for costly damages my constituents had experienced. So I called Oregon's Governor's office. I asked him to find out whether the Endangered Species Act had in any way contributed to the flooding in Oregon. The answer was a resounding no.

Let me read from a letter from the director of Oregon's Emergency Management Department, quote:

> As the director of the State's emergency management agency, I want to let you know that consideration of endangered species has not caused unreasonable delays in implementing flood recovery in Oregon.

She went on to say:

> The ESA includes an emergency consultation process. Consultation by telephone usually allows emergency response to proceed with the least disruptive action.

In other words, the Endangered Species Act does not cause or exacerbate flood damages in my State. The bill is not needed.

But there is something worse about this bill. Not only will it not help prevent flood damages, it will cause a huge unintended consequence. That consequence is further loss of fishing jobs in our beleaguered sports and commercial salmon fishing industry.

Let me read from the Pacific Coast Federation of Fishermen's Association, that said about H.R. 478: ''The ESA is a necessary tool for West Coast salmon recovery. A blanket exemption of this sort would lead to widespread extinction of large portions of the Pacific salmon fishery industry. Such a categorical exemption,'' as is in this bill, ''grants a license to kill this Nation's valuable aquatic resources.''

They go on to say that this is hidden ostensibly in the name of flood control. Mr. Chairman, I want to tell my colleagues that this license to kill will kill jobs in my State. It will kill jobs on the West Coast of this country. It is a bad bill. It is hiding the Endangered Species Act under this emergency. It is not a flood control bill. Vote ''no'' on H.R. 478.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentlewoman from Idaho [Mrs. CHENOWETH].

Mrs. CHENOWETH. I thank the gentleman from California for yielding me time.

Mr. Chairman, debates like this make me wonder what we are doing here. I thought this was a House that put together laws that represented the people. I thought there was a phrase once said that laws were to be made of the people, by the people, and for the people. It seems that this debate is trying to tilt to laws of the beetle, by the beetle, and for the beetle. That is the debate, Mr. Chairman. Are we going to expend all kinds of resources and human energy to protect a beetle, or are we going to remember the people in this debate? Are we going to remember Bill Nakagawa, an 81-year-old very distinguished World War II veteran and hero who risked his life to fight for life of the humans, property of the humans, and Bill Nakagawa died in this flood in California.

Mr. Chairman, it is time we get our priorities straight in this debate.

Mr. POMBO. Mr. Chairman, I yield 1½ minutes to the gentleman from Nevada [Mr. GIBBONS].

(Mr. GIBBONS asked and was given permission to revise and extend his remarks.)

Mr. GIBBONS. Mr. Chairman, I want to join my colleagues in strong support for H.R. 478. This bill is probably the most commonsense solution and needed piece of legislation that I have encountered in the 105th Congress.

Earlier this year, several States experienced severe flooding, including my State, the State of Nevada. Many people's lives and futures were put in jeopardy or lost because levees did not hold. The underlying question behind this is why. The reason is clear. Several of the levees were not adequately maintained or repaired to properly contain the water because of these very same governmental regulations.

H.R. 478 applies commonsense solutions to the Endangered Species Act when the act affects flood control projects. Let me state that the current law only allows the waiver of the ESA after a disaster happens. H.R. 478 amends the law to allow maintenance activities on flood control facilities to take place before a disaster strikes, not afterward.

Mr. Chairman, human life cannot be balanced against the life of a beetle or any other non-human species.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from Montana [Mr. HILL].

Mr. HILL. I thank the gentleman for yielding this time.

Mr. Chairman, the debate has been a little bit confusing here, but, simply stated, H.R. 478 places protection as a priority above redtape. When confronted with the need to make repairs to our Nation's flood control structures, delays can be fatal to people, to wildlife, and to the environment. Flood control structures work to preserve human life and animal habitat. It is important to everyone that they are properly designed, properly constructed, and maintained and repaired. If they fail when left unrepaired or improperly maintained, people, habitat, and the environment all lose.

Mr. Chairman, this bill is a commonsense approach to maintaining existing flood control facilities when there is a direct threat to public safety and human life. I urge my colleagues to support it.

Mr. POMBO. Mr. Chairman, I yield 1¾ minutes to the gentlewoman from Missouri [Mrs. EMERSON].

Mrs. EMERSON. Mr. Chairman, the eastern border of my district has 200 miles of Mississippi River frontage. I can tell my colleagues that when the Mississippi River floods, the wildlife head to our levees. If we are going to talk about truly protecting wildlife, then I think the best way to do that is to have a levee that is structurally sound, well-maintained and able to withstand the extraordinary floods that we have had in the past few years.

Our levee boards, our drainage districts that work on a daily basis to maintain these levees, who touch and see and feel and who actually have some experience with the levees, oppose the Boehlert amendment and support H.R. 478. These folks have to face

the daily threat of the Department of Interior and the EPA swooping down on them because they disturbed wildlife while doing some sort of general maintenance work, all in the name of endangered species. If we cannot do preventative maintenance, then the levees fail and we do not protect anything. As a matter of fact, our Department of Conservation every 2 years has to spend $1 million to put the wildlife habitat back together. If the levees were intact, that would not be the case. That is just taxpayer dollars. If we cannot do preventative maintenance, the levees will fail, we will not protect anything, we will not save the communities, the people in those communities or the birds, the fish and the beetles. We have to be able to perform maintenance that prevents levee failures. As the gentleman from Nevada [Mr. GIBBONS] says, current ESA provisions allow repairs only after natural disasters have begun to destroy human life and property and only after the President declares this a Federal disaster area.

I urge support for H.R. 478. Let us put people first for a change.

Mr. POMBO. Mr. Chairman, I yield 1½ minutes to the gentleman from Pennsylvania [Mr. PETERSON].

Mr. PETERSON of Pennsylvania. Mr. Chairman, we have heard again and again today that H.R. 478 guts the Endangered Species Act. Is that true? Does it open the floodgates? I have listened to the evidence and the answer is no, no, no.

The Endangered Species Act is very important when we build levees, when we build dams, how we locate them, how it is going to affect creatures and people and protect people. But today we just want to maintain them. We want to keep them working so they perform what they were built to do.

The Endangered Species Act bureaucracy has failed us with endless delays. It has not worked. Does it open the door? No, we only can use it when there is critical imminent threat to public health and safety or to address catastrophic events, to make sure that our structures work.

I have listened to this debate carefully. There has been no evidence given that we are gutting the Endangered Species Act or endangering it in any way. It is a common sense bill brought about by the failure of the bureaucracy that has enforced the Endangered Species Act to prevent us from just repairing the structures that have been built to protect this country.

Mr. MILLER of California. Mr. Chairman, I yield 30 seconds to the gentleman from Washington [Mr. DICKS].

Mr. DICKS. Mr. Chairman, I have been on the Interior appropriations subcommittee for 21 years and when the new Republican majority took over, one of the first things they did was cut out the money for the work that is necessary under the Endangered Species Act.

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It was gutted in our committee, and the reason they are having difficulty in getting consultation done and other work done on the ESA is because they cut out the money for the bill, the money for the work.

Now if my colleagues are truly sincere about what they are trying to do today, they would offer an amendment to put the money back in so they could do the consultation.

Mr. POMBO. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. CONDIT].

Mr. CONDIT. Mr. Chairman, I rise in support of the Pombo bill. Unfortunately, in the areas needing flood control facilities the maintenance of these facilities have been compromised by excessive mitigation requirements. While I and most of us do not quarrel with the need to take strong measures to conserve endangered species, we strongly disagree with placing species conservation priorities above flood control projects.

Mr. Chairman, what we need to be doing is trying to fix levees, streams, before we get to a flooding stage, and we think that what Mr. Pombo's bill does is allow us to protect the people in those areas. Let us fix those levees and streams, let us get to doing the job of doing that, and in doing that we think in the long term we will save species and we will save human life and property.

So, I would urge all my colleagues to support the Pombo bill, and I would congratulate him on this effort.

Mr. MILLER of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have heard a lot of reasons why we should gut the Endangered Species Act with this legislation. Unfortunately, most of them just turn out not to be true. We are told that the floods in northern California in the Yuba City area happen because of endangered species. But listen to what the Sacramento Bee, the newspaper of record, tells us, and what the Corps of Engineers tells us, and what the Fish and Wildlife Service tells us.

The fact of the matter is the Fish and Wildlife Service signed off on that project in 1990, 1992, and 1994, but what happened? The local agency came in and asked that it be delayed so it could be built larger. Then the person who lost the bid came in and sued and delayed the project. That is why the project, it had nothing to do with endangered species.

We are told that somehow the floods in central California happened because of endangered species, that the lower San Joaquin failed. We had levees that were designed for 8,000 cubic feet per second; that had 80,000 cubic feet per second come through there in a flood, 10 times the amount of water. These were perfectly maintained levees, according to the Corps of Engineers. They failed because 10 times the amount of water.

The Coachella bypass, 10 times the amount of water that that levee was designed for came through that river and blew out those levees. Those levees were perfectly maintained, according to the Corps of Engineers.

What we have here is a ruse. The same coalition that brought us the repeal of the Endangered Species Act from our committee last year is bringing this to the floor. The same coalition that brought us logging without laws that almost devastated the forests of this country now brings us levees without laws. This is nothing more than to blow a hole in the Endangered Species Act that far exceeds the holes blown in the levees by 10 times the amount of anticipated water.

Historic floods, historic amounts of water, but what is their answer? Their answer is to repeal and exempt large, integrated, publicly subsidized water projects from any compliance with the Endangered Species Act, and that should not be allowed because the record is clear. Nobody can point to the Endangered Species Act in this case of suggesting that is why these levees broke. That is not what the corps said.

But the most important point is this. Mr. BOEHLERT's amendment allows all of those levees to be fixed, and it allows all of those levees to be maintained in anticipation of an eminent threat to health or safety. That is Mr. BOEHLERT's amendment. We do not have to blow a hole in the Endangered Species Act to take care of this problem. This problem will be taken care of by the substitute offered by the gentleman from New York [Mr. BOEHLERT] and the gentleman from California [Mr. FAZIO].

More importantly, that substitute will be signed into law. The rest of this is an interesting exercise, but the President has already said he would veto it.

So the point is this: The evidence is clear. These levees failed, these well-maintained levees failed, because of 10 times the amount of water blew through these levees than was anticipated before, and that was true up and down the State of California. And when the gentleman from Louisiana [Mr. TAUZIN] waves that book of regulations, that is California law, that is not Federal law.

Mr. POMBO. Mr. Chairman, I yield 10 seconds to the gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Chairman, I just want to refute what the ranking member said. We did not repeal the Endangered Species Act, nor did we attempt to. We tried to rewrite it without any help from the minority at all, and this administration has been asked many times, and they sit on their fat never mind. No, I am not yielding any time. The gentleman said we repealed; we did not. We tried to do what is right.

Mr. POMBO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in conclusion on the debate, I would just like to say that

the point is we have drafted a bill which is designed to allow routine maintenance and operation of the levee system in California. That is what it is designed to do.

We have heard a lot of statements that have been made here today which are factually untrue. It does not gut the Endangered Species Act, it does not blow a hole in the Endangered Species Act; none of that is true. What it does is it allows regular routine maintenance of the levee system to happen on a timely basis. That is what it allows.

Mr. Chairman, the entire levee system was built to protect peoples' lives and property. Why do our colleagues find it so difficult to put that as a priority of the levee system? Is it so difficult for them to place people as the No. 1 priority of our levee system, of our flood control system?

Mr. Chairman, this is a simple bill that has a targeted, very narrow problem that we are trying to correct. That is what we are after at this time. All of the stuff we keep hearing from the minority really is just an effort to block passing on control to the local district managers and giving them the opportunity to manage their levee system.

Mr. BISHOP. Mr. Chairman, the Flood Prevention and Family Protection Act before us today provides an opportunity to restore a small amount of critically needed balance to the Endangered Species Act.

The Psalmist raises the question:

What is man, that Thou art mindful of him? . . .

For Thou hast made him a little lower than the angels, and hast crowned him with glory and honour.

Thou madest him to have dominion over the works of Thy hands;

Thou hast put all things under this feet.

All sheep and oxen, yea, and the beasts of the field;

The fowl of the air, and the fish of the sea, and whatsoever passeth through the paths of the seas. . . .

This bill gives this body an opportunity to clearly state what a majority of my constituents believe: the preservation of human life should take priority over the preservation of endangered species.

In July 1994, the Flint River in my State of Georgia flooded. Several lives and substantial property, including cropland, were lost in that flood.

If a local flood control official in Georgia needs the flexibility to prepare for a future flood on the Flint River, I want that official to have the flexibility needed to do what it takes. I do not want the Endangered Species Act to stand in the way of protecting the lives and property of the people I represent.

It is only common sense that any major flood is devastating to every plant and animal in its path.

Let's not be fooled into believing that an otherwise preventable flood will not further endanger the very plants and animals the Endangered Species Act was designed to protect.

Mr. LEVIN. Mr. Chairman, I am adamantly opposed to H.R. 478. This legislation is a transparent effort to gut the Endangered Species Act.

Supporters of this bill would have us believe that the Endangered Species Act was somehow responsible for the tragic floods that occurred earlier this year in the Midwest and California. There is simply no evidence to support their claim that the Endangered Species Act was in any way linked to these events. Both the Interior and Commerce Departments have emphatically stated that there were no cases where it could be demonstrated that the implementation of the Endangered Species Act caused any flood structure to fail. The truth is that the floods in California and the Midwest were the result of storms that were unprecedented in recent history. Reservoirs and levees were simply overwhelmed.

It should be noted the Endangered Species Act already contains emergency waiver provisions that permit the President to grant exemptions to ESA regulations in major disaster areas.

The legislation before us would undermine the basic protections of the Endangered Species Act. H.R. 478 would prevent species protection from being taken into account at any existing dam, levee or flood control project, even in cases where there is no conceivable threat to public safety.

Earlier this week, I received a letter from the sponsor of this legislation that contained a picture of water pouring over a breached levee with the admonition, ''Let's work to Prevent this from Happening. Support H.R. 478.'' I wonder that the author of this letter did not also attempt to link the Endangered Species Act to last summer's crash of TWA Flight 800 or, for that matter, the sinking of the Titanic. Even the name of this bill is misleading. The ''Flood Prevention and Family Protection Act'' will neither prevent floods or protect families.

We should do everything humanly possible to reduce the possibility of future flooding. To that end, we must look to the real causes of these disasters. We should not use these tragedies to undercut the Endangered Species Act. I will support the substitute offer by Mr. BOEHLERT which allows repairs to flood control projects to go forward anywhere there is an imminent threat to human lives or property. Should the Boehlert substitute fail, I urge the defeat of H.R. 478.

Mr. MILLER of California. Mr. Chairman, the assault on the basic environmental laws of this country is underway once again on the floor of the House of Representatives. Some 2 years ago, it was the ''logging without laws'' rider that legitimized devastating timber practices in utter disregard for the Nation's environmental protection and resource management laws.

Now we are presented with H.R. 478—the ''levees without laws'' proposal. This legislation pretends to be responsive to the victims of recent flooding, but its provisions go far beyond flood relief.

''Levees without laws'' pretends to promote protection of families. But it really protects those who would sanction the permanent management of dams and other facilities without regard for the ESA, regardless of any danger of flooding.

We are once again being asked to legislate by anecdote: A Member cites a case where a levee failed, although there is plenty of doubt—and no real evidence—that the ESA had anything to do with that failure. And off we go: waiving the ESA on every flood control facility, anywhere in America, for repairs, reconstruction, maintenance, whatever; not just for this flood season, not just for imminent flood threats, but for any reason, and forever.

Let me tell you how far-reaching and damaging H.R. 478 would be, because the impact of passing this bill will not only be on the endangered species. It will be on your water districts. On your constituents who enjoy fishing. On commercial fishing operations. On logging companies and employees in your districts. On the economy of towns and counties you represent.

This bill doesn't wipe out the ESA, much as its sponsors would like to do. It just creates a great big exemption for levees and dams and other flood control facilities. Let me tell you what that means. If these projects are excused from making their contribution to ESA protection and mitigation, the whole burden is going to pass to those further downstream whose actions may impact on the species. The flood control district may escape its responsibilities, the farmer may escape his responsibilities. But that means that all the more impact will be felt by those other individuals, businesses, and activities that also affect the species.

This is directly contrary to the way we have been moving in species management protection. In California, where few have thought there was much chance for it, we have brought irrigators and cities and environmentalists and fishermen together and pounded out agreements on how to apportion water and how to manage our resources. It isn't easy and it doesn't always work quickly; but everyone stays at the table and negotiates because they know their interests are best protected by their being there and participating.

But H.R. 478 tells the levee districts and the flood control districts: You're free to do whatever you want that affects endangered species, as long as you can call it maintenance or repairs or operations. You get to get up and walk away from the table, and pass all those responsibilities and burdens on to other people and economic interests in your community. You alone do not need to consult with anyone else; you do not need to participate in the species protection program, even though excusing you may well double or triple the burden for the logging industry, or municipalities, or the fishing industry, or the recreation industry.

This isn't speculation; this is what is going to happen if we exempt maintenance and operational requirements of dams to protect endangered fish, like salmon in the Pacific Northwest. That is what H.R. 478 will do. The Everglades ecosystem could be devastated if the central and south Florida flood control project no longer has to consider endangered species with respect to water diversions and flows. Decisions on outflows in the Sacramento-San Joaquin Delta and San Francisco Bay will no longer have to consider impacts on delta smelt or winter run chinook. In the Upper Colorado Basin, purchases, sales, and exchange of water rights, which users have come to rely on, would cease.

That is what H.R. 478 will do.

Now, no one—and I stress that again, no one—is saying that the ESA should interfere with efforts to repair and rebuild damaged facilities, or to make necessary repairs to prevent flooding from occurring. The Fish and Wildlife Service has approved such waivers. The Army Corps of Engineers has agreed. An amendment to rewrite H.R. 478 to permit

those emergency actions is going to be offered later today by the gentleman from New York [Mr. BOEHLERT].

But that is not what H.R. 478 does.

There is no urgent need for those provisions of H.R. 478 that go beyond the relief for flood victims and prospective flood areas, as provided in Mr. BOEHLERT's amendment. The additional issues raised in H.R. 478 are extraneous to the debate over flooding. They deserve to be addressed during the comprehensive debate over reauthorization of the Endangered Species Act in the Committee on Resources. Our committee, however, has not yet begun that debate, and it is premature and inappropriate to bring these complicated issues before the House when we simply will not have the time nor expertise to address such wholesale changes to the ESA.

Let us keep the focus where it belongs today: On the floods of 1997 and what we should do to alleviate the damage and loss of those who have suffered or who might suffer from future flooding.

As both the Corps of Engineers and the Department of Interior have stated, as many of the witnesses that testified at our hearing stated—the California levees broke because there was too much water, not because of the ESA. The rains and the melting snowpack combined to produce water that were 10 times the normal rates in some cases.

Waiving the ESA is not going to stop floods. We have to consider many options: restoring channel complexity, wetlands protection, and setback levees, so that we can catch the water where it falls instead of dumping it down stream. We need to look at forest management policies that allow upstream clear cutting and the construction of logging roads which lead to erosion and slides that not only destroy valuable fisheries habitat, but contribute to downstream floods as well.

We should provide more direct and indirect aid for moving homes and businesses out of the hazard zone, and we must limit the circumstances where we will permit the use of Federal funds to rebuild in harm's way. Existing levees systems should be re-engineered to ensure that they maximize flood hazard reduction. Rather than relying solely on repairs to existing levees, the Corps of Engineers should review the causes of the breaks and determine whether levees should be moved or constructed differently to withstand future floods. Finally, we need to look at how project planning and contracting processes and local funding issues slow the repairs and maintenance that need to be done.

This bill does not address any of those problems, however. Instead, it focuses on one single aspect of the flood control planning process and takes a sledge hammer to the ESA.

Please remember this bill is not about flood protection. It is an initial, and a sweeping, weakening of the Endangered Species Act that applies to any activity, on any flood control project, at any time, rain or shine. Flooding, or the threat of flooding, does not even have to be an issue.

If this bill passes, no flood control project will ever be required to mitigate for its maintenance activities ever again. Nor will there be a requirement for mitigating the impacts of replacement, repair, rehabilitation, or operational activities regardless of whether these activities were conducted to protect human lives or property, and regardless of the impacts on endangered species.

Now if there were no alternative but to choose between human lives and property or an endangered species, the argument would be different. But there is an alternative. We can provide the flexibility that is needed in the event of floods and flood threats, and we can do that without destroying the Endangered Species Act. We can achieve those goals by supporting the Boehlert substitute without modification when it is offered.

Mr. PACKARD. Mr. Chairman, it is unbelievable that an outdated law to protect endangered species is causing catastrophic harm to animals, humans, and agriculture. In my home State of California, the floods of 1997 have already caused the deaths of nine people and more than $1.6 billion in total damage. If flood control structures had been properly maintained, this loss of life and property could have been avoided. Unfortunately, the Endangered Species Act prohibits much-needed maintenance of these areas. In fact, the very animals who kept the flood control structures from being repaired in the first place were also displaced and killed by the devastating floods.

In January 1997, California experienced the worst flooding in State history. However, California was not alone. Numerous other States were ravaged by flood waters. Most recently, the citizens of North Dakota saw the waters destroy their towns and homes. It is horrible to see the loss of life and property which resulted from the devastating floods. However, it is far worse to realize that some of this damage could have been avoided.

Mr. Speaker, I applaud my dear friend and colleague WALLY HERGER for introducing the Flood Prevention and Family Protection Act which attempts to prevent the disaster of flooding. As a proud cosponsor of this bill, I know that we must prevent these disasters before they occur. Once the floods have destroyed our homes, there is little we can do to restore the photo albums and family treasures. However, we can take the appropriate steps toward avoiding future flooding problems by enacting this bill. This legislation will allow for proper maintenance, repair, and reconstruction of existing dams, levees, and other flood control systems. Not only will this bill save lives and ecosystems, but homes and family memorabilia. I am very pleased to support this legislation today.

Ms. ESHOO. Mr. Chairman, I rise in opposition to H.R. 478, the so-called Flood Prevention and Family Protection Act of 1997.

This bill will not provide any more protection beyond current law to those who live in areas threatened by flooding. Instead it will create a giant sinkhole in the Endangered Species Act.

Right now, without passage of this bill, the Endangered Species Act has provisions that allow for expedited review for improvements or upgrades to existing structures in emergencies.

This bill will permanently exempt the reconstruction, operation, maintenance, and repair of all flood control projects, including dams, hydroelectric facilities, levees, and canals. This means that operations like those designed to revive the salmon on the Pacific Coast could be threatened and possibly suspended. As Secretary of the Interior Bruce Babbitt has pointed out this could exempt the entire Columbia River basin from provisions of the Endangered Species.

Some Members have said that the Valley elderberry longhorn beetle delayed repairs which caused the levees to collapse. However, as my colleague, Mr. MILLER, has pointed out the levees that failed in the Central Valley failed not because they were not repaired, but because there was 10 times the amount of water than the levees were designed to withstand.

H.R. 478 is not a flood prevention bill. Instead it is a backdoor assault on the Endangered Species Act, and I urge my colleagues to adopt the substitute offered by Mr. BOEHLERT and Mr. FAZIO and reject H.R. 478.

Ms. PELOSI. Mr. Chairman, the bill before us today is an ill-advised, destructive approach to a law that was intended to protect species from extinction, not to be manipulated as a substitute for poor disaster response.

Natural disasters affect human lives and can be devastating to local communities and economies. My community has certainly experienced its share of natural disasters and I know firsthand the difficulties people encounter in rebuilding their homes and lives in the aftermath of such devastation. We should be sensitive and responsive to these human needs, and we should address them on an immediate basis. Residents in flood-prone areas should be protected and added steps can be taken to ensure the safety of people and their property in these areas. Response to the California flood disaster should not be used as an excuse to obliterate the law that gives lasting defense to the survival of threatened species on Earth.

In an emergency threatening human lives the current law provides for the Endangered Species Act to be waived.

But H.R. 478 goes to the extreme in allowing a nonemergency exemption of the act with the result of permanently decimating the intent of the ESA. It would codify actions now considered damaging to the protection of species the law was intended to protect. H.R. 478 will not prevent floods, but it will prevent needed environmental protection of threatened species.

The Pacific Coast Federation of Fishermen's Associations advises a vote against H.R. 478 on the basis of the potential threats to restoration of northern California salmon populations under the ESA. In their letter they emphasize:

> The California Central Valley is the source of most of the West Coast's remaining salmon harvests. Eliminating ESA-driven water reforms in the California Central Valley Project would seriously damage Washington's Oregon's and California's salmon harvests, wiping out tens of thousands of fishery jobs as far north as Alaska which those resources now support.

The arguments linking flood damage to the ESA are unfounded. In the Statement of Administration Policy, OMB states:

> The administration of ESA by the Fish and Wildlife Service [FWS] and the National Marine Fisheries Service has not resulted in significant delays in construction or proper maintenance of flood control facilities. For example, during the recent California flooding, FWS implemented ESA provisions which allowed emergency actions in disaster areas to be taken quickly without the Act's normal ''prior consultation'' requirements.

In the Dissenting Views filed with the committee report to H.R. 478, it is noted that both the Department of Interior and the Corps of Engineers,

were emphatic that there were no cases where it could be demonstrated that the implementation of the ESA caused any flood structure to fail, or where the presence of any listed species prevented the proper operation and maintenance of flood control facilities.

H.R. 478 is a misdirected attack against an imaginary enemy. The Endangered Species Act did not cause California's devastating floods. Our response to this disaster can be positive—let's repair or replace the damaged flood control facilities under the current ESA waiver and work together on sound water management policies that will protect people and the environment into the future.

This is the most important environmental vote to come before the House in this session. We should not revisit the rancor of the last Congress where the majority went against the mainstream of public sentiment which favor greater protections for our environment. In a letter to Members of Congress, the President of Republicans for Environmental Protection states that

the American people do not want to see our environmental laws weakened. And they certainly do not want to see such things accomplished by bad, opportunistic legislation such as H.R. 478.

I urge my colleagues to join the bipartisan initiative and support Boehlert-Fazio amendment and to vote against final passage of H.R. 478.

The Endangered Species Act must not be another casualty of the floods.

Mr. POMBO. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

The amendment in the nature of a substitute printed in the bill shall be considered by section as an original bill for the purpose of amendment, and pursuant to the rule, each section is considered read.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Flood Prevention and Family Protection Act of 1997''.

Mr. POMBO. Mr. Chairman, I ask unanimous consent that the remainder of the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The text of the remainder of the committee amendment in the nature of a substitute is as follows:

SEC. 2. PURPOSE.

The purpose of this Act is to reduce the regulatory burden on individuals and local, State, and Federal agencies in complying with the Endangered Species Act of 1973 in reconstructing, operating, maintaining, or repairing flood control projects, facilities, or structures to address imminent threats to public health or safety or catastrophic natural events or to comply with Federal, State, or local public health or safety requirements.

SEC. 3. AMENDMENTS TO ENDANGERED SPECIES ACT OF 1973.

(a) ACTIONS EXEMPT FROM CONSULTATION AND CONFERENCING.—Section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)) is amended by adding at the end the following new paragraph:

''(5) Consultation and conferencing under paragraphs (2) and (4) is not required for any agency action that—

''(A) consists of reconstructing, operating, maintaining, or repairing a Federal or non-Federal flood control project, facility, or structure—

''(i) to address a critical, imminent threat to public health or safety;

''(ii) to address a catastrophic natural event; or

''(iii) to comply with Federal, State, or local public health or safety requirements; or

''(B) consists of maintenance, rehabilitation, repair, or replacement of a Federal or non-Federal flood control project, facility, or structure, including operation of a project or a facility in accordance with a previously issued Federal license, permit, or other authorization.''.

(b) PERMITTING TAKINGS.—Section 9(a) of such Act (16 U.S.C. 1538(a)) is amended by adding at the end the following new paragraph:

''(3) For purposes of this subsection, an activity of a Federal or non-Federal person is not a taking of a species if the activity—

''(A) consists of reconstructing, operating, maintaining, or repairing a Federal or non-Federal flood control project, facility, or structure—

''(i) to address a critical, imminent threat to public health or safety;

''(ii) to address a catastrophic natural event; or

''(iii) to comply with Federal, State, or local public health or safety requirements; or

''(B) consists of maintenance, rehabilitation, repair, or replacement of a Federal or non-Federal flood control project, facility, or structure, including operation of a project or a facility in accordance with a previously issued Federal license, permit, or other authorization.''.

The CHAIRMAN. Are there any amendments to the committee amendment in the nature of a substitute?

AMENDMENT OFFERED BY MR. POMBO

Mr. POMBO. Mr. Chairman, I offer an amendment. It is printed in the RECORD as No. 2.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. POMBO:

Page 3, after line 12, insert the following new line after the word 'authorization':

where necessary to protect human life or to prevent the substantial risk of serious property damage.

Page 4, after line 8, insert the following new line after the word 'authorization':

where necessary to protect human life or to prevent the substantial risk of serious property damage.

MODIFICATION TO THE AMENDMENT OFFERED BY MR. POMBO

Mr. POMBO. Mr. Chairman, I ask unanimous consent to correct line references in my amendment as follows:

The reference to page 3 after line 12 should be page 3 after line 15, and the reference to page 4 after line 8 should be page 4 after line 12.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The text of the amendment, as modified, is as follows:

Page 3, after line 15, insert the following new line after the word ''authorization'': ''where necessary to protect human life or to prevent the substantial risk of serious property damage''.

Page 4, after line 12, insert the following new line after the word ''authorization'': ''where necessary to protect human life or to prevent the substantial risk of serious property damage''.

Mr. POMBO. Mr. Chairman, in an effort to reach a consensus on this bill we have worked long and hard. I have met with Members of the minority repeatedly, I have met with Members of my own party who had concerns repeatedly. We have narrowed the bill substantially from the way it was first introduced. But as of last night, or as of yesterday, there were still concerns that maybe the bill could be interpreted to be more broad than the intention.

Because of that and in consultation with the gentleman from California [Mr. CAMPBELL] a decision was made that we would add additional language to the bill which would narrow the scope and meet his concerns.

Having said that, I yield to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, for purposes of debate, what I would like to do is inform my colleagues and friends on the other side of this issue that I would like to use the 4 minutes, but then I would be happy to engage in debate with any colleague on their time. I will stay here for that purpose.

Here is what my amendment does: I believe that the present Herger-Pombo bill is too broad. I have great respect for my two colleagues from California, but I believe they created an exemption that was too broad. So I began to speak with them and I said, ''What is the real focus of your concern?'' They point out that the real focus of their concern is when a levee bursts, when there is harm to human life or substantial risk to properties in that kind of context.

So I said, ''Why do we not limit your amendment to the specific cases we just discussed?'' They agreed. Here is what the amendment says: After all of the provisions that we have talked about regarding a maintenance, rehabilitation, repair or replacement of a Federal or non-Federal flood control project, after all of those, the limitation would now be imposed: ''where necessary to protect human life or to prevent the substantial risk of serious property damage.''

That being my amendment, I offered that to my colleagues; and they were

kind enough to say that they would accept it. I put to my colleagues, give me the case when you would not be in favor of expediting maintenance, rehabilitation, repair or replacement when it is necessary to protect human life? I just do not think anyone would have such a case. Or where it is necessary to prevent the substantial risk of serious property damage?

With that limitation, it is no longer true that the Herger-Pombo bill runs a serious risk of ''blowing a hole in the Endangered Species Act.'' The bill is now limited to restoration of existing projects that already have a Federal permit where necessary to protect human life or prevent the substantial risk of serious property damage.

It was raised in debate by one of my colleagues, the gentleman from New Jersey [Mr. PALLONE], that we ought to await the comprehensive Endangered Species Act reform before adopting an amendment such as mine, or a proposal such as mine.

I remember when I first came to Congress in 1989, we began talking about the Endangered Species Act. When I left in 1992, we were still talking about the Endangered Species Act. We never got a chance to reauthorize the Endangered Species Act. We are really playing with people's lives to say, let us wait until we have the overall omnibus Endangered Species Act.

What we have now is a proposal dealing with a specific crisis and the steps necessary to prevent other crises. I would love to see the Endangered Species Act amended in order to take this into account, but we cannot wait for that to happen.

Lastly, in my opening remarks, the subject of the Boehlert amendment has been raised. I have a very good friendship with the gentleman from New York [Mr. BOEHLERT]. I admire him immensely. But I do refer to the fact that his amendment refers to imminent threat, there has to be an imminent threat—except for the case the repairs of those properties that were damaged in California in the most recent flooding. Imminent threat means that the water is already rising.

Mr. BOEHLERT. Mr. Chairman, would the gentleman form California yield?

Mr. CAMPBELL. Mr. Chairman, I cannot, but I am happy if the gentleman would yield me time on his time to conduct a discussion. That was what I said at the start. So I will stay here for that debate, Mr. Chairman. I look forward to debating the gentleman from New York [Mr. BOEHLERT].

But the phrase in the amendment of the gentleman from New York [Mr. BOEHLERT] is, ''in response to an imminent threat to human lives and property.'' And contrast that with my phrase, ''where necessary to protect human life or to prevent the substantial risk of serious property damage.''

It is all the difference in the world between waiting for the disaster to be so imminent. Are you going to have to build up the berms higher, or can you take the action in advance when the imminent threat is not yet upon you, but where it is wise to act.

I have only one final remark in my opening remarks, and that is that my good friend, the gentleman from New Jersey [Mr. SAXTON], said that my amendment was broad enough so that everything would be included in it. That is not so. Perhaps in debate further I will be able to illustrate why, as my time is presently expired.

Mr. FARR of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, while the gentleman from California [Mr. CAMPBELL] is there, maybe I can have a colloquy with him. Is it the intent of the gentleman that his amendment will affect all of section B?

Mr. CAMPBELL. Mr. Chairman, if the gentleman will yield, it is my intent to affect all of section B.

Mr. FARR of California. OK. Mr. Chairman, on my own time, the issue raised here is whether this amendment really does anything to the bill. Remember, we are dealing with the issue of flood control projects. Flood control and the purpose of flood control is to control damage done by excessive water.

I do not think that the amendment is material to really what the purpose of the bill is, which is to drive a hole in the Endangered Species Act by exempting from that act consultation for operations. Remember, there is nothing in the language in this bill that even mentions the word ''levee,'' yet everybody who got up and proposed it said that this was a levee bill.

This is about operations of water facilities, operations forever, not just when it rains, not just when there is flood damage, it is operations. Operations is why so many people are concerned about this, particularly the fishermen.

□ 1600

The reason, the gentleman from California [Mr. CAMPBELL] knows, is that in California with the Sacramento River the whole issue of water flow releases is to try to control the water temperature so that we can maintain a salmon run. If there is not enough water, the water gets too warm and then the species that lives in that water cannot survive. So the purpose of trying to make sure that when we are operating a flood control district, that we consult in this process, is so that we get all of the concerns on the table.

The Corps of Engineers has interpreted this ''structures and projects'' to mean dams, to mean pumps, levees, dikes, channels, draining systems, dredging projects, reservoirs, and even beach erosion control. In the committee the issue was raised that it was going to include beach erosion control, and the author indicated that he would accept an amendment to that, although we do not see it in the bill at all.

So the bill on the floor with the gentleman's amendment I do not really think ensures that we are going to be able to continue to maintain these facilities for all the interested parties that rely on water usage, and that is the purpose of flood control districts.

Mr. CAMPBELL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, my purpose in asking for 5 minutes now is to complete my one last comment regarding the point made by the gentleman from New Jersey [Mr. SAXTON], and then to yield to anyone who wishes to engage in debate. I see my colleague from California [Mr. POMBO], wants a word, but let us save some time for debate, because I do wish to have the opportunity for anyone who wishes to debate me on this to do so.

The one last thing I wished to comment on was the point of the gentleman from New Jersey [Mr. SAXTON], Mr. Chairman, and that was that my amendment was too broad because everything would fit in it, in that all flood control is done to prevent risk of loss of life, or serious property damage. This is not quite correct because my amendment deals with maintenance, rehabilitation, repair or replacement; it does not deal with construction.

For instance, once the flood control device, the berm, has broken, then there is no further imminent loss of property, nor any further imminent loss of life. The imminent loss of life, the threatened, or the likely prospect of it, is when the tension is building up behind the berm. Once that is broken, as to whether that particular part is reconstructed or not would no longer pose a question of the necessity to protect human life, because it has already broken, that pent-up pressure is gone. Nor would it any longer present a substantial risk of serious property damage.

So I hope that answers the question of my good friend from New Jersey. I would be happy to yield to him further if he wants to respond to it. But I believe I responded to his point. I believe I responded to the other points, as well.

This is a sensible improvement on Herger-Pombo. I do not see anyone in the Chamber who ought to oppose this amendment. I would go further to say that this makes a such a further improvement that the Boehlert amendment is unnecessary, and on that there may be further debate. However, on whether my amendment is desirable, I just do not think there is further dispute.

Mr. Chairman, I yield to my friend, the gentleman from California [Mr. POMBO].

Mr. POMBO. Mr. Chairman, I thank the gentleman for yielding. I just wanted to add, in response to a statement by the gentleman from California [Mr. FARR] and the gentleman from California [Mr. MILLER], even if this legislation were to pass and be signed into

law, I have a list from an environmental impact statement for the Sacramento River system control plan which listed the following Federal laws which must be complied with before the levee repairs could begin:

National Historic Preservation Act, Archaeological and Historical Preservation Act, Archaeological Resources Protection Act, Preservation of Historic Properties, Abandoned Shipwreck Act reviews, Clean Air Act, Clean Water Act, Coastal Zone Management Act, the Endangered Species Act, the Estuary Protection Act, the Federal Water Project Recreation Act, and it goes on and on and on. It has over 20 Federal laws and State laws that we had to abide by before we could repair the levee.

All we are asking for is to allow us to maintain our levees. That is all we are asking for, to protect human life and private property. This is not that difficult.

Mr. CAMPBELL. Mr. Chairman, reclaiming my time, I will now yield to anyone who wishes to debate me on this amendment. If there anyone who wishes to debate me?

Mr. FARR of California. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from California.

Mr. FARR of California. Mr. Chairman, why is the word ''levee'' in here? It is projects. It is all of these projects.

Mr. CAMPBELL. Mr. Chairman, reclaiming my time so that I might respond, there is more then one form of flood prevention, and a levee would be only one form. There are other forms of flood prevention.

Mr. FARR of California. Mr. Chairman, there are dredging projects.

Mr. CAMPBELL. Mr. Chairman, I reclaimed my time to answer the question and I am almost done.

The purpose here is that whatever project it is that will be necessary to prevent—not just be helpful but be necessary to protect human life or to prevent substantial risk of serious injury—I wish to cover; and if that is more than a levee, it is for a good purpose, because it has that qualifier, where necessary to protect human life or prevent substantial property loss.

Now I yield to my colleague. Go right ahead.

Mr. FARR of California. Mr. Chairman, I appreciate that explanation.

My point that I made to the gentleman from California [Mr. POMBO] was that I think the bill goes far beyond what he originally intended, because it goes into projects that are greater than levees. It goes into dredging, it goes into dams, it goes into beach erosion, and I do not think that was what the intent was as a result of the problem that occurred in the Sacramento Valley.

Mr. CAMPBELL. Mr. Chairman, again reclaiming my time, as to all of those, I remind my good friend from California, as to all of those, the language I just announced would apply, that in answer to the gentleman's question earlier, the limitation ''where necessary to protect human life'' or the limitation ''where necessary to prevent the substantial risk of serious property damage'' applies to all of B.

Mr. CAMPBELL. Mr. Chairman, I yield to the gentleman from California [Mr. POMBO].

Mr. POMBO. Mr. Chairman, it was mentioned, dredging, dams. Could they dredge, if the gentleman's language was adopted as part of this bill, could they go in and dredge under that language?

Mr. CAMPBELL. Mr. Chairman, reclaiming my time, they could, only where necessary to protect human life or to prevent substantial risk of serious property damage. Off the top of my head, that would be a very narrow case.

The CHAIRMAN. The time of the gentleman from California [Mr. CAMPBELL] has expired.

(On request of Mr. VENTO, and by unanimous consent, Mr. CAMPBELL was allowed to proceed for 2 additional minutes.)

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, the gentleman portrays as a qualification a very high threshold, ''where necessary to protect human life or serious property damage.'' I think I have it right. I was trying to get a copy of it. In searching two areas of the bill, both undertaking to eliminate the clause undertakings and consultation and conferencing, is that correct?

Mr. CAMPBELL. Mr. Chairman, I would say in response, not quite. The phrase is ''necessary to protect human life or to prevent the substantial risk,'' just if I could answer, taking my time back to answer your question fully, ''or to prevent the substantial risk of serious property damage.''

Mr. VENTO. Mr. Chairman, if the gentleman would continue to yield, of course that is an additional qualifier, risk. So, for instance, if I am riding barges up and down the Mississippi, and I represent a community on the Mississippi, and it is portrayed that in order to maintain the channels so that the barge would not run into one of the wing dams, that then, which would run the risk of deck hands on the barge just falling off and perhaps drowning in the river, would that be an adequate test then, to prevent the loss of these individuals from falling in the river and drowning?

Mr. CAMPBELL. Mr. Chairman, reclaiming my time, not necessarily. The reason is I did not say just to prevent risk or minimize risk or lower risk. I intentionally said prevent substantial risk, which would be to say that you would have to bring the probability of it happening from a high number down to a low number.

Mr. VENTO. Mr. Chairman, if the gentleman would yield down, I think the issue is being portrayed as some sort of a crisis. Is it a crisis to in fact go through the National Environmental Protection Act and the Clean Water Act and other activities, and all of a sudden the Endangered Species Act would not be important in terms of trying to prevent, for instance, that barge, because if we did not have the channel, it might run into a bridge and cause serious property damage?

MR. CAMPBELL. Mr. Chairman, reclaiming my time in order to answer, lest we run out of time.

Mr. VENTO. Mr. Chairman, I would say to the gentleman, I will ask for more time if we run out.

Mr. CAMPBELL. Mr. Chairman, I am just worried that I will not get to answer.

Mr. VENTO. Mr. Chairman, I am pleased because I would not want the gentleman to think that there is not concern or opposition about his amendment or that it solves the problem, because I do not think it does.

Mr. CAMPBELL. Mr. Chairman, I would say to the gentleman to please proceed as long as he likes and then I will respond. I apologize for the interruption.

The CHAIRMAN. The time of the gentleman from California [Mr. CAMPBELL] has expired.

(On request of Mr. VENTO, and by unanimous consent, Mr. CAMPBELL was allowed to proceed for 1 additional minute.)

Mr. CAMPBELL. Mr. Chairman, if the gentleman would allow me to say that there is need for something less than imminent risk, because imminent is what the Boehlert amendment proposes, and more than ordinary maintenance. What I am trying to do is get at the prevention where the threat is high.

So if we want to go just with the imminent risk of something about to happen, then that is Boehlert. It is not good enough. Now, however, should we allow any old dredging, any old maintenance without ESA; no, that is not my desire. it has to be to prevent a substantial risk of serious property damage, or necessary to protect human life.

Mr. VENTO. Mr. Chairman, if the gentleman would further yield, the gentleman is a very good attorney and learned in law. The gentleman in the well is just a humble science teacher. But I would suggest to the gentleman that in fact this will be used. As it affects this particular law, I have no objection to it in terms of what is down here. It may be somewhat of an improvement, but I do not think it gets to the criticisms and the concerns that I have and frankly the Boehlert-Fazio amendment deals with in this bill.

I thank the gentleman for yielding.

Mr. CAMPBELL. Mr. Chairman, I thank the gentleman for his courtesy.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would inquire of the chairman of the subcommittee, I do

not think there is any opposition here to accepting this amendment. We believe it is basically a restatement of law, and we have a long night ahead of us.

Mr. POMBO. Mr. Chairman, if the gentleman would yield, I do intend on accepting the amendment.

Mr. MILLER of California. Mr. Chairman, that is fine with us.

Mr. POMBO. Mr. Chairman, if the gentleman would continue to yield, this is a friendly amendment. The committee is in agreement with the work that the gentleman from California [Mr. CAMPBELL] has done and we intend on accepting the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. POMBO], as modified.

The amendment, as modified, was agreed to.

AMENDMENT NO. 1 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BOEHLERT

Mr. BOEHLERT. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. BOEHLERT:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Flood Prevention and Family Protection Act of 1997''.

SEC. 2. PURPOSE.

The purpose of this Act is to ensure that the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) does not delay flood control facility repairs that are required to respond to an imminent threat to human lives and property.

SEC. 3. AMENDMENTS TO ENDANGERED SPECIES ACT OF 1973.

Section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)) is amended by adding at the end the following new paragraph:

''(5)(A)(i) Consultation and conferencing under paragraphs (2) and (4), with respect to a project to repair or replace a flood control facility located in any area in the United States that is declared a Federal disaster area in 1997, shall only be required in the same manner and to the same extent as would be required for that project if it were carried out in the area in California that is subject to the United States fish and Wildlife Service Policy on Emergency Flood Response and Short Term Repair of Flood Control Facilities, issued on February 19, 1997.

''(ii) This subparagraph shall not apply to projects in a Federal disaster area after the earlier of—

''(I) the date the Assistant Secretary of the Army for Civil Works determines that all necessary emergency repairs to flood control facilities in the area have been completed; or

''(II) December 31, 1998.

''(B)(i) Consultation and conferencing under paragraphs (2) and (4), with respect to any project to repair a flood control facility in response to an imminent threat to human lives and property, shall only be required in the same manner and to the same extent as would be required under the policy referred to in subparagraph (A)(i) for a project that is substantially similar in nature and scope.

''(ii) This subparagraph shall not apply after December 31, 1998.

''(C) This paragraph shall not affect the authority of the President under section 7(p).''.

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, this substitute would accomplish what the sponsors of H.R. 478 only claim to do. That is, it would ensure that the Endangered Species Act never subverts emergency work to prevent or respond to floods, while keeping fundamental species protection intact.

Here is precisely what this substitute would do. First, in disaster areas it would allow the repair or replacement of flood control facilities to move forward without prior consultation with the Fish and Wildlife Service. This would mean, to use my opponents' terminology, that no redtape or faceless bureaucrats could prevent emergency repairs from proceeding immediately.

Second, in places that are not disaster areas, let me stress, not disaster areas, my substitute would allow repairs to move forward without prior consultation whenever a flood control project poses an imminent threat to human life or property.

Now, the sponsors of H.R. 478 ought to like that language. It is taken from the one targeted section of their bill.

Third, the substitute makes clear that we are not limiting in any way the President's authority to issue further exemptions in disaster areas.

Fourth, the substitute is an amendment to the Endangered Species Act.

I need to emphasize these points because the opposition has repeatedly mischaracterized this amendment. In this substitute, we have responded to virtually every real concern we have heard about the ESA and flooding. We have heard that the ESA has prevented repairs from taking place. This substitute ensures that repairs can take place.

We have heard that repairs are needed not only in disaster areas, but throughout the country. This substitute addresses potential disasters as well as actual ones.

This substitute clarifies language in the supplemental appropriation that was approved by voice vote, so it can hardly be accused of appealing to a narrow constituency. So what have we done? Again, we have responded to what we have heard is actually or potentially harmful about the ESA and emergency situations.

However, here is what we have not done. We have not used these legitimate concerns as an excuse to undermine fundamental species protection. H.R. 478 would emasculate the Endangered Species Act. Our substitute, while creating new exceptions, would keep the law fundamentally intact.

Most endangered species live along or in waterways. H.R. 478's blanket exemption for flood control projects, even with the language of the gentleman from California [Mr. CAMPBELL], threatens any species that depend on waterways to survive.

The endangered species actions that have been taken to protect salmon, whooping crane, sea turtles, manatees, and other creatures would not have been possible if H.R. 478 had been in effect.

□ 1615

Protecting newly listed species would be virtually impossible under the bill. That is why this bill is opposed by every environmental group, by Republicans for Environmental Protection, by American Rivers, by the International Association of Fish and Wildlife Agencies, by Trout Unlimited, by the American Canoe Association; by just about any group, large or small, that has any interest in protecting our waterways and their denizens.

It is not that these groups do not care about human beings. It is not that these groups are all in agreement on ESA reform. It is that they understand that H.R. 478 is quite literally a case of overkill. My substitute accomplishes H.R. 478's stated objectives without threatening the environment.

Let me add, Mr. Chairman, that I do not claim that my substitute takes care of every legitimate concern with the Endangered Species Act. Some Members, for example, have concerns with the cost of mitigation. But our express purpose here today is to take care of narrow problems related to emergency situations. Mitigation is a broad and fundamental issue that must be addressed in the context of comprehensive ESA reform. I daresay that a comprehensive bill would not reform mitigation in the ham-handed way envisioned by H.R. 478.

Let us not hold up emergency legislation because additional concerns must be addressed at a later time. My substitute would be signed into law and would provide real relief for real people facing real emergencies. H.R. 478 would not be signed into law and will not help anyone. By voting for it, I would suggest Members would be making the wrong move. I urge my colleagues to support balance, moderation, a real solution for a legitimate problem.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the so-called Boehlert amendment, here, let me go through something. It fails to protect human life and the environment. It is too little too late. It allows only emergency repairs when disaster has already occurred or is threatening. By the way, it protects Federal employees from the ESA penalties for impacting habitat, but keeps the penalties for local officials. It ties their hands. They cannot maintain these levees.

By the way, it is only temporary. I want the gentleman from California [Mr. FAZIO] to hear this, it is only temporary. It is only temporary. It is only temporary until 1998. It retains unfunded mandates on States and local

governments, and frankly, would continue further delay through encouraging litigation. This is a charade of amendments. This is an amendment that does nothing. In fact, I do not know why the gentleman is even offering it. It does nothing, absolutely zero.

May I remind the gentleman, it says, ''This paragraph shall not apply after December 31, 1998.'' That says you only have time to repair the existing breaks, the ones that broke. I am not really worried about the ones that broke, and I feel sorry for the people, but I want to prevent those breaks and the dollars we have wasted. May I stress, $10 million was used to mitigate. They finally agreed last week to repair the levee. It was supposed to cost $3 million, now $13 million. The levee breaks, which we were told it was going to break, and we lose the lives, we lose the property, and guess what, we lost the habitat. We lost the habitat. We ought to be proud of what the ESA has been able to do.

Mr. Chairman, this amendment guts the so-called Herger-Pombo bill. I think that is really what they are trying to do is gut it. They are trying to put a charade out and trying to protect a few people who might be directly affected by supposedly not supporting the Pombo-Herger bill, but in reality, it does nothing. It, in fact, is worse, because it takes the California doctrine and applies it to the rest of the Nation.

As I have told people before, if they want California's problems and the bureaucracy, then vote for the Boehlert amendment. Mr. Chairman, I suggest respectfully, if Members want to solve a problem, then they will vote for the Herger-Pombo bill. They will make this bill a reality. They will make this bill save lives, save property.

By the way, I heard somebody today say we have to change the way man is living. We have to give more room to let the water go out and meander like it did back in the year 1600. Think about that a moment. That means the whole city of Houston is gone. Some people might like that. It means the whole city of New Orleans will be gone. I would not like that. It means probably Sacramento would be gone, too, period, and flooded out. I am sure the gentleman from California would not like that.

Probably, I might suggest respectfully, if we want to follow this theory of the so-called environmental groups who are supporting Boehlert, we all ought to be drowned. Think about that a moment. I will admit, I lived on a levee. I was born on the Sacramento River. I looked out on that river every morning when I got up. I watched it flood.

Yes, we could not dredge. I admit that now. Then we did. I will tell the Members something; those levees were built way back during the Gold Rush days. We rebuilt them. It has given California one of the finest standards of living in the world. It has protected people and property, and it is a system that does work.

We can talk about the thousands and thousands and thousands of acres and feet of water that go down and are wasted and going into the ocean, and by the way, I want the gentleman from California [Mr. MILLER] to hear that. We had a drought in California a few years ago, does the gentleman remember that? We had no water. Now they have water clear up to their elbows.

I am suggesting respectfully if they want to take and have the Endangered Species Act, stop repairing those levees, then, very frankly, they can vote for the Boehlert amendment. We can forget lives, we can forget property, we can forget those people that live all around this great Nation of ours near water flow.

I know some of us would like to have more wetlands. I know how they can create wetlands. They can flood Sacramento, the city of Sacramento, the capital, by the way; they can flood every major city, and they will have wetlands. I do not believe in that. I think it is important we allow this tool to be available for the local people, that this tool be available for the Federal people, so we can in fact solve the problems of the flood.

It is wrong not to maintain these levees. Some people say they did not cause the flood. We have documentation with the Corps of Engineers where they did say this area will break if it is not addressed, and it did break. So do not tell me that these areas did not create floods.

I will say, every break, by the way, is not caused by the Endangered Species Act, but we can have both. We can have the Endangered Species Act and we can have the people.

The CHAIRMAN. The time of the gentleman from Alaska [Mr. YOUNG] has expired.

(On request of Mr. POMBO and by unanimous consent, Mr. YOUNG of Alaska was allowed to proceed for 1 additional minute.)

Mr. YOUNG of Alaska. Mr. Chairman, we can have the endangered species protected and the people protected. I want to keep stressing that. We have heard people talk about my wanting to repeal the Endangered Species Act. I never attempted to repeal the Endangered Species Act.

I had 17 hearings with the gentleman from California [Mr. POMBO], and we had hundreds of witnesses testify before us that the system is not working, and I want to fix it. I want to protect the endangered species, but I want to also have man's involvement in the protection of the endangered species. I do not want to join the SSS's club. I don't want to belong to that club. Some Members want to shoot, shut up, and shovel. I do not want anything to do with that. What I want is protecting the species, and the act today is not working.

I asked the gentleman from California and this administration, Mr. Babbitt and Katie McKinney and the President, to come down and give me some suggestions. They did not do that last year. They sat quietly and beat our brains out because we tried to improve the act. They said we tried to repeal it. We did not do that. We tried to improve it, and it should be improved.

The CHAIRMAN. The time of the gentleman from Alaska [Mr. YOUNG] has again expired.

(On request of Mr. MILLER of California and by unanimous consent, Mr. YOUNG of Alaska was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, I tried to make the point in general debate, and as the gentleman knows, we have levee failures in our State and we have had them across the country, and there is very little or sketchy evidence, in my opinion, that says it is due to ESA.

But also, the Corps of Engineers in fact requires annual maintenance of the levees that includes mowing, burning, vegetation removal, filling in of burrow sites; all of the things the gentleman and I associate in the Sacramento Delta with that.

Mr. YOUNG of Alaska. Reclaiming my time, Mr. Chairman, only if it is in consultation with the Fish and Wildlife, and they agree to it.

Mr. MILLER of California. This is an annual requirement of the maintenance of the levee by the Corps. Fish and Wildlife signs on.

Mr. YOUNG of Alaska. If it is a federally controlled levee. If it is a district, such as in the Sutter Basin, if that is under district control then Fish and Wildlife can only give them the authority, and they do not have that authority. That is what happened out in the Yuba County area. They would never give them the right to do that.

Mr. MILLER of California. That is not the case, if the gentleman will continue to yield, Mr. Chairman. Both in the Chowchilla River and in the San Joaqain there were perfectly annually maintained levees that failed because instead of 8,000 cubic feet, Yuba was more, and that was not about maintenance.

Mr. YOUNG of Alaska. Reclaiming my time, we cannot say there will never be another flood, I will not say that, but it is ridiculous to allow a flood because we were supposedly protecting the habitat of the elderberry beatle, which they have never seen, by the way. This is the greatest thing in the world. They were protecting the habitat, the elderberry bush, when the levee went out. Guess what, this took the elderberry bush. So what have we accomplished, besides losing 3 lives and millions of dollars? Why cannot we take those few dollars we have left in the Treasury and address that problem?

Mr. Chairman, I am just suggesting what we have to do is vote down the Boehlert amendment. Very frankly, it

is ill-conceived. It is an attempt to gut the bill. I understand where the gentleman is coming from. But the bill as written by the gentlemen from California, Mr. WALLY HERGER and Mr. POMBO, as it came out of the committee is a bill that will solve the problem.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is appropriate, as we discuss this amendment, to consider what is happening in California as repairs to levees are proposed. We heard the testimony of flood managers and levee managers from California before this bill was passed through our committee. I want to give an example of what happened, as the chairman of our committee just alluded to.

A repair was requested to a project in California on the west bank of the Mokelumna River that would involve approximately .37 of an acre, one-third of an acre. This is what the Interior Department required in a letter of instruction to those wanting to repair the levee.

First, they would have to find every single elderberry bush in that one-third of an acre and transplant it. They would have to transplant it to an acreage five times as big. They would have to plant new elderberry bushes, five times as many as they transplanted from the old site. In addition, biologists had to be on site to monitor the transplanting of these elderberry bushes.

Second, they had to provide to a resource agency or a private conservation organization fee title. They had to buy the land and give it to this organization to maintain these elderberry bushes. It had to be maintained, and money had to be provided to maintain it in perpetuity. Understand, the levee may not be maintained in perpetuity, but the elderberry bushes will be.

Third, the qualified biologists had to be on site managing everything that was done. There had to be written documentation that all conditions would be carried out in perpetuity. There had to be an annual assessment of the facility to mechanically pull out any weeds. Biologists and law enforcement agencies had to have full access to the project at all times to monitor it. Permanent fencing had to go up.

Every five elderberry seedlings had to have two other types of species planted next to it, because apparently the beatles like other species. Every year for a period of 10 years, qualified biologists had to come in, assess the elderberry bushes, and make reports. Maps showing where every individual adult beatle was and the exit holes that were observed in each elderberry plant had to be analyzed, the survival rates of the plants and the beatles had to be reported on. Get this, the on-site personnel, who were supposed to be repairing the levee, had to go to school for instructions regarding the presence of elderberry beatles. They had to go to beatle school.

Mr. Chairman, all of this was done for one-third of an acre. I have showed Members the large book. The bill we are debating today does not say you cannot protect these beatles. It does not say you cannot have sites to put elderberry bushes and raise beatles on if you want to do that. It simply says that the money that was to be spent on this one-third acre to construct the repairs to this levee should be spent to repair this levee, and not to do this beatle protection program.

It simply says that when this levee was in dire need of repair, we should have done it. We should have done it on time. We should have saved those five lives that were lost in California because levees like this failed. It says that across America we ought to recognize that the good environmental things we do to protect beatles are fine, and we ought to find the money and fund it to do that if they are important to us, but we ought not to take it out of funds necessary to repair bridges and levees.

The Boehlert amendment says, in effect, that this California system ought to be the system we use across America.

□ 1630

In Louisiana, when the Mississippi levee, as it is in north Louisiana, is 6 feet too short, we are in serious trouble and we have to do a mitigation program, too, like the California program. Unless the flood is imminent and we are about to be flooded, the Boehlert amendment gives us no relief. In fact, the Boehlert amendment says if we do not build the repairs before a certain date, forget it; we still have to go through the beetle program of California.

The Boehlert amendment says, in effect, that in Louisiana and every State, we are going to get letters like this compelling our levee managers to do what they had to do in California. The Boehlert amendment says that we are going to see loss of lives in our State like we saw in California.

We maintain levees all over my State. Levee managers try to do a good job. When the Federal Government contributes a dime to that levee construction, when it contributes one dime, it requires the State manager of the levee or the local manager to assume full liability if the levee fails.

Here is the situation. The Federal Government says: You are fully liable if the levee fails; but, by the way, if you try to fix it, we are going to put you in a beetle protection program instead, and you cannot fix the levee. When it fails and people flood and lives are lost, it is on your nickel; it is your responsibility.

The Boehlert amendment, Mr. Chairman, is a phoney solution. If we want to solve this problem, if we want to make sure that in Louisiana and every State we fix levees, then we need to vote for the Pombo bill.

Mr. BONILLA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the Boehlert amendment and for H.R. 478, the Pombo bill. Let me say first of all that I am as committed as any other American in this country to preserving clean air and water and to preserving wildlife across this Nation. But this debate is not about preserving wildlife and saving species in this country. What we do is we stand here today, 25 years after the Endangered Species Act was enacted, trying to figure out how we got to this position in the first place. The authors of that law never intended for us to have this battle today. What we are standing here talking about is groups that are way out there on the fringe who have figured out a way to use this law to now impose power, their personal agenda over communities across this country.

Do we think for one second that they care about these beetles or these bugs or these snails or these creatures all across the country that in many cases are just used in court documents and have never even been seen by the groups that are pushing to try to save these species? That is not what this is about. This is about power.

If I could engage the gentleman from California [Mr. POMBO] in a colloquy for just a second, let me just show another instance of how we have gotten out of control. Is it true that there is a fly that is classified as a maggot in California that is on the endangered species list and then caused a delay of construction of a hospital that a community needed?

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. BONILLA. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, yes; that is correct. It was in southern California. It was a fly that was listed as endangered, and the result of that was that we had a hospital delayed because of that.

Mr. BONILLA. It cost millions of dollars, if I am correct.

Mr. POMBO. Mr. Chairman, it was several hundred thousand dollars per fly.

Mr. BONILLA. The groups that are in favor of spending this money and delaying a hospital that a community needed were quoted in an article in the Washington Post as saying that this maggot is actually a national treasure and was worth spending this money on. Is the gentleman aware of that?

Mr. POMBO. Mr. Chairman, I am aware of that. I did see the article that they considered it a national treasure and that it was worth delaying the opening of a hospital for several months and the spending of several hundred thousand dollars per fly by the taxpayers of Riverside County.

Mr. BONILLA. Mr. Chairman, there was a quote that said, it is a ''fly you can love.''

The point I am making here is that the folks that oppose the gentleman's bill and oppose what we are trying to do here are the same folks that are

quoted as saying this maggot is a fly we could love and do not care how it affects the community at hand. That is the point I am trying to make.

Mr. POMBO. Mr. Chairman, if the gentleman will continue to yield, I think that the point is they are opposed to any change in the Endangered Species Act regardless of how good a cause it is.

Mr. BONILLA. Now, what we have had is, we have had people lose their lives in California. When is it going to stop? What we are talking about here is human life. We are talking about human rights. In many cases, these folks who are thinking maybe somewhere in the cosmos up there that perhaps these bugs and beetles and snails are more important. I frankly do not understand how someone can think like that. What we are talking about here today is we are either standing with us for human rights and human life or we are standing with the bugs and the slugs and the scrubs. Get real.

Mr. SAXTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is a difficult situation because I believe that the goals of the bipartisan coalition that supports the Boehlert amendment and the goals of the gentleman from California [Mr. CAMPBELL] and the goals of the gentleman from California [Mr. HERGER] and the gentleman from California [Mr. POMBO] are all the same. But what makes this difficult is that there are two approaches, one which is reasonable and can become law, and the other which is somewhat less reasonable and in my opinion cannot become law.

Why is it that it cannot become law? It is really pretty simple if we know the process in Washington, DC. We have received, for example, strong vibes, strong statements from the administration that it will not become law with the Herger-Pombo language even as amended by the gentleman from California [Mr. CAMPBELL].

So this is an exercise in futility and in fact I will not yield at this time. And so why we would send a bill out of this House escapes any rational explanation that I can think of.

Second, if we send this bill to the Senate, which I do not think we will do unamended, if we send this bill to the Senate, I know some Senators and I know Members of both parties in the other House that will not vote for the Pombo-Herger language either. And as we all know, the Senate requires 60 votes in order to get cloture and to come to a vote on final passage. I do not think there are anywhere near 60 votes in the other House for the Pombo-Herger language. And as a matter of fact, I can count votes pretty well in this House, too. And I do not think the Pombo-Herger language with the Campbell amendment is going to pass in this House either.

So as the accusations have kind of flown back and forth between the bipartisan coalition and those who would like to have it the other way, I think everybody should keep in mind that we both have the same goal and that there is one proposal that can make it to meet that goal, and that happens to be embodied in the Boehlert amendment.

Why can Pombo-Herger become law? Well, it is being advertised as a very narrow bill, which with regard to flood concerns, the bill basically makes significant changes in ESA in the areas under consideration, which are levees. I think it is important for us to recall that most endangered species live along waterways. And so the very critters that ESA tries to protect are being directly and adversely affected in large numbers by the Herger bill. The bill would exempt further from ESA consideration specifically from the requirements to consult with the Fish and Wildlife Service and the takings prohibition any activities related to any existing flood control project.

I must add at this point that I disagree with the gentleman from California [Mr. CAMPBELL], my friend. The reason we accepted his language is because we think it does not change the Pombo-Herger bill at all. The reason for that is that the language that the gentleman from California [Mr. CAMPBELL], my friend, has included is quite specific and is added to the language of the Pombo bill and the language that is added to talks about the routine operation, maintenance, rehabilitation, repair or replacement of Federal or non-Federal flood control projects. And here is the new language: where necessary to protect human life or to prevent the substantial risk of serious property damage.

Why are levees built? Why do they exist in the first place? To protect human life or to prevent substantial property damage.

So the language that was added to the Herger bill simply states again what the purpose of the levee system is and I do not think does anything to change the original intent at all and continues, therefore, to have the Herger language applied to the entire flood control system in our country as we know it.

In addition to that, the law applies, the Herger language applies regardless of whether this is any conceivable threat to the public. This would prevent any project reviewed to prevent damage to existing listed species, and it would make it virtually impossible to protect new species.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. SAXTON] has expired.

(By unanimous consent, Mr. SAXTON was allowed to proceed for 2 additional minutes.)

Mr. SAXTON. Mr. Chairman, those are the basic reasons that Secretary Babbitt has indicated some disagreement with this bill. That is the basic reason that I think the President will veto the bill. Those are the basic reasons that I think the Senate will not pass the bill. And those are the basic reasons why I think the bill unamended by BOEHLERT will fail here today.

Now, the Boehlert amendment, on the other hand, will be targeted at what Pombo and Herger claim correctly that their complaint is that ESA prevents vital repairs to levees and other flood control projects, and we agree. We think relief is needed. We believe that our amendment, therefore, will exempt the repair of flood control projects from the consultation requirements of ESA all across the country, not just in California. It applies to both disaster areas and to any place where a project poses an imminent threat to human life or property and, as I said, it applies nationwide.

So this amendment, this bill as amended by the gentleman from New York [Mr. BOEHLERT] can become law. It goes to accomplish the purposes of the gentleman from California [Mr. HERGER] and the gentleman from California [Mr. POMBO]. I believe that we should vote for it on a bipartisan basis. I think we should get behind it wholeheartedly and pass this amendment so that we can have a bill that becomes law.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. SAXTON] has again expired.

(On request of Mr. CAMPBELL, and by unanimous consent, Mr. SAXTON was allowed to proceed for 2 additional minutes.)

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. SAXTON. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, there were two points I would like the gentleman to give a very candid, honest answer to. First of all, is it the gentleman's understanding that the President's veto threat applies to Herger-Pombo even as amended by Campbell.

Mr. SAXTON. Mr. Chairman, I do not believe that the gentleman's well-intended amendment changes the bill at all and, therefore, I believe the President's veto threat remains in effect.

Mr. CAMPBELL. Mr. Chairman, if the gentleman will continue to yield, I am going to ask him a slightly different way. Is the gentleman's understanding of a veto threat expressed by the White House after the White House was informed of the existence of the Campbell amendment?

Mr. SAXTON. Mr. Chairman, it is my opinion that the White House believes, as I do, that the well-intended language of the gentleman from California does not change the bill at all in terms of its practical application to the entire flood control system as we know it in this country and, therefore, it is my opinion, I have not talked to the White House about this, but it is my opinion that the veto threat remains.

Mr. CAMPBELL. Mr. Chairman, has the gentleman talked to the White House or any spokesperson for the White House since the Campbell amendment became known?

Mr. SAXTON. Mr. Chairman, if I may reclaim my time for a moment, before I respond, I yield to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, I think the gentleman makes a very important point because under the Pombo legislation as amended by Campbell, the threshold that is required is the ordinary threshold we use for any public works project and any maintenance of any public works project, because that is always the rationale for the expenditure of the public moneys.

So we still have the position where we could get into extensive maintenance which could include flushing out the bottom of Shasta Dam and destroying downstream habitat. You could get into massive rehabilitation of levees. You could move levees from 50-year protection to 100-year protection.

So the Campbell amendment simply does not do anything to mitigate the concerns that the White House and many of us have about this legislation, because it is such a low standard. It is the same standard we use for any public works project.

So I think the gentleman makes a very good point, that if we want to take care of this problem and we want to take care of it on a timely basis and we want to respond to these people who have, who have been flooded out and those who may be in the future, the Boehlert-Fazio approach is the only one that is going to get us there.

I thank the gentleman for his remarks.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Mr. Chairman, I rise in opposition to this bill and in support of the Boehlert-Fazio amendment.

This measure's portrayal after the floods, the basic underlying measure is misleading and inaccurate and is an attempt to misuse the tragic loss of human life as a basis for a wholesale retreat from the Endangered Species Act.

□ 1645

I would ask those who would disagree with me to simply look at the facts. I sat in the hearing, I heard some of the panels of witnesses, and the Endangered Species Act had, in the final analysis, nothing to do with causing the floods in California and the upper Midwest.

Anecdotal explanations will not do for this debate. According to the preliminary report of California Governor Wilson's flood emergency team, unprecedented water flows were simply too much for that channel. Designed capacities and sustained high flows saturated and further weakened levees. In fact, as the gentleman from California, the ranking member, Mr. MILLER, has pointed out, 10 times the flow capacity.

When one adds to this fact that these levees had silty and sandy soil beneath a top layer of clay, the claims that the ESA or fauna or flora protection are somehow to blame for that, this is clearly the result of a catastrophic act of God and even becomes more ridiculous in considering it.

Blaming the floods of 1997 on the Endangered Species Act would have been like Noah blaming the great flood on the animals he brought with him on the ark. It just does not make sense. It does not add up.

What is evident is the design and intent of some special interests to exploit these human tragedies as a basis and a scapegoating of the Endangered Species Act. This is incredible, it is not fair, and it is not the way we should make decisions or laws.

So why are we here today? We are debating this when there are thousands of flood victims working to rebuild their homes and their lives in the wake of these horribly destructive natural events this year.

Mr. Chairman, the Boehlert-Fazio amendment provides us the opportunity to repair the flood damage that has occurred. I submit that that will carry the day. What we need, of course, is action on that. We need to get the supplemental bill passed. And the fact is that some are trying to use this as a basis to write this measure into law.

Frankly, I thought we were through and had passed the dark shadow of some of the problems in the last session for the last few years that have persisted in the Congress but, apparently, this is yet not the case. Are we to suspend every law and regulation that affects or impacts the construction of water projects? Are we so concerned about the nourishment of beaches that the Endangered Species Act, the National Environmental Protection Act, Coastal Zone Protection, all of that should be disregarded because it represents somehow a qualification or encumbrance on that particular activity? I think not.

I think that this effort is wrong. I think the Boehlert-Fazio amendment is a well-tailored amendment to address the major issue that we have before us. I would hope that this Congress would act positively on that amendment and respond to what is necessary.

This legislation, the underlying legislation, virtually suspends almost all water projects and activities, from dredging, as I said, the channel nourishment, from the law. This would affect almost every district, as some have said, in the country because most of us have some water projects of a sort in our area.

The law actually can work and does work smoothly. From time to time we do run into issues where there are threatened or endangered species, but the type of requirements that were outlined here as an example of redtape, simply do not hold up in most of the jurisdictions that we represent.

This is an important law, along with the other laws that we have to protect clean water, to deal with the issues that arise when water projects and activities go on. It is wrong to scapegoat, as I said, one law in this instance, and I think that the motives and the effect of this is negative and reflects badly on this Congress and body in terms of dealing with facts rather than anecdotal stories.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, I thank the gentleman for yielding to me, and I think he raises a very important point.

If we want to scapegoat the Endangered Species Act, we can, but the mounting evidence is, in these floods, that the Endangered Species Act was a nonfactor. In central California we had 10 times the amount of water come through the river channel than the levees were designed to hold. We had somewhere between 70 and 80,000 cubic feet per second in a channel that was designed for 8,000 cubic feet per second.

Further north in the Yuba City area we had the failure of a levee. We had the failure of a levee in the area of where maintenance was talked about. But the fact of the matter is, over the last decade the Fish and Wildlife Service has signed off on a number of plans.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has expired.

(On request of Mr. MILLER of California, and by unanimous consent, Mr. VENTO was allowed to proceed for 3 additional minutes.)

Mr. MILLER of California. Mr. Chairman, will the gentleman continue to yield?

Mr. VENTO. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, what happened was the local levee agency, the local flood control agency kept coming back to the Corps and making additions to the levees. Change orders.

Those of us who know about military expenditures know the cost goes up because of change orders. They kept changing the design, and in this case the levee. The costs kept going up. They had to come back through budget cycles to get the money. Then the person who lost an open bid to do the work sued, saying the process was illegal, held the bid up and delayed the project. Had nothing to do with the Fish and Wildlife Service and ESA. The fact is they signed off on all these changes on all these projects.

So we can scapegoat the ESA, and people can come down here, and we saw a little while ago in the well, and we can rail against the slugs and bugs and we can rail against the ESA. I would suggest that, for the most part, that is the genesis of this bill.

If we look at the people who are supporting this legislation, they are the same people that supported this legislation in our committee, if the gentleman will remember, that basically

just gutted the Endangered Species. They said we can save the species but we could not save the habitat. Hello? Where are the species supposed to go?

So we have the same coalition. We can rail against it and feel good, and we can try to tell our constituents that this levee failed and that levee failed because of the Endangered Species. The gentlemen from Louisiana were up here talking about how they maintain their levees and how they have to dump water into their lake. They are doing that today. They are doing that today.

There is nothing in the Boehlert amendment that requires the California mitigation plan. These are scare tactics. These are simply scare tactics, and the gentleman from Minnesota is making a very good point; that we ought to make this based upon the evidence and the information available. And the evidence and the information available simply does not add up that we should be blowing a hole through the Endangered Species Act with this legislation.

And make no mistake about it, that is what part B of this legislation does, it blows it right out of existence with respect to all of the activities in large, integrated flood control and western water projects. They simply escape their liabilities.

Mr. VENTO. Mr. Chairman, reclaiming my time, I appreciate the gentleman's observations.

I would just point out also that the underlying legislation here is permanent. It is a permanent change in terms of the Endangered Species Act as applies to water projects, which I might add, to my colleagues, is not a small activity that goes on in this country in terms of the amount of dollars. It is an important activity, one that is vital, but it has to be done and channeled.

I would say more often than not that those environmental requirements, including the Endangered Species Act, are the best money we can spend. They are the best money because they have held accountable this Congress from the type of wasteful projects that are repeatedly brought to this floor. So I do not think the environmental laws of this Nation, including the Environmental Protection Act and the others, if anything, they have limited the type of wasteful spending in project after project.

And if it does not work perfectly, let us improve it. Let us not permanently exempt all these projects. Let us adopt the Boehlert and Fazio substitute, which is a temporary fix and something that needs to be addressed.

Mr. SHADEGG. Mr. Chairman, I move to strike the requisite number of words, and I rise to join this debate and speak very strongly in favor of H.R. 478, as amended by the Campbell amendment, which has been accepted, and to speak very strongly in opposition to the Boehlert amendment.

Let me explain my reasoning. We heard a lot of discussion about anecdotal information. I think it is important to focus on the language and the problem that is before us. Let me begin first with the language of the Boehlert amendment and make an argument and make a suggestion for why I think it does not do what is essential at this moment in time.

The Boehlert language says that we could waive the essential requirements only when there is an imminent threat to human lives and property. The key word is ''imminent'' threat. I suggest we look at those words.

I went to Webster's International Collegiate Dictionary and looked up the word imminent. The word imminent is defined. Two definitions. The first: ''Ready to take place.'' And the second, ''Hanging threateningly over one's head.''

What that means, Mr. Chairman, is that we would have to wait until the threat was hanging threateningly over our head. We could not do the necessary maintenance until the flood waters were headed our way. That is a serious problem with that language, and let me illustrate that.

In my State of Arizona we do not have waters that rise slowly over a period of days. We do not have waters that rise over a period of weeks. We have flash floods, flash floods that occur in an instant, flash floods that come up within a matter of hours and rise instantaneously.

This language would make it virtually impossible. We cannot predict a summer thunderstorm. We cannot predict the quantity of water that it is going to dump. We cannot predict it in advance. But under the Boehlert language, since we would have to wait until that threat was hanging threateningly over our head, we would be essentially precluded from doing the necessary maintenance.

Now, let us look by contrast at what has been accomplished with the Campbell amendment to the original Pombo bill. I think it offers ample protection, ample protection for anyone concerned. And why? Why does it go beyond the argument of my friend, the gentleman from New Jersey, [Mr. SAXTON], that it does not add anything in the bill? Where is he wrong in that?

Let us look again at the language. The language says that the exemption would apply only where necessary to protect human life or where necessary to prevent substantial risk of serious property damage.

Well, let us go back to the words that are being used. First, it is where necessary. It is not where it would be reasonable for the protection of human life. It is not where it would be good for the protection of human life. It is not limited to where it would be helpful for protection of human life. It does not even apply if it is desirable for the protection of human life. It says, instead, where it is necessary for the protection of human life or necessary to prevent a substantial risk of serious property damage.

Again, let us look at the words and go to the dictionary definition. I pull out Webster's New Collegiate Dictionary and once again the definition of necessary is: ''An indispensable item or essential.''

We are not talking about just casual need or desire or reasonable or good or helpful. We are talking about where it is essential to protect human life or essential to prevent the substantial risk of serious property damage. That is what we are talking about.

This is not a waiver, a blanket waiver any time anyone feels like it. And as one of my colleagues on the other side pointed out quite early, these issues get litigated. In this case, the litigation will focus on this question: Does someone just want to do this levee work? That does not cut it. Is it good to do this levee work? That would not qualify under the law. If it would be helpful to do the work involved, that does not meet the standard. If it would be desirable to do this kind of maintenance work to protect human life or to avoid a substantial risk of property damage, that does not meet the test.

It is defined, as amended by the amendment of the gentleman from California, [Mr. CAMPBELL], as necessary. Understand what necessary means. Necessary means essential or indispensable. That affords the protection which the other side refuses to recognize.

Now, perhaps the arguments on the other side were framed before the Campbell language came forward. Perhaps we discussed the threat of a veto before the President knew of the language. But I suggest to my colleagues that this language does do what is necessary to enable us to prevent and to protect against potential flood damage but not to wait until the waters are literally rising. And in my State of Arizona, that is a condition which cannot be met because of the flash flood conditions we face.

Mr. Chairman, I urge my colleagues to support the bill, as amended by the gentleman from California, and to oppose the Boehlert amendment.

AMENDMENT OFFERED BY MR. DICKS TO AMENDMENT NO. 1 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BOEHLERT

Mr. DICKS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. DICKS to amendment No. 1 in the nature of a substitute offered by Mr. BOEHLERT:

On page 2, line 15, strike ''an imminent'' and insert in lieu thereof ''a substantial''.

Mr. POMBO. Mr. Chairman, at this time, I reserve a point of order against the amendment.

The CHAIRMAN. The point of order is reserved.

The gentleman from Washington [Mr. DICKS] is recognized for 5 minutes on his amendment.

Mr. DICKS. Mr. Chairman, I rise to offer this amendment because I agree with the gentleman from Arizona, and

I think the words ''a substantial threat'' are better for us here than an ''imminent threat'' for many of the reasons he described. I think it will allow earlier action.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I think the gentleman's amendment provides necessary clarifying language, and I am willing to accept that. I think it is constructive, and I thank the gentleman very much.

Mr. DICKS. Mr. Chairman, I ask for a vote on the amendment.

□ 1700

The CHAIRMAN. Does the gentleman insist on his point of order?

Mr. POMBO. Mr. Chairman, I withdraw my point of order.

The CHAIRMAN. The gentleman withdraws the point of order.

The question is on the amendment offered by the gentleman from Washington [Mr. DICKS] to the amendment in the nature of a substitute offered by the gentleman from New York [Mr. BOEHLERT].

The amendment to the amendment in the nature of a substitute was agreed to.

Mr. CALVERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of H.R. 478 introduced by my friends, the gentleman from California [Mr. HERGER] and the gentleman from California [Mr. POMBO], and in opposition to the Boehlert substitute.

In January 1993 in my district, in the Temecula-Murrieta area of California, over $10 million worth of damage occurred in the old town area of Temecula and Murrieta when the Murrieta Creek overflowed its banks. It is not a theory, it is not my imagination. I was there, I saw it happen.

Interestingly enough, the county of Riverside, the county flood control agency, had for months if not years attempted to get permission from the Federal authorities to do necessary repairs and cleaning out of that Murrieta Creek bottom. They were unable to get those permits. Because of that, that damage occurred. Furthermore, there was so much debris within that creek bottom, it went on down through Murrieta Creek and joined into the Santa Margarita Creek and went on through that area, and there was so much debris, it created an artificial dike for a while while the water accumulated behind it. Eventually that broke, and the water went through and hit the dike that protects the helicopters at Camp Pendleton in California. That dike broke, and that water cascaded without any warning on to the military base and I believe approximately $75 million worth of helicopters were destroyed because of that.

We could have solved that problem. This was absolutely solvable. All we had to do was just clean out that river bottom. We were unable to do it. Fortunately since then we have been able to clean out the river bottom. We have been able to do that but unfortunately with a lot of effort. Just this last year we tried to clean it out, up until just a couple of weeks before the rainy season began, we still had a very difficult time getting the necessary permits to keep it cleared out. I have had a lot of disasters in my county. I am the same county, of course, that had the problem with the fire breaks and the inadequacy of the fire breaks and the Winchester fires in the same year which destroyed many homes of folks that could have been protected if fire breaks had been allowed. This bill does not address that. I would like to get into that somewhere down the road. But it does address necessary protection to flood control channels which protect life and property. If we cannot protect life and property and be Members of this Congress, I do not know what we can do.

Please support the gentleman from California [Mr. HERGER], the gentleman from California [Mr. POMBO] and oppose the gentleman from New York [Mr. BOEHLERT] and let us move forward with this.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York.

I have listened to the debate with a great deal of interest this afternoon. I have heard my colleagues who offer the legislation talk about the intention of the original authors of the Endangered Species Act. They were right. They said we did not want to prevent people from protecting their homes and avoiding calamities and taking steps necessary to repair after.

I have also listened to my colleagues on the side who are pushing the amendment offered by my good friend, the gentleman from New York [Mr. BOEHLERT]. They have said that the purpose of the original Endangered Species Act was to see to it that we protected precious species from being extinguished by the hand of man. Both are right. I think it is good that we should take steps to protect endangered species from being extinguished. I think it is also right that we should protect people. That leaves us a choice between the amendment offered by the gentleman from New York and the original piece of legislation. Interestingly enough at the time that the legislation was written, I was the chairman of the subcommittee. In fact, I was the author of the legislation. I thought it was good legislation then, and I still think it is good legislation. The distinguished gentleman from Alaska, if I recall correctly, was a member of the committee at the time we wrote that legislation. He is now chairman of the Committee on Resources, and I am delighted to see that because he is a fine chairman and a dear friend of mine. But I would observe to my colleagues that in choosing between the extinction and the extermination of species and the protection of human life, the choice here really is quite simple. That is, to adopt the amendment which was wisely and prudently offered by the gentleman from New York [Mr. BOEHLERT] and to reject the basic language of the bill, because the basic language of the bill does not just protect human life, it gives an absolute absolution, it gives an immunity bath to the wiping out of any species in connection with the construction, reconstruction, amendment, repair, or other things of some kind of a flood control project. It goes as far as drains and dams and it goes as far as fishways and protection of fishways. It goes even to things like beach erosion. I am not sure that that is necessary for the protection of human life. It allows anything to be done without any consultation or anything else. The Boehlert amendment says that if there is substantial danger to human life, all those things are waived. Substantial danger. We have just changed it to deal with the concerns that were expressed about imminent.

The bill also affords reasonable time limitations in terms of how long this will go. The Committee on Resources is not going to close up its business tomorrow. It is going to be here. They will have oversight and look at the way that this legislation should be conducted and I think that is the way the Congress should function, and I commend the committee for what it is it does. The legislation they have brought before us is not good legislation. The legislation as amended by the amendment offered by the gentleman from New York would be good legislation. It would be legislation of which we could be proud. It would carry out the two purposes of the debate today. First, the protection of endangered species. If some of the proponents of this amendment would really like to talk to me about what they really have in mind, I would like them to tell me why we ought to wipe out species that are precious in terms of the gene pool, or that lend unique and rare quality to the life that we all enjoy in this world of ours. Or why it would be useful for us to sacrifice those kinds of species when there might be some future importance to them, to human beings going even beyond the simple knowledge that that species might be there.

Let us talk about doing something and doing something quickly. The amendment offered by the gentleman from New York [Mr. BOEHLERT] makes it possible for us to have immediate relief. This legislation will whistle through the House if that amendment is adopted and it will whistle through the Senate because both bodies are looking for something to do. It also will be signed by the President.

Now, the alternative is the adoption of the bill as it is laid before us, an immunity bath for any misbehavior under the Endangered Species Act which would relate to flood control projects. The President is not going to sign the bill as it now is. And so all of us are going to go home and we can tell our constituents about the wonderful speeches we made about how we were protecting people from floods. But the real answer is, if Members really want to protect people from floods, if we really want to do a wise and careful job of legislating, if we really want to protect endangered species and if we want to protect people, if we want to deal with the problems of floods and repairs and to do it responsibly and thoughtfully, adopt the amendment that is offered by the gentleman from New York and reject the bill as it is now drawn.

Mr. HERGER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the Boehlert amendment and in support of H.R. 478. I want to make perfectly clear what is at stake with maintaining and repairing flood control structures across the United States. In 1986, California was hit with what was up to that time the worst flooding in recorded history. This photo shows an example of the devastation. Members can see how the water in Linda in northern California in my district was up to the bottom of the road signs. In that disaster, 13 lives were lost and more than $400 million worth of damage was caused. After this tragic flood, the Army Corps of Engineers spent 4 years to study what levees needed to be repaired. Under the Boehlert substitute, the deadline would have been surpassed because the Boehlert substitute limits the time in which flood control experts can repair the levees to only 1½ years. Our Nation would in fact be worse off under the Boehlert substitute than under existing law which does not limit the window for making repairs nor does it require after-the-fact mitigation. Even if the repairs could be accomplished within the time limit, the Boehlert amendment would still require local communities to pay for costly environmental mitigation after the levee was repaired. The Boehlert substitute makes national law a policy that requires local officials to play Russian roulette with limited tax dollars by forcing them to choose between making necessary repairs or facing undetermined mitigation costs. It writes a blank check for the Fish and Wildlife Service to charge local communities whatever they want in mitigation costs. This is clearly another major unfunded mandate. But by far the worst part of the Boehlert substitute is that it does nothing to prevent flood disasters from occurring in the first place. The Boehlert substitute would only allow flood control structures to be repaired after a catastrophe occurs, only after lives have been lost, and only after the loss of wildlife that the ESA is supposed to protect. Why should a law prevent the repair of a flood control structure only to have that structure give way and take lives and devastate wildlife?

Mr. Chairman, the Boehlert substitute simply defies common sense. Under H.R. 478, flood ravaged areas around the Nation could find comfort in knowing that they will have the regulatory relief necessary to do everything in their power to prevent flooding. When a levee, like this one in this photo, broke in my district on the Feather River on January 2, 1997, three people were drowned. Claire Royal, a 75-year-old retired elementary school teacher, was found drowned near her car in which she had been attempting to flee the flood waters. Marian Anderson, a 55-year-old mother of 10, was found drowned near her car in which she had been attempting to flee the flood waters. Bill Nakagawa, an 81-year-old World War II veteran who served with the famed and distinguished Japanese-American 442d Combat Team, was found drowned in his home a quarter mile away from the broken levee.

Ask yourselves this: Would Claire Royal, Marian Anderson, and Bill Nakagawa, been better off under the Boehlert amendment that only allows repairs after the disaster has hit, or would they have been better off under our legislation, H.R. 478, that allows flood control officials like Mrs. Anderson's husband, the manager of the broken levee, to make the repairs while the sun is shining and the high waters are not present?

Mr. Chairman, the Boehlert substitute is worse than current law and does nothing to protect communities from future devastation from floods. I urge my colleagues to vote ''no'' on the Boehlert substitute and ''yes'' on final passage of H.R. 478.

The CHAIRMAN. The time of the gentleman from California [Mr. HERGER] has expired.

(On request of Mr. DICKS, and by unanimous consent, Mr. HERGER was allowed to proceed for 3 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. HERGER. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I think the gentleman will be happy to know that we take care of his primary concerns.

First of all my amendment does not deal with only after. We deal with prior to. We have made an adjustment as a result of the Dicks amendment to mine which I accepted. So if there is a substantial threat, we can do the repair work prior to. That is very important.

□ 1715

Mr. HERGER. Mr. Chairman, reclaiming my time, let me ask the gentleman, is their not a 1½ year time limit on his bill? Does his bill not expire on December 31, 1998? Yes or no?

Mr. BOEHLERT. If the gentleman will yield, no. The answer is ''no.''

Mr. HERGER. It is not written into the bill that it expires?

Mr. BOEHLERT. If the gentleman will yield, I would be glad to respond to the question.

Mr. HERGER. Yes.

Mr. BOEHLERT. Mr. Chairman, what we do is 1998 is the time, and we do this for a very logical reason. What this Congress too often does is passes sweeping legislation for time immemorial. We want to try this as a pilot project. We think our colleague has a good idea; we want to assist him.

Mr. HERGER. Let me reclaim my time. Could the gentleman from New York be specific on when it expires in his legislation?

Mr. BOEHLERT. Sure; the end of calendar year 1998, a pilot program to see how it works.

Mr. HERGER. OK; that is what I thought. I reclaim my time.

It ends on the end of calendar year 1998. That is 1½ years from the day. That does nothing to help future floods. And I might mention this study that was done was asked for in 1986 after another flood there, which I am sure the gentleman from New York may have fought us doing something about then. We did a study that determined the levee that broke where Mrs. Anderson was drowned, the Corps of Engineers in 1990 said that there will be a loss of life unless this levee is repaired. For 6 years the Corps of Engineers jumped through hoops trying to mitigate for an elderberry plant, and, no I will not—tried to mitigate for this.

This is serious. We had three people drown in our district because of those who have taken over the environmental movement, and it will not even allow for simple commonsense legislation that puts people, puts people ahead of endangered species. All we are talking about is repairing levees.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. HERGER. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, there is some obligation to go to the accuracy of the remarks he is saying. There is no limitation on debate.

The CHAIRMAN. The time of the gentleman from California [Mr. HERGER] has again expired.

(On request of Mr. MILLER of California, and by unanimous consent, Mr. HERGER was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. HERGER. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, the gentleman suggested somehow that the Endangered Species Act prevents these projects from going forward.

Mr. HERGER. That is correct, because it does.

Mr. MILLER of California. I mean the gentleman can stand up in the well

and say whatever he wants, but he has some obligation to be accurate. But the fact of the matter is it is a water resources act, so if the gentleman from California does what he wants to do, it requires that mitigation be temporary, not the Endangered Species Act.

The gentleman says the amendment offered by the gentleman from New York [Mr. BOEHLERT] would have prevented the report from going forth; there is nothing in the amendment that prevents the report from going forward. And the gentleman says it would be worse than existing law, and the fact is what he does is waive the provisions of existing law requiring consultation.

So the gentleman can get up here and rail against the Endangered Species Act. We have some obligation to be accurate in terms of the facts we present to the House.

Mr. HERGER. The fact is, and I will reclaim my time, the fact is that the gentleman from New York [Mr. BOEHLERT] stated in a question I asked him that his legislation sunsets on December 31, 1988. That is 1½—I have the time—this is very serious. We have lost three of my constituents in this levee break because of an Endangered Species Act that for 6 years kept mitigating for an elderberry plant and put a plant—Mr. Chairman, I have the time—that mitigated for 6 years, spent $9 million on a repair that would have only cost $3 million that finally, after jumping through 6 years of hoops, this repair was due to be done this summer.

Guess what? It was about 6 months, too late for the lives of three Americans and constituents of mine.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. HERGER. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, is the gentleman aware of any maintenance activities in his district that were delayed because of mitigation, the implementation of the Endangered Species Act?

Mr. HERGER. I am aware of a number in my district that are delayed, and specifically the one that I have related to not only was delayed but it was delayed from 1990 until the summer, which has not come yet, of 1997, and prior to that time after 6 years the levee broke.

The CHAIRMAN. The time of the gentleman from California [Mr. HERGER] has again expired.

Mr. POMBO. Mr. Chairman, I ask unanimous consent the gentleman be given an additional 2 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. DICKS. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. FORBES. Mr. Chairman, I move to strike the requisite number of words.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. FORBES. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I just want to say to the gentleman from California [Mr. HERGER], and I understand his concern and it is legitimate, had the Boehlert language been in effect we would not have had that 6-year delay that he refers to. The fact of the matter is our substitute amendment is designed to take care of those situations. We want to prevent them from happening in the future.

Mr. FORBES. Mr. Chairman, I rise today in strong support of the substitute amendment offered by the chairman of the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure, the gentleman from New York [Mr. BOEHLERT].

Before us we have an amendment that strikes the requisite balance between providing for the timely repairs to our Nation's flood control infrastructure and protecting valuable endangered species such as salmon and steelhead.

If we fail to adopt the Boehlert amendment, we will be left with a bill that threatens thousands of miles of our Nation's most valuable endangered species habitat.

The threat H.R. 478 poses to rivers and streams across America was highlighted for me in a recent letter from one of America's leading sports fishing organizations, Trout Unlimited. I would like to read to my colleagues what our friends from Trout Unlimited are saying:

> Enactment of H.R. 478 would undercut trout and salmon protection and recovery efforts nationwide. There are literally thousands of dams and other structures nationwide that have flood control as a purpose. H.R. 478 would give dam managing agencies, such as FERC, the Bureau of Reclamation, and the Army Corps of Engineers carte blanche to conduct or authorize construction, maintenance, repair, and operation of dams and other structures in the name of flood control regardless of the impacts of those actions on listed species. This is a prescription for species extinction and further erosion of once thriving sport and commercial salmon fisheries on both coasts of the Nation.

It is for these reasons that our Nation's premier sports fishing organizations have united in strong opposition to H.R. 478. However, these same fishermen are supporting the Boehlert amendment as a reasoned approach providing balance to a very obvious problem and necessitating that truly needed repairs to our Nation's flood control structures that are not unduly delayed by the Endangered Species Act.

Mr. CASTLE. Mr. Chairman, will the gentleman yield?

Mr. FORBES. I yield to the gentleman from Delaware.

Mr. CASTLE. Mr. Chairman, I rise also in strong support of the Boehlert amendment which strikes a balance between protecting valuable endangered species and providing for the timely repairs to our Nation's flood control infrastructure.

This year's massive flooding has been a great American tragedy, and it would be irresponsible if this House does not consider how to reduce the likelihood of such tragedies from occurring again in the future. But Congress should not use this as an excuse to undercut the Endangered Species Act which, rhetoric aside, was not responsible for the rash of flooding.

The passage of H.R. 478, unamended, will not guarantee increased safety. Instead, the bill's broad blanket exemptions to the Endangered Species Act would have environmental impact far beyond the stated goal of protecting human life and property.

I believe that the substitute offered by the gentleman from New York [Mr. BOEHLERT] is a reasoned approach to assuring that truly needed repairs to our Nation's flood control structures are not unduly delayed by the Endangered Species Act.

Today we are provided with a stark choice of one of our Nation's most important environmental policies. We can either vote to exempt millions of acres and thousands of miles of rivers from any endangered species protections, or we can vote to provide meaningful relief to those actually facing true flood control emergencies.

Do the right thing. Support the Boehlert substitute.

Mrs. MORELLA. Mr. Chairman, will the gentleman yield?

Mr. FORBES. I yield to the gentlewoman from Maryland.

Mrs. MORELLA. Mr. Chairman, I rise in strong support of the Boehlert amendment.

As my colleagues know, today we are provided with the stark choice of one of our Nation's most important environmental policies. We can either vote to exempt millions of acres and thousands of miles of rivers from any endangered species protection, or we can vote to provide meaningful relief to those actually facing true flood control emergencies.

Let me put it in even more stark terms for my colleagues. They can vote for a measure that is strongly opposed by every major fishing and environmental group in the country, a measure that will most certainly be vetoed by the President, or they can vote for a measure that is supported by fishermen and environmentalists and can be signed into law.

What do Trout Unlimited, the American Canoe Association, the Atlantic Salmon Federation, the Federation of Flyfishers and the International Association of Fish and Wildlife Agencies all have in common? The litany goes on. They all support the Boehlert substitute and strongly oppose H.R. 478.

As noted in a recent letter I received from the International Association of Fish and Wildlife Agencies, ''The language in H.R. 478 is a broad overreach which goes way beyond circumstances related to disaster response measures and could significantly affect the recovery of endangered fish stocks, such as Pacific salmon.''

We respectfully urge you to oppose any legislative proposal which contains this language.

We do support the substitute language to H.R. 478.

Join me in supporting the Boehlert substitute. The only measure that can actually be signed by the President—the only measure that makes environmental sense—the measure that will provide real relief to those affected by flooding.

The CHAIRMAN. The time of the gentleman from New York [Mr. FORBES] has expired.

Mrs. MORELLA. Mr. Chairman, I ask unanimous consent that the gentleman from New York [Mr. FORBES] have 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Maryland?

Mr. YOUNG of Alaska. I object.

The CHAIRMAN. Objection is heard.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think the Boehlert amendment is extremely ill-considered. I really wonder, as a member of the authorizing committee that passed the Herger-Pombo bill out, you read the language, it simply says, ''Consultation and conferencing is not required for any agency action that A, consists of reconstructing, offering and maintaining or repairing Federal or non-Federal flood control project, facility or structure.''

Mr. Chairman, this really is a good debate. I am glad we are having it. We have been trying to get to this debate for over 2 years now in the Congress. It really is going to come down, I guess, between a very extreme application of the law, as is presently the case, by the bureaucrats and the Fish and Wildlife Service and NMFS and others, or whether we are going to have a reasoned, balanced approach.

In our State of California alone, there are over 6,000 miles of levees. There is the picture of one, on the far right, that broke. We have 6,000 miles of aging levees that have been built over the decades. Only 2,000 miles of those are even federally constructed levees. The rest are non-Federal.

Since we have had the Endangered Species Act and the very extreme interpretations and additions that have come about over the years, we now find ourselves with tremendous aging, unstable levees in much of our State. We know it has been documented.

The scientists have said that we live in an era of heightened volcanic activity with dramatically increasing weather changes. Just to illustrate this point, we have a hydrologic history in our State that goes back to about the turn of the century, and yet the five largest storms of record have all occurred since 1954 in the State of California.

We may be facing these kinds of floods every year for the next few years. We need to begin now. We need to protect public safety and human life so that we do not have repeats of this kind of a scene. My heavens, how can we be debating this in this fashion when we have seen scenes all over the country of people whose lives have been ruined, who have been up to their necks in water, who have been forced to move out?

They showed a special, I think on Prime Time Live here last week, talking about New Orleans, the district of the gentleman from Louisiana [Mr. TAUZIN] when they had the floodings in the 1920's. Seven hundred thousand people were rendered homeless. Are we going to countenance policies like we have in the law today that will preclude the adequate maintenance and repair of these levees in order to prevent this from happening?

This is outrageous, Mr. Chairman. We ought to defeat the Boehlert amendment. It is a bad amendment. It is calculated to stymie this very legitimate effort to allow local agencies or the Federal or the State agencies to do what needs to be done to protect people's lives and property.

I am sorry, that comes ahead of a bug or a plant. I think the issues are pretty well defined in that regard.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. DOOLITTLE. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I think the gentleman from California [Mr. DOOLITTLE] would agree that what happened here is we had a 500-year flood, a catastrophic event, that caused all this damage. It was certainly not the Endangered Species Act. How can my colleague possibly blame it on protection of habitat and species?

Mr. DOOLITTLE. Mr. Chairman, reclaiming my time to answer the question of the gentleman. You can have a 500-year flood every year in a row for 3 or 4 years. That does not mean they happen every 500 years.

We had a 500-year flood. We had a 250-year flood a couple years before that in parts of the State. So, yes, I blame it on the Endangered Species Act. It does not allow flood control agencies to protect and maintain these levees without jumping through all the hoops that the gentlemen from California [Mr. POMBO] and [Mr. HERGER] and others have described.

It is absurd that we have to spend $10 million in mitigation on a project that costs $3 million to construct.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. DOOLITTLE. I yield to the gentleman from Washington.

□ 1730

Mr. DICKS. Mr. Chairman, as I remember, there were a lot of people offering amendments to cut out funding for the Corps of Engineers and also money for the Endangered Species Act that could have been utilized for these purposes. I think if the gentleman goes back and looks at the record, he will see that some of those amendments are a part of the reason why he did not get more of a response on these issues.

Mr. DOOLITTLE. Mr. Chairman, let me just say this is reasonable language that allows the maintenance and repair of levees without having to go through this absurd, years-long, multimillion-dollar process to protect people's lives and property. It is an extreme policy under the law now, and we are about to change it. Vote ''no'' on Boehlert and vote ''aye'' on the underlying language.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. I think all of us, if cool heads prevail, would have some understanding that, yes, there are problems with the Endangered Species Act; and I think we would all recognize that there are problems with maintenance on various levees. I think we would all recognize that there are costs associated with mitigation.

If we look at the maintenance and we look at what has to be mitigated, it is hard to tell what comes first, the chicken or the egg, but there are serious problems with maintenance and mitigation. I will offer an amendment in a little while to try to deal with those problems.

Mr. Chairman, I stand here today to address the emergency issue at hand, and that is the levees and the levee system that failed, especially in these 48 counties in California, and how do we repair those levees right now. I am supporting the Boehlert amendment because the Boehlert amendment goes beyond present existing law to repair the levees up to 1998. Now, I would be the first one to say that some of those levees might not be ready in 1998 and we are going to have to extend that.

I would also be one of the first people to say that there is a problem with understanding how to maintain a levee so that we do not have to deal with an elderberry bush or a small yellow snake; we can just clear that elderberry bush, fill in that snake hole, fill in that rat hole. I recognize that we have to deal with the situation that we are now presented with, and that is the safety of human beings that rely on the levee system. We have to deal with that.

However, I would go further, Mr. Chairman, and say the weaknesses here today, when we focus on the photograph that the gentleman from California showed us, the breach in the levee and the woman being carried down with the fast-moving water, I would say that the real weakness, if we look at the big picture, is not with the Endangered Species Act. The real big picture here is not with maintenance or mitigation. The real picture here, the weakness, is within State and Federal approaches to flood management. The weakness is with the current labyrinth of dams and levees. The weakness is with land use planning and our attempts to engineer rivers.

In this debate do we need to understand the mechanics of natural processes? Can we protect people behind levees for a 500-year flood that may happen 2 or 3 years in a row, and the answer is no. Do we want to repair the

existing levees? You bet we do. Do we want to resolve the problem of maintenance? You bet we do. Do we want to resolve the problem of mitigation? You bet we do. Do we need to find a solution for the mitigation costs? The answer to these questions is yes.

I feel at this point that the gentlemen from California, [Mr. POMBO, Mr. HERGER and Mr. CAMPBELL], my friends, their motivations are right on target to resolve the problem of flood control, particularly with levees. I just happen to think that they go a little bit too far at this particular point.

Do we want people to move off the levees or out of these cities? The gentleman from Louisiana said, do we want people to move out of New Orleans? The answer is no. Do we want people to move out of Sacramento? The answer is no. Do we want people that are behind levees right now to have to move and go someplace else? The answer is no.

However, my question is—and I know that we want to protect those people behind those levees and clear up the problems with maintenance and clear up the problems with mitigation costs. I fear, though, that if we say adopt the present bill in front of us, that there will be a sense of protection that tranquility will prevail, and we will then begin to expand the levee system and we will put more people in harm's way.

For this reason, Mr. Chairman, at this point, I support the amendment of the gentleman from New York [Mr. BOEHLERT]. I will offer an amendment to help resolve the problem of maintenance and mitigation costs. I will yield to the gentleman from California, and then I will yield to the other gentleman from California.

Mr. POMBO. Mr. Chairman, the gentleman, I believe, understands the Boehlert amendment and understands the main bill that the gentleman from California [Mr. HERGER] and I put together. Does the Boehlert amendment allow maintenance of the levee system?

Mr. GILCHREST. Mr. Chairman, reclaiming my time, the Boehlert amendment, in my understanding, does not address the maintenance, the long-term maintenance. The gentleman is correct.

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has expired.

(On request of Mr. POMBO, and by unanimous consent, Mr. GILCHREST was allowed to proceed for 3 additional minutes.)

Mr. GILCHREST. Mr. Chairman, the Boehlert amendment deals with the existing emergency, which is to repair the levees up to 1998.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, if the area was declared a disaster area from the floods of 1997, they allow us to repair the damages from the floods in disaster areas from 1997?

Mr. GILCHREST. Mr. Chairman, reclaiming my time, I would say two quick things. No. 1, the Boehlert amendment ensures that repairs that were broken take place in the levee system; but No. 2, if the levees are maintained—and this is what I want to do in my study—if the levees are maintained and cut the grass and deal with the issues, we are not going to have an elderberry bush grow up.

So my amendment, which will amend the Boehlert amendment, I think, will deal with the problem of maintenance.

I yield to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, I thank the gentleman and I appreciate his argument. There is a reason we go through the process of endangered species. There is a reason we go through environmental impact statements.

Mr. Chairman, last year the Congress talked about spending $1 billion for one dam in California, one dam, $1 billion or more. We went through the assessments, we looked at the environmental assessments, we looked at the alternatives. What did we do? We changed the way we operate at Folsom Dam. We strengthened the levees. We did not build the $1 billion dam for the biggest floods in our State, and that system worked perfectly.

That is why we go through these assessments, because good environmental practices and the taxpayers' interest coincide so very often. We could have chosen to build a $1 billion dam, we did not have to. And now for very little money, I think that is the point the gentleman makes, there is a reason for doing this.

Mr. GILCHREST. Mr. Chairman, reclaiming my time, I thank the gentleman from California, I thank both gentlemen from California, and even the other gentleman from California. There are a lot of people from California here.

I think that we all have to recognize that yes, there have been some extremes, and there are some examples. And the gentleman from California [Mr. HERGER] described an example where some maintenance was held up because of the Endangered Species Act, because of the problems with maintenance and because of the problems of mitigation costs.

Those are real issues that actually happened and create layers of bureaucracy that we are trying to swim through, pardon the pun. However, Mr. Chairman, at this point, I think this House would more adequately address the problem if we vote for the Boehlert amendment, which will end in 1998 and in that process ensure that repairs are taking place. In a minute I will offer an amendment to the Boehlert amendment that will deal with the maintenance and the mitigation costs.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, the gentleman has said that the Boehlert amendment does not address maintenance. The gentleman's amendment is asking for a GAO study. So neither one deals with the real problem that we have of preventive maintenance.

Mr. FAZIO of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Boehlert amendment. I know that the Endangered Species Act is not as well-known to the rest of the country as it is to those of us in California who live with it on a regular basis, and I think that perhaps we speak with more emotion than many of the other people who engage in our debate, perhaps with the exception of the gentleman from Louisiana [Mr. TAUZIN], who exceeds us all. But let me say something that I think has been lost in this entire discussion.

The approach that the gentlemen from California, Mr. POMBO and Mr. HERGER, are taking is not at odds with the approach that was taken by the full Committee on Appropriations unanimously and the essence of the substitute that the gentleman from New York, Mr. BOEHLERT, has brought to us on the floor today.

We may have differences of opinion about the Endangered Species Act, and I, for one, would like to bring the authorization out and go through it line by line on this floor and resolve our various points of difference. But no matter how we feel about that, the bill, as reported out by the Committee on Appropriations coming to this floor next week, contains language which makes a difference for the people who are impacted by this flooding in California.

That amendment was based on a simple premise, that emergency repairs should go forward without any ESA requirements for mitigation or prior consultation to impede them. In other words, for the next, what, 17 months through the end of next year, we believe the districts, the State, and the Federal agencies responsible for putting back in place the flood control system that was rendered ineffective by the winter storms can do so without reference to the Endangered Species Act. That is the thrust of the Boehlert substitute.

Now, it may not be enough to satisfy some, and I understand that there is need for some ongoing approach, maybe expedited approaches that would get through the redtape of bureaucracy more quickly, maybe some things that would provide commonsense permits for our local communities to proceed with on important flood control projects.

We need to talk about streamlined process that gets these projects underway in a construction season, which is already limited by salmon runs and other requirements. We also need to discuss incentive-based approaches to get improved compliance with the Endangered Species Act. We need to make

a more cooperative and less heavy-handed bureaucratic approach.

That is all to be done in an approach that could, I think, get broad bipartisan support on this floor as it relates to the entire Endangered Species Act; not a single-shot approach to flood control, but one that would affect all of our districts and that would move us further down the road toward, I think, some understanding of how we can live with this law.

But get this: This Boehlert substitute, which is the only language that the President will sign, we got that message clearly today, is all we can accomplish in this short timeframe. The President will veto the Pombo bill, even as amended, because it is a fundamental rewrite of the ESA that we made up here on the floor, people adding amendments and subtracting amendments.

I mean, the bottom line is we have not done our homework, we have not done the job that needs to be done. We are reacting out of emotion, and I understand that. I feel as the gentleman from California [Mr. HERGER] does about the deaths that have occurred in northern California, the devastating loss of property, and the cost to the taxpayers at every level.

But the solution to this problem is not to take the Endangered Species Act out and shoot it, we can fix it; but it is to deal with all of the other environmental laws that we have not even talked about like the NEPA statute that affects consultation as well and, more importantly, to get the resources we need to fix the levees.

We need State and local taxpayers and property owners and the Corps of Engineers to come up with a comprehensive approach to this solution. We need a flood bond act to pass in California. I am hopeful one will in the next calendar year, in the election either on the spring or fall ballot.

We need to work together on that and not make it appear that the Endangered Species Act has caused the floods. It has, I believe, contributed to delays, I believe perhaps has contributed to additional costs, yes. That is an irritant, that can become a serious problem, but it is not the reason we have the floods. We need to focus on what we can do together to bring about the mix of funding sources that will get on top of this, and I would like to fix the Endangered Species Act in the context of a repair to that entire statute and not just because we have had to suffer in California and in other parts of the country this winter.

□ 1745

I think this effort that the gentleman from New York [Mr. BOEHLERT] has made is designed to get both sides together to give us something we can say to the people of California and other parts of the country who have lost property and lives, and I think we can get the system back up and operating.

The CHAIRMAN. The time of the gentleman from California [Mr. FAZIO] has expired.

(On request of Mr. MILLER of California and by unanimous consent, Mr. FAZIO of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. FAZIO of California. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, I want to commend the gentleman for his remarks. I think he in fact makes maybe the most reasoned presentation so far on the floor. That is that we have all heard from our constituents and we have all heard from our colleagues, problems with implementation, management, and enforcement of the Endangered Species Act. That is a well known fact on the floor of this House.

The fact is that we have watched and we have battled over this thing over the many years. But the gentleman makes a point; if we really want to address this, it has to be done in a reasoned fashion. We have to bang it out. The gentleman from California [Mr. POMBO] started an effort last year and that came to naught. The gentleman from Alaska [Mr. YOUNG] has approached me this year about whether or not there is a chance to get a group of people to sit down and discuss this. The gentleman from New York [Mr. BOEHLERT], the gentleman from New Jersey [Mr. SAXTON], and the gentleman from Maryland [Mr. GILCHREST] have talked to Members in their caucus about this.

Mr. Chairman, the fact of the matter is we are arriving at a point where there is a critical mass of people who believe that we have an obligation to address this in a comprehensive fashion. I think that is the important way to go about it.

But to use this vehicle as a means of now just driving a large hole into it with respect to huge, huge integrated water projects throughout the western United States, through much of the area of flood control projects, I think would be a terrible mistake. We can do the Boehlert-Fazio amendment. That is doable. The President will sign it. We can take care of this immediate problem. Then we can start with the very hard, difficult work, and that is getting a comprehensive review and changes with this act so in fact it can work for the rest of our economy.

Mr. FAZIO of California. Mr. Chairman, reclaiming my time, I want to congratulate the ranking member. I am sure the gentleman from California [Mr. POMBO] and the gentleman from Alaska [Mr. YOUNG] are pleased to hear that kind of commitment, because we all know that kind of work has to be done.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. FAZIO of California. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, one of the realities here, too, is when people are talking about protecting flood control projects, that is one thing. But then there is going to be a higher burden on the farmers, on the miners, on the other industries, because we are going to have to do this protection at some point.

The CHAIRMAN. The time of the gentleman from California [Mr. FAZIO] has again expired.

(By unanimous consent, Mr. FAZIO of California was allowed to proceed for 2 additional minutes.)

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. FAZIO of California. I yield to the gentleman from New Jersey.

Mr. SAXTON. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would like to clear up one matter. Earlier in the debate when I was in the well, there was some question about the position of the White House. The gentleman from California just reiterated a position that I thought was valid, and that was that the White House, the President, would not sign the Pombo bill in its current form. I am also aware that calls have been made to the White House in the subsequent couple of hours. Would the gentleman bring us up to date on what he believes the position of the White House is?

Mr. FAZIO of California. Mr. Chairman, I believe the White House remains opposed to the Pombo bill, as amended, and supports the Boehlert alternative, which is the only thing we can accomplish in this short time frame; maybe not from the standpoint of many Members the best, but it is what is doable. It is what we can bring home to our constituents in need. We can then go back and take a more comprehensive approach. The committee can do its work. We will not be supplanting them here on the floor.

I do think that is the most constructive thing. What I really want to get across is this bill, as we know, is not going to pass the Senate. It is not going to even come to the President for a veto. It is a vehicle for debate. It is a vehicle to air a problem. Now, let us not lose sight of the fact that we owe it to our constituents to help them with a short-term crisis. Mr. Chairman, I urge Members to support the Boehlert substitute.

Mr. POMBO. Mr. Chairman, I ask unanimous consent that debate on this amendment be limited to 30 minutes, 15 minutes on each side, equally divided.

The CHAIRMAN. And all amendments thereto?

Is there objection to the request of the gentleman from California?

Mr. GILCHREST. Reserving the right to object, Mr. Chairman, and I do not want to object, but I would like to ensure that my amendment be protected in this time frame.

Mr. POMBO. The request is to the Boehlert amendment and all amendments thereto. I will assure the gentleman that I do not have any objection to his amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from California [Mr. POMBO] will control 15 minutes, and the gentleman from California [Mr. MILLER], the ranking minority member, will, I assume, control the other 15 minutes.

PARLIAMENTARY INQUIRY

Mr. DICKS. Parliamentary inquiry, Mr. Chairman.

Mr. Chairman, is it not the regular order that Members who are standing are recognized for a portion of the 30 minutes?

The CHAIRMAN. The request was to expedite and divide in half the control of the time, so the Chair exercised discretion to carry out that allocation which was clearly in agreement.

Mr. MILLER of California. Mr. Chairman, it is my understanding that it is 15 minutes a side. I ask unanimous consent to yield half my time to the gentleman from New York [Mr. BOEHLERT], half of my 15 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from New York [Mr. BOEHLERT] will control 7½ minutes.

AMENDMENT OFFERED BY MR. GILCHREST TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BOEHLERT

Mr. GILCHREST. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. GILCHREST to the amendment in the nature of a substitute offered by Mr. BOEHLERT:

At the end of the amendment add the following new section:

SEC. . GAO STUDY OF MITIGATION REQUIRED FOR LEVEE MAINTENANCE PROJECTS.

Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a nationwide study of the costs and nature of mitigation required by the United States Fish and Wildlife Service and the National Marine Fisheries Service, pursuant to consultation under section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)), for flood control levee maintenance projects; and

(2) submit to the Congress a report on the findings and conclusions of the study.

Mr. POMBO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. GILCHREST. Mr. Chairman, I ask that the amendment to the amendment in the nature of a sustitute be adopted.

The CHAIRMAN. The question on the amendment offered by the gentleman from Maryland [Mr. GILCHREST] to the amendment in the nature of a substitute offered by the gentleman from New York [Mr. BOEHLERT].

The amendment to the amendment in the nature of a substitute was agreed to.

Mr. POMBO. Mr. Chairman, I yield 4 minutes to the gentlewoman from Idaho [Mrs. CHENOWETH].

Mrs. CHENOWETH. Mr. Chairman, I thank the gentleman from California for yielding time to me.

Mr. Chairman, I wanted to address the Boehlert amendment. We have heard the gentleman from California [Mr. FAZIO] speak very eloquently to the fact that we need to put off consideration because, after all, hopefully we will be dealing with the Endangered Species Act. But if we think for one minute that the entire act will not evoke more emotion and more concern than this particular bill does, then we are not thinking clearly, again.

Certainly, organizations like Trout Unlimited and the Sierra Club will be lobbying any commonsense reform to the Endangered Species Act. The Boehlert amendment simply codifies into law that which is already being used by rules and regulations, and it is not working. The issue is, when are we going to put humans and human property above the lives of a beatle or a snail or various other species?

These agencies have not been using common sense as they regulate. In Idaho, we have a highway that goes into a little town, Grangeville, that was being washed out because of flooding. Yet, the National Marine and Fisheries Service and the Fish and Wildlife Service would not let us repair that highway. Instead, they allowed a huge amount of siltation and sediment load to occur in those streams and rivers that have been set aside as critical habitat for the salmon because this agency was not willing to make a decision.

In the little town of Julietta the flooding occurred, and the sewer system up there was threatened with the settling ponds, and the Fish and Wildlife Service insisted that the town plant willows and other bushes on the dikes in order to protect the steelhead, and yet the settling ponds were flooding and effluent was going into another river that is critical habitat for the salmon.

Mr. Chairman, the fact is that when agencies are left to their own, they are mixing up their priorities. We are simply, in this body today, trying to reestablish the priorities. Yes; these are not extreme emotions, and these are not extreme solutions that we are looking to. Mr. Chairman, as I look at these pictures, it does evoke emotion. It is of great concern to us. I think we need to do the responsible thing. We need to support the Pombo amendment and we need to defeat the Boehlert amendment.

Mr. Chairman, I rise in support of H.R. 478, the Flood Prevention and Family Protection Act, and in opposition to the Boehlert-Fazio substitute.

There is a great deal of misinformation being spread around here today, I want to clear some of this up.

Fact—under current law, the Endangered Species Act allows necessary repair work to levees and flood control structures only after flooding has begun to destroy human life, property and wildlife habitat, and only after the President declares the flooded area a disaster.

In other words, flood prevention repairs can begin only after there is a devastating flood. That is not prevention, Mr. Chairman, and is yet another example of the inflexible nature of the ESA.

Fact—H.R. 478 does not gut the ESA, as some claim. If H.R. 478 becomes law, the NEPA process will still provide Federal agencies with an opportunity to ensure flood control measures do not harm endangered species.

Fact—this is not a problem limited to California's 1997 winter floods. We have heard and will hear more ESA horror stories throughout the day. But, Mr. Chairman, let me tell you about my home State of Idaho. We, too, were flooded in Idaho this winter. On New Years Day this year, streams became torrents of water, dykes were breached, levees were blown-out all over Idaho. I personally flew over the flooded areas to see firsthand the devastation. Livestock and other property were lost. Fourteen counties in Idaho were declared disaster areas.

In Idaho, a river is eroding a county road near Grangeville—a road that is the sole access to a housing development. Because of the geological structure of the area, this is the only place that a road is possible. The river is cutting away at the bank and the road, pouring sediment into the river. This sediment impacts the endangered salmon.

Yet, the National Marine and Fishery Service [NMFS] is holding up repair until they can determine if the repair will be harmful to the endangered salmon. This is a dangerous situation because an entire community can be cutoff, and at the very least, travel over this road is hazardous. In the short term, repairs may impact the salmon, yes, but in the long term, the community and the salmon would benefit—sediment would no longer be pouring into the stream, and the citizens can safety travel over the road.

Another example from Idaho, a stream bank on the edge of the town of Julietta—population 488—was breached by flooding. The water continues to threaten Julietta's sewer system. But the U.S. Fish and Wildlife Service is requiring Julietta to plant shrubs and willows to mitigate impacts to the steelhead, a species that is proposed but not listed as endangered.

The problem is that the planting on the stream bank isn't even in the town of Julietta, and is out of Julietta's control. Additionally, the steelhead isn't even listed. The levee remains breached, and Julietta remains at risk—even through the river remains high and the snow pack in the mountains is at record levels. All forecasts point to another flood.

What we have in Idaho, then, Mr. Chairman, is sediment pouring into a stream—impacting both humans and fish—and the possibility of sewage effluent entering a river—again impacting fish and humans. Grangeville and Julietta and the fish are impacted by the inflexible nature of the ESA, and are at risk. This has also affected the species the ESA was meant to protect—this is simply unacceptable, especially in these emergency situations.

North Dakota recently experienced flooding—and who knows where it could happen next.

Is this the intent of the Endangered Species Act? Is it to be implemented in such a way that communities are threatened? I say no. We must provide the flexibility to protect our citizenry from flooding and in the end, as in the case of Grangeville, protect the endangered species, the salmon.

H.R. 478 does not gut the ESA. This is a good bill which merely provides the flexibility to allow our citizens to prepare and try to prevent disasters.

The Boehlert-Fazio substitute will not work. in fact, it will make the current situation worse. The substitute subjects the repair or replacement of all flood control projects in disaster areas around the National to requirements established by the U.S. Fish and Wildlife Service for projects located in declared disaster ares in California. That's right, Boehlert-Fazio is limited to only California, and authorizes repairs only through 1998. What about my State of Idaho? What about future threats and disasters?

Passing legislation that gives the FWS dominion over people sets up a very dangerous precedent—and is a real threat to families across America. The FWS has already shown that it puts the interests of wildlife over property rights. With the Boehlert substitute, the FWS would have the legal authority to place the interests of wildlife before the safety of people. The safety of people and wildlife should be treated at the same level.

What's worse, the Boehlert-Fazio substitute provides no coverage for maintenance, either before or after flood disasters. As we in the West know, maintenance of dykes and levees is absolutely crucial to flood protection. The Boehlert-Fazio substitute makes existing law worse.

With that, Mr. Chairman, I urge my colleagues to vote for H.R. 478, and vote against the Boehlert-Fazio substitute.

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. FARR].

Mr. FARR of California. I thank the gentleman for yielding time to me, Mr. Chairman.

Mr. Chairman, let us think about it for a minute. We would think that there was never a disaster in America before the Endangered Species Act. That act was adopted when Nixon was President in 1972. We wait until 1997 to get up and say that all the floods in California were a result of the Endangered Species Act? Then what they do is to bring an amendment to the floor which, frankly, the reason we are having such a long debate on is that it was very poorly drafted. It was poorly drafted because it opens a huge hole.

If we look on page 2, and I hope all of us will read these bills, because that is what we are sworn in office to do as lawmakers, it says on line 21 that the consultation and conferencing under the paragraphs in this bill are not required for any agency; not required, not required. This is the big loophole.

Mr. Chairman, before coming to the Congress I served in the California Legislature. I drafted bills that created water districts and irrigation districts. Before that I was on the board of supervisors. I sat on water districts and irrigation districts, and on air boards and transportation boards. The reason we have the consultation process in law is so we can avoid the unforeseen problems that come about when you start tampering with nature.

If we are going to do levees and build dams and operate them, we are going to have downstream effects. Those downstream effects can affect people's livelihood. We do not want to exempt that process, because what happens if we do not have that consultation in the beginning, we are going to end up with someone filing a lawsuit in court, and if there is any way to delay a project, just get it tied up in the courts where nobody wins except the lawyers.

I have all the respect in the world for the people that came and wanted to try to deal with the regulatory issues when it comes to floods, but this bill, the way it was drafted, is the wrong approach.

I rise today in support of the Boehlert amendment. Many of the people who spoke in favor of this bill who gave these causes are California legislators. They never got up after the 1986 flood, where we lost lives, and blamed it on the Endangered Species Act. They never took action before when they were in Congress to amend the act.

Do not make any bones about it, this bill, the way it came to the floor, opens a door far beyond what those who tell us they just want to kind of make the process a little bit expeditious really intend to do.

Every time we make a decision to dig, drill, cut, build, repair, we are going to affect something. I assure the Members that they have to have a process where people talk about that before the effects are known, before the effects of the construction are placed upon those that have a negative effect.

I urge Members to support the Boehlert amendment. It is a reasonable approach. It can get signed into law. If we really want to correct the problem, we want it to become law. That is what the President will sign. I urge an ''aye'' vote.

Mr. POMBO. Mr. Chairman, I yield 3 minutes to the gentlewoman from Missouri [Mrs. EMERSON].

Mrs. EMERSON. Mr. Chairman, it pains me to have to rise and speak against the amendment of my dear friend, the gentleman from New York [Mr. BOEHLERT]. Mr. Chairman, it will not help my district in Missouri, and I realize that that sounds a little bit selfish, but the fact is that my job here is to protect the folks back home, and that is what I need to do.

Let me explain by telling the Members about a couple of situations in my district. We have a small town called East Prairie, where the integrity of its levees are greatly threatened. This is a poor town and it is very prone to flooding every year. Because of this, there are a lot of folks who live on welfare in East Prairie because no companies want to come to East Prairie and locate because they keep getting flooded out.

□ 1800

So we have no jobs. We have lots of welfare recipients and we do not have any prospects for getting new jobs until our levees can be fixed and we can get two pumping stations to help keep those levees strong and maintain them.

I need to know what I can tell the folks in East Prairie, MO, who desperately want to find work. Am I going to tell them that they ought to move away because Fish and Wildlife or the EPA thinks that the pallid sturgeon in our region is more important than them?

And then several miles up the river in a place called Commerce, MO, right on the river we have another problem. If we had a flood half as bad as they had in Grand Forks, the Army Corps of Engineers tells us that we would have a huge chocolate tide coming in because our levees cannot hold the water and, it would spread all the way through our district, southern Missouri, all the way to Helena, AR, the home of our colleague, the gentleman from Arkansas [Mr. BERRY] and the President's home State.

Our levee simply cannot manage that influx of water. We stand to lose half a million lives, several interstates, schools, businesses, private property. It is a terrible situation.

Our landowners, for example, we have to wait 2 years to have an environmental impact statement to tell us if we can even get a permit to fix this. That is not right. Our landowners in both these cases have offered five times the mitigation to maintain and repair these levees, but we are told by the EPA and Fish and Wildlife that since this is not natural wildlife they will not accept that, but five times hundreds of thousands of dollars of mitigation and it is unacceptable.

So what do I tell these folks in my district? What do I tell them when their lives are in harm's way on a daily basis? That we have to wait 2 years to even try to fix this problem?

So anyway, that is my problem. That is my concern. I sure think that the Pombo-Herger bill is going to help our folks in southern Missouri a lot more than that of my friend, the gentleman from New York [Mr. BOEHLERT].

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. DICKS].

Mr. BOEHLERT. Mr. Chairman, I yield 1 minute to the gentleman from Washington [Mr. DICKS].

The CHAIRMAN. The gentleman from Washington [Mr. DICKS] is recognized for 3 minutes.

Mr. DICKS. Mr. Chairman, I thank the gentlemen very much for yielding me the time.

I rise in very strong support of the Boehlert amendment. I think the Boehlert-Fazio amendment is carefully crafted. It gets the job done but it does

not create this great big broad exception in the Endangered Species Act.

Let me just read to my colleagues, I think very careful language that addresses why the bill as reported, the Pombo bill, is unacceptable. The bill would permanently exempt the reconstruction, operation, maintenance, and repair of all dams, hydroelectric facilities, levees, canals, as well as a host of other water-related activities, from the safeguards and protections provided in the Endangered Species Act. There are literally thousands of dams and other structures nationwide that have flood control as a purpose.

H.R. 478 is clearly unnecessary. There is no credible evidence suggesting that the ESA has worsened flood damage. In fact the ESA is already flexible enough to allow expedited review for improvements or upgrades to existing structures in impending emergencies.

The ESA also allows exemptions for replacement and repair of public facilities in presidentially declared disaster areas. The Fish and Wildlife Service issued a policy statement clarifying how the agency is implementing these emergency provisions in the 46 California counties that were declared Federal disaster areas this year. Under the policy, flood fighting and levee repairs are automatically exempted from the ESA if they are needed to save lives and property.

By the way, just to read again the statement by the administration, the administration strongly opposes H.R. 478 because it would exempt all flood control projects from consultation and taking requirements of the Endangered Species Act. The administration clearly supports minimizing flood damage and protecting the residents living in flood-prone areas, but does not believe that H.R. 478 will achieve these purposes. Because of severe economic and environmental impacts that would be caused by H.R. 478, the Secretary of the Interior would recommend that the President veto the bill in its current form.

Mr. Chairman, that is why I think the Boehlert-Fazio substitute, which is carefully crafted, which deals with the emergency situation, which in essence codifies in law what the President has already done in California through his declaration, is the right way to proceed. This will be in conjunction with what we are doing on the supplemental appropriations bill.

I just hope Members really do understand that this amendment is aimed at weakening the Endangered Species Act and I think will produce a very negative consequence to the timber industry, to agriculture and mining who will have restrictions laid on them because of this exemption.

Mr. BOEHLERT. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Chairman, we are down to the last few minutes of this debate on the Boehlert substitute. I think it is important to point out here that there are some things that we can get done today which will become law and there are some things that we ought not to get done today which frankly cannot become law.

One of the things which cannot be done today is that we cannot make major changes to the Endangered Species Act because if we were to do so, we would have to have the cooperation of the administration, and the administration has clearly stated as late as the last couple of hours that the Pombo-Herger language is unacceptable and, therefore, it cannot become law.

What can happen today is the adoption of this amendment, the Boehlert substitute, which can then become the base bill which can pass this House, which I believe can pass the Senate and which I believe can be signed into law, which will grant the constituents of the gentleman from California [Mr. POMBO] and the gentleman from California [Mr. HERGER] and the folks from North and South Dakota and the other flood stricken areas the relief that they need in order to repair the flood control systems that have been damaged by the floods.

Mr. Chairman, I just want to urge every Member to do what I have concluded is the right thing in order to pass this aid along, not in the form of money but the opportunity to get things done quickly and in a way that nobody seems to object to, particularly the administration whose cooperation we once again need.

I commend the gentleman from New York [Mr. BOEHLERT] for his hard work, as well as the gentleman from California [Mr. POMBO], who has a different approach, but I think that in the interest of moving the process forward and in the interest of getting the relief to the folks who need it the most, that there is only one answer and that answer is to vote ''yes'' on the Boehlert substitute.

Mr. POMBO. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LEWIS].

(Mr. LEWIS of California asked and was given permission to revise and extend his remarks.)

Mr. LEWIS of California. Mr. Chairman, I thank my colleague for yielding me the time.

Mr. Chairman, there are two experiences I have had in my life that I would like to point to in setting up my share of this discussion. In 1938 we had a major flood in California. I was 4 years old. I remember it clearly, dropping a ping pong ball outside my back window and it dropped about 12 to 18 inches and hit the water and floated out through the back fence. At that point in time, I understood clearly that nature could have a very big impact upon our lives and that disasters were of great potential that we needed to pay great attention to.

The next event involved the late 1960's, when my colleague from California who is standing over here and I discovered the word environment. And it was a very important development before all of us recognized that mankind was having an impact upon our environment that we needed to pay very careful attention to. As a result of that and the work involving that, I once chaired a committee that developed the toughest air quality management district in the country. I take a back seat to nobody in terms of environmental questions.

But when we find ourselves in a circumstance like that which California is experiencing now, where a major flood control project in southern California would be held up by the wooly star, which is nothing but a cactus that is almost laughable except it gets a little purple flower for about 2 weekends a year; when indeed the kangaroo rat is having a huge impact upon development in the Central Valley where these floods have recently taken place; when the Delhi Sands flower-loving fly is impacting not only the development of a county hospital but the economy and the flood control in the very region I am worried about in the south lands. That would suggest to me that the environmental movement has some way gotten into the hands too often of those people who are on the very fringes of this entire discussion.

It is time to make sense out of the Endangered Species Act. It is time to recognize that these flood control mechanisms in the Central Valley are critical to the health and welfare of our people. And we should not allow extreme voices to dominate this debate.

If we defeat the Boehlert amendment and the Fazio amendment today and we go forward with this bill, we will set up a discussion that will for the first time in many, many a year cause everybody of good faith to say, hey, we have to make sense out of this thing. There is no doubt that my public is concerned about the environment, but they do not want to have idiocy prevail.

To suggest that these gentlemen on my side of the aisle are interested in gutting the Endangered Species Act is less than a service to the process we are about here. Indeed, we have gone to extremes, and it is about time we took sensible voices to the bargaining table between now and the time the President ever sees this bill and make sure that endangered species that are important to all of us truly have their place in this debate, a very valuable place; but also people, a very valuable species, ought to have a place in this debate as well.

Mr. Chairman. I rise today in strong support of the Flood Prevention and Family Protection Act of 1997. This legislation was introduced by my colleagues Congressman WALLY HERGER and Congressman RICHARD POMBO following the January floods in California which devastated the San Joaquin and Sacramento Valleys. This legislation, which enjoys wide bipartisan support, has been drafted in an extremely focused manner to correct a serious deficiency in the Endangered Species Act as

it relates to the interplay between wildlife habitat and flood control projects, facilities and structures.

I also want to thank my colleagues TOM CAMPBELL and BILLY TAUZIN for their thoughtful input and positive changes to this important legislation. The voices these members add to the debate help move this discussion in a positive direction. Their recommendations are welcomed by my colleagues and I who have long-standing concerns over the excesses of the Endangered Species Act and its oft-times arbitrary application.

H.R. 478 allows the reconstruction, maintenance, repair and operation of existing flood control projects before a flood event occurs—not after the damage has been done. This is a critical point. Opponents of this legislation believe that we should sit on our hands while a 100-year flood event wipes out people's property, species habitat and existing flood control projects. This makes absolutely no sense. I cannot believe that opponents of this measure think that endangered species like the delhi sands flower loving fly and the kangaroo rat should have the same priority as the protection of human lives and property. That's right, the extreme environmental groups place species protection over the protection of humans. I hope my colleagues listening to this debate don't have the same set of priorities. The fringe environmental community wants you to believe that this measure guts or rips the heart out of the Endangered Species Act. Nothing could be further from the truth. It simply adjusts shortcomings with the ESA.

The County of San Bernardino, which I represent, is responsible for constructing, operating and maintaining hundreds of miles of flood control facilities. These facilities are designed to protect people and property from flood damage—not provide habitat for endangered species. The Santa Ana River Mainstem Project and the Seven Oaks Dam are located in my congressional district. These projects are responsible for the protection of millions of lives and billions of dollars of property in Riverside and Orange Counties. I certainly don't believe that the millions of people who are protected by these projects feel that we should wait until after a major flood catastrophe to repair these projects.

As a result of the Endangered Species Act and its ever-changing interpretation and the ever-increasing list of threatened and endangered species, the mitigation requirements on many flood control facilities are cost prohibitive. In fact, the permitting process has become so costly and time consuming that critically needed projects are now often delayed and abandoned. At the very least, we need to provide State and local flood control professionals with the ability to repair existing flood control investments before disaster strikes. It is unfortunate that the regulatory burden on the permitting process has become so encumbered that the public, in many instances, no longer receives the same level of flood protection they once enjoyed.

Make no mistake, this legislation can also reduce Federal costs associated with future flood disasters. As chairman of the Appropriations Subcommittee responsible for the annual budget of the Federal Emergency Management Agency, I know full well the impacts that natural disaster supplementals have on other Federal programs. Prior to the 104th Congress, Congress and the Administration simply added the costs of disaster recovery to the deficit. Congress has now taken the responsibility of fully offsetting federal disaster recovery spending from other important federal programs. In fact, the disaster supplemental which will be on the House floor next week uses housing programs as an offset for disaster spending. While I don't believe that we should have to pit housing and other programs against disaster relief, these will continue to be the tough choices we face unless we get a handle on the costs of disasters.

The Herger-Pombo Flood Prevention and Family Protection Act is one such tool we can use to decrease the exorbitant costs of future flood disasters.

Let's give some relief to the past and future flood victims by providing flood control professionals the tools they need to do their job effectively. As Governor Wilson stated in a May 6 letter to Congressmen HERGER and POMBO, ''this bill will make it much easier to avoid loss of life and property by expediting preventative maintenance prior to flooding with the expectation that this would reduce the risk to life and property during the flood itself.''

I urge my colleagues to put people first. Support H.R. 478 and oppose the Boehlert-Fazio amendment.

Mr. MILLER of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are coming to the end of this debate. Let me just suggest that the experience in Congress is not very good when we try to write wholesale exceptions to an individual law without considering the impact elsewhere.

We did this 1½ years ago with logging without laws. Not only did we devastate a lot of the forests in the Pacific Northwest and elsewhere, but we found out we had horrible impacts in terms of landslides this year that killed people because of lack of restrictions on where cuts were made. We also see that we are having an impact on the commercial fisheries and on jobs.

Now we come to it is essentially levees without laws. This Government, the taxpayers, have spent billions and billions of dollars taking the great rivers of this country that ran across thousands of miles, that have filled hundreds of miles of flood plains, and we have forced them into very narrow rivers with very high levees. Should we be surprised when every now and then the rivers jump out of those levees? That is what happened this year.

But there is no indication at all that that happened because of the Endangered Species Act, and yet we are on the floor today talking about blowing a huge hole in the Endangered Species Act because we are angry about the floods. But the demonstration is simply this, we had too much water for the existing design of the levees and the water blew those levees out. It had nothing to do with the Endangered Species Act.

We had river flows that most of us in our lifetime have never seen in the State of California, they had never seen in North Dakota, they had never seen in the Midwest. It had nothing to do with the Endangered Species Act. It had to do with the fact that so much water was coming through that there was no capacity of the levees to hold.

We ought to be very careful before we accept a wholesale retreat on the Endangered Species Act with respect to huge publicly subsidized Federal water projects in the West and elsewhere.

I say that because of this: If you get these exceptions, then the burdens of meeting the requirements of the Endangered Species Act fall on the commercial fishermen, they fall on the logger, they fall on the miner, they fall on the municipalities, because that burden has to be met somewhere else. And if the levee districts can escape their obligation under the Endangered Species Act, we will be looking to the people in the forests, we will be looking to the people in the commercial fishing industry to try to pick up that burden.

I hope that we would vote for the Boehlert-Fazio amendment and reject Pombo.

□ 1815

Mr. BOEHLERT. Mr. Chairman, I yield 1 minute to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I am grateful to the gentleman for yielding me this time.

I want my colleagues to understand that today they have a choice between going home and telling people they did something about levees and levee reconstruction or going home and saying that they made wonderful speeches and brought down the legislation which could have helped those people; that they have assured a veto or a filibuster in the Senate which will kill this legislation.

I want to give my colleagues one example of what this means. In the West, salmon streams now are faced with a situation where salmon are becoming endangered species. What this says is that we are stripping those homeowners and others along the shore of the protection of Federal flood control, but we are also doing something else, we are stripping the salmon, which is one of God's great gifts to the people of the Western United States, of all protection. And we will find the great runs of salmon being a matter of cold hard history with those species now gone from the western rivers.

Mr. Chairman, I urge my colleagues to vote for the amendment of the gentleman from New York and against the legislation.

Mr. BOEHLERT. Mr. Chairman, I yield myself the balance of my time.

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, we are coming to the close of a spirited and very serious debate, and I want to commend all those who have participated for the seriousness of purpose.

My substitute addresses the stated objective of H.R. 478 in a manner that does not violate a very important piece

of legislation, the Endangered Species Act, and in a manner that is friendly and sensitive to the environment.

We have a choice. Do we want to solve a problem or do we want to beat up on the Endangered Species Act? I do not find the Endangered Species Act, despite the fact that it is so well-intended, to be perfect. It requires some refinement. But that is another debate for another day. This purpose today is to address an emergency situation.

We have been faced with an emergency situation and we have come up with an emergency response, a response that allows the repair work to go forward not just after the fact, as some have been concerned with, but prior to the fact if there is a substantial threat.

Now, the crafters of H.R. 478 will tell my colleagues that their bill is narrowly crafted. Be wary of that. Do not buy anything from that, because their bill would exempt from the Endangered Species Act maintenance, rehabilitation, repair, or replacement of a Federal or a non-Federal flood control project, facility, structure. The list goes on and on. A blanket exemption.

We have heard expressed here in eloquent terms how important the Endangered Species Act is to America. Do we just want to throw it out? The answer is clearly no. But no law is more important than human life, and we want to protect human life, and that is why we have the exemptions we do in this bill. When human life is threatened, when there are substantial property investments threatened, we do not want a lot of bureaucrats and red tape and a lot of paperwork saying, well, we are sorry. We do not want people to be in harm's way so we provide exemptions for that.

Now, let me tell my colleagues something. People will say, well, the gentleman from New York, [Mr. BOEHLERT] and the gentleman from Michigan, [Mr. DINGELL] and some of the others are against flood control projects. They do not want to build any public works projects to protect the American people. How wrong they are. Because I am chairman of the Subcommittee on Water Resources and Environment that brought to this floor last year a $4 billion, 4-year program for flood control and important activities like that which are so essential to California, not just California but New York, too.

So I suggest to my colleagues, if our desire is to beat up on ESA, go ahead. But that is not what we are here to address. We are here to address an emergency. We are here to legislate.

I have been told by the administration that H.R. 478, even as amended, will not be signed into law by the President of the United States. So we can have all the grand speeches we want, all the press releases we want, but we will not have legislation to deal with real problems affecting real people in a real emergency. My bill will be signed by the President. The administration has said so. So that is very important.

Finally, let me point out that my language, my proposal, was passed unanimously by voice vote in the Committee on Appropriations on a bipartisan basis. But that was not good enough. The committee was upset and they objected to it. That is why we are here. Support an environmentally friendly substitute. Let us do the people's business.

Mr. POMBO. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the gentleman from New York, [Mr. BOEHLERT] is accurate on a few things, and I appreciate that he has come to the floor with his amendment. And if it did what he said it did, I would wholeheartedly support it. I would be the first person down here saying that it was a great piece of legislation and that we all should support it. But it does not do what he says it will do.

It absolutely does not accomplish the goals that we set out. He says it does. His statement says it does. The things that he passed out says that it accomplishes what we want, but it does not.

We do have a choice today, my colleagues. We have a very definite choice. What the amendment of the gentleman from New York would allow is that this break in the levee, it would allow us to fix that. It would not waive mitigation. It would not waive the Endangered Species Act. It would defer the Endangered Species Act until it was repaired.

Well, what is the difference between that and current law? Nothing. The policy that was sent out by the U.S. Fish and Wildlife Service on February 19 said exactly what the gentleman wants to do. He says the administration will sign it. Well, of course they will sign it, they issued it. Of course they will. It does not take care of the problem that we have, and that is to prevent this from happening.

I would like to show my colleagues, if I may, something that is very real. This is a picture of a levee bank. This is the picture of a levee bank right now. We can see the condition that it is in. They were prevented from maintaining that bank, clearing the brush out so that it could handle the 500-year flood, so that they could handle the amount of water that went through there.

They wanted to do it. They were told they could not until they went through a lengthy bureaucratic red tape mess.

But take a look at that picture a little closer. As they got a little closer in the boat, we begin to see just how bad this is. And we go a little bit closer and we can see the hole, the hole through the levee. We did not see it in the first picture because it is covered with brush, but we can see it if we get up 2 feet away. I know my colleagues cannot see this, but there is a man standing inside that hole.

That is the other side of the river where they had a boil coming up with water pouring out. That is the reality of what we are trying to do.

The amendment of the gentleman does absolutely nothing about this. The gentleman's amendment does nothing on preventive maintenance. It does not allow us to maintain that levee system.

What it does do is it says if the President declares it a disaster area in 1997, from this year's flood, then we can fix it. We can go back and fix that break. It does nothing to take care of an ongoing maintenance problem so that we do not have to come back and do this again year after year after year. It falls short of the goal. It accomplishes nothing.

Yes, we do have a choice. We can go home and tell our constituents that we actually did something about this problem or we can do what Congress has done for the past 40 years: Put up something that looks good, feels good and does absolutely nothing, because that is what the gentleman is giving us, nothing.

The gentleman keeps talking about what is in our particular bill. It consists of maintenance, rehabilitation, repair or replacement of a Federal or non-Federal flood facility if there is a threat to human life or serious property damage. We can maintain our levees if there is a threat to human life. We can rehabilitate our levees if there is a threat to human life. We can repair if there is a threat to human life and a substantial risk of the loss of private property. That is what we are asking for.

All of this stuff about gutting the act and everything else is just talk. We are asking for the chance to maintain our levees. What the gentleman is telling us is he is telling us that the airplane crew can provide maintenance on that aircraft as soon as it crashes and the people are dead, but until that point we are sorry.

Vote no on the Boehlert amendment and yes on the base bill.

Mr. PORTER. Mr. Chairman, I rise in strong support of the Boehlert amendment. We are all aware of the substantial needs of the victims of the recent floods and we should do all we can to help them. As currently provided in the supplemental emergency bill, all repair of flood control projects in federally declared disaster areas are exempt from ESA regulations. This language was approved by the Full Appropriations Subcommittee. However, since there were concerns over the ESA causing a delay in the construction of flood control projects—although there is no evidence that the ESA is directly accountable to this claim—Mr. BOEHLERT has offered this amendment to be sure that repairs to flood control projects will not be delayed anywhere where there is an imminent threat to human lives and property. This will help current flood victims and dispel any concerns over future maintenance and repairs.

H.R. 478 is not a bill to help flood victims. It is a poor attempt to weaken the Endangered Species act under the guise of emergency provisions. There are acknowledged problems with the ESA that should be addressed in a

complete reauthorization bill, but these should not be addressed piecemeal during times of crisis.

Support the Boehlert amendment to alleviate immediate problems and leave other concerns for complete ESA reauthorization.

The CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute, as amended, offered by the gentleman from New York [Mr. Boehlert].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BOEHLERT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 227, noes 196, not voting 10, as follows:

[Roll No. 108]

AYES—227

Abercrombie
Ackerman
Allen
Baldacci
Barcia
Barrett (WI)
Bass
Bentsen
Berman
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Castle
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (FL)
Davis (IL)
Davis (VA)
DeFazio
DeGette
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doyle
Ehlers
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Fawell
Fazio
Flake
Foglietta
Forbes
Ford
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Gordon
Goss
Green
Greenwood
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Hobson
Hooley
Horn
Houghton
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Johnson (CT)
Johnson (WI)
Johnson, E.B.
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kingston
Kleczka
Klink
Klug
Kucinich
LaFalce
LaHood
Lampson
Lantos
LaTourette
Lazio
Leach
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDade
McDermott
McGovern
McHale
McIntyre
McNulty
Meehan
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Neal
Neumann
Oberstar
Obey
Olver
Owens
Pallone
Pappas
Pascrell
Pastor
Payne
Pelosi
Petri
Porter
Poshard
Price (NC)
Quinn
Rahall
Ramstad
Rangel
Rivers
Roemer
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sanford
Sawyer
Saxton
Schumer
Scott
Sensenbrenner
Serrano
Shays
Sherman
Skaggs
Slaughter
Smith (MI)
Smith (NJ)
Smith, Adam
Smith, Linda
Snyder
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Sununu
Tanner
Tauscher
Thompson
Thurman
Tierney
Torres
Towns
Upton
Velázquez
Vento
Visclosky
Walsh
Waters
Watt (NC)
Waxman
Weldon (PA)
Weller
Wexler
Weygand
White
Wise
Wolf
Woolsey
Wynn
Yates

NOES—196

Aderholt
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Bateman
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Bliley
Blunt
Boehner
Bonilla
Bono
Boswell
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Deal
DeLay
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
Ensign
Everett
Ewing
Fowler
Gallegly
Ganske
Gekas
Gibbons
Goode
Goodlatte
Goodling
Graham
Granger
Gutknecht
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jefferson
Jenkins
John
Johnson, Sam
Jones
Kasich
Kim
King (NY)
Knollenberg
Kolbe
Largent
Latham
Lewis (CA)
Lewis (KY)
Linder
Livingston
Lucas
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Mica
Miller (FL)
Molinari
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Pombo
Pomeroy
Portman
Pryce (OH)
Radanovich
Regula
Riggs
Riley
Rodriguez
Rogan
Rogers
Rohrabacher
Royce
Ryun
Salmon
Sandlin
Scarborough
Schaefer, Dan
Schaffer, Bob
Sessions
Shadegg
Shaw
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (OR)
Smith (TX)
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Turner
Wamp
Watkins
Watts (OK)
Weldon (FL)
Whitfield
Wicker
Young (AK)
Young (FL)

NOT VOTING—10

Andrews
Barton
Becerra
Clay
Delahunt
Filner
Foley
McKinney
Reyes
Schiff

□ 1850

The Clerk announced the following pair:

On this vote:

Mr. Filner for, with Mr. Foley against.

Messrs. KLINK, NEUMANN, WELLER, and SMITH of Michigan changed their vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute, as amended, was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. DELAHUNT. Mr. Speaker, I was unavoidably detained and missed rollcall No. 108. Had I been present, I would have voted ''yes.''

Mr. YOUNG of Alaska. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. BONILLA] having assumed the chair, Mr. HASTINGS of Washington, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill (H.R. 478) to amend the Endangered Species Act of 1973 to improve the ability of individuals and local, State, and Federal agencies to comply with that Act in building, operating, maintaining, or repairing flood control projects, facilities, or structures, had come to no resolution thereon.

PERSONAL EXPLANATION

Mr. CUNNINGHAM. Mr. Speaker, on Rollcall 90 I was recorded as in favor of the Roemer amendment to H.R. 1275. This was an error. As a supporter of the Space Station, I ask that the RECORD show my intentions to vote ''nay'' on the Roemer amendment.

ANNOUNCEMENT OF SCHEDULE FOR THE REMAINDER OF LEGISLATIVE DAY

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, I have an announcement to make.

The bill that was just on the floor has been pulled, and we are about to take up a rule on the Juvenile Crime Control Act. There will be about a 45-minute vote on it, and then that will be the last vote of the night. In the meantime those that are on the floor now, they are welcome to leave or take seats so that we can take up this last matter before the House today.

PROVIDING FOR CONSIDERATION OF H.R. 3, JUVENILE CRIME CONTROL ACT OF 1997

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 143 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 143

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 3) to combat violent youth crime and increase accountability for juvenile criminal offenses. The first reading of the bill shall be dispensed