

just nonsense. The American people understand this. There is no crisis in America. We are going about our business. People are getting up and going to work every day. Nothing is happening. We can take our time. The President-elect is not sworn in until January 20. We have time to make sure the vote is accurate and fair. There is no need to pull the curtain down and say, no, we have to end it right now, when so much is in doubt, when the race is so close, and when a fair and accurate counting of the ballots may move it one way or the other.

I do not know; maybe Mr. Bush will win the election. As I have said, it is not important right now whether Mr. Bush wins or Mr. GORE wins. What is important is that every voter's vote in Florida is counted accurately and counted fairly, and whether that takes us 10 days or 12 days or 2 weeks, I believe the American people deserve to have those votes counted fairly and accurately.

Earlier today my colleague from Pennsylvania, Senator SPECTER, introduced a bill proposing the formation of a commission to examine methods to reduce the miscounting of votes at the polls. I have cosponsored that legislation with him because I believe we do need to look at this situation. I think we should carefully examine alternatives, given the experience we are now going through. We should examine the electoral college. Maybe it is not perfect, but I happen to think it may be more perfect than a direct election but I am willing to look at it. Perhaps we could allocate the elector's votes by electoral district as Nebraska and Maine have decided to do. Perhaps we should consider automatically giving these electoral votes to whoever wins the State, rather than electing individual electors who could actually vote against the will of the voters in their areas. But I am intrigued by having electoral votes determined by congressional districts as Maine and Nebraska do, as I said.

We ought to consider providing counties and States the necessary funds to assist them in modernizing and standardizing their voting methods. Although it may be somewhat more expensive—we don't know—there is voting technology that exists and is used today, or some of it may be not used, that could reduce voting errors and errors in vote tally. No technology will completely eliminate inaccuracies, but this election clearly demonstrates our current methods must be improved. That is why I joined with Senator SPECTER to cosponsor this legislation. I really do believe we need a more standardized methodology of voting machines in this country.

I asked my staff earlier, How many different kinds of voting machines do we have in this country? We have looked at this question and we do not know the answer.

The PRESIDING OFFICER. The Senator's additional 5 minutes have expired.

Mr. HARKIN. I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. We do not know how many different kinds of voting machines there are in this country. Since we are a mobile people, we move from one State to another, one area of a State to another, they can go and be totally confused by a voting machine that is different than what they had used the election before. So I wonder aloud about maybe standardizing voting machines throughout the country so, no matter where you go, you have the same voting machine that you had before.

I also believe we have to look at the latest technology—it exists—which could reduce to the barest possibility that a person does not vote for whom he or she wants to vote. There are interactive devices; I have seen them demonstrated myself, devices that any person with a disability, whether you are blind or deaf or whatever you might be, could use alongside anybody else. It wouldn't differentiate.

It would ensure that when you walked out of that booth, you knew exactly for whom you voted or for what you voted in terms of some of the resolutions and other items that are on the ballots.

If nothing else, we ought to be about this in the next session of Congress. I commend my colleague from Pennsylvania for introducing this legislation in this session, and I look forward to cosponsoring it with him when we meet again in January.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. L. CHAFEE). The Senator from Maine.

Ms. COLLINS. Mr. President, I ask unanimous consent that I be permitted to proceed in morning business for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ATLANTIC SALMON LISTING DECISION

Ms. COLLINS. Mr. President, it is with great disappointment that I rise today to comment on the decision announced yesterday by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to list as endangered Atlantic salmon in Maine. The decision represents an opportunity lost and reflects a process gone badly astray. It also raises serious questions about the mechanics of the Endangered Species Act, a law that I support, and how the Services have chosen to interpret and follow its dictates.

I rise also out of deep concern for the Atlantic salmon. The rivers of Maine once played host to magnificent runs of

Atlantic salmon. Scores of fish returned each year to the streams where they were born after two- or three-year journeys out to sea, venturing thousands of miles off the coast of Maine, as far away as Newfoundland. The question is, "What is the best way to protect and restore these extraordinary fish?"

Yesterday's announcement is no small matter to my home State. It has serious implications for the aquaculture, blueberry, cranberry, and forest product industries that form the backbone of the economy in the most economically challenged area of Maine. The cruel irony underlying the decision is that Maine believed it had laid the issue to rest some three years ago when the Services withdrew a proposed listing and joined with the State in pursuing the Maine Salmon Conservation Plan. On December 15, 1997, the Services announced they were withdrawing their proposed listing of Atlantic salmon to pursue a "cooperative recovery effort spearheaded by the State of Maine." At that time Secretary of the Interior Bruce Babbitt announced:

We are unlocking the full potential of rivers in Maine and opening a new chapter in conservation history. The governor showed great leadership in forging this collaboration, which will enhance the ecology and economy of the state for years to come. The seven rivers will continue to attract more anglers, boaters and other sportsmen who will help grow and sustain new jobs and revenue as the rivers continue to stand as a model for the nation.

At the same time, Assistant Secretary of Commerce for Oceans and Atmosphere and NOAA Deputy Administrator Terry Garcia praised Maine's salmon conservation plan with these words:

This plan, which was developed by a state-appointed task force with input and advice from federal fisheries scientists, is an innovative effort to resolve the real world conflicts that occur when preserving a species clearly means rethinking traditional uses of a river. Our decision to protect salmon through this plan rather than through a listing under the Endangered Species Act highlights the ESA's flexibility and our willingness to consider state-designed plans.

Bruce Babbitt's and Terry Garcia's statements purported to highlight the ESA's flexibility and the Services' willingness to consider state-designed conservation plans. But the decision to list Atlantic salmon exposes the statements as hollow rhetoric and reflects a policy of inflexibility and of rejecting potentially effective state plans as alternatives to listing. In the end, Secretary Babbitt and Mr. Garcia reneged on their commitment to work with the state, within the framework of the state plan.

The Services have taken the implicit position that they are under no legally-binding obligation to abide by their earlier commitments to work with the

state through the Maine Salmon Conservation Plan. In proposing the salmon listing, they abandoned the Plan, which the Services relied on to withdraw their 1995 proposal to list Atlantic salmon as threatened. Indeed, in withdrawing the proposed listing three years ago, the Services referred to the Plan as "a comprehensive collection of measures and protective actions that offer[s] a positive benefit to the species" and as a substitute for listing. Moreover, at the time, the Services signed a statement of cooperation with the State of Maine to support the Plan as the means toward restoring Atlantic salmon in the seven identified rivers. In short, the Services gave every indication that they were committing to the Plan as an alternative to listing the salmon under the Endangered Species Act.

And that is precisely how the ESA is meant to operate. Listing determinations may not be made until the Services take "into account those efforts, if any, being made by any State \* \* \* to protect such species." As one court recently put it, "The ESA specifically requires [the Services] to consider conservation efforts taken by a state to protect a species." By its own terms, the ESA also encourages states "to develop and maintain conservation programs." This means that the Services can and should rely on a competent state plan to avoid listing a species as threatened or endangered. In *Defenders of Wildlife v. Babbitt*, decided just last year, the court ruled that the Fish and Wildlife Service properly relied, in part, on a cooperative state/federal conservation plan to withdraw a proposed rule to list the flat-tailed horned lizard under the ESA. The court reasoned as follows:

The ESA was not implemented to discourage states from taking measures to protect a species before it becomes technically or legally "necessary" to list the species as threatened or endangered under ESA guidelines. Rather, states are encouraged to work hand in hand with other government agencies and conservation groups to implement evolving policies and strategies to protect wildlife over time. Though the ESA regulations may represent many species' last chance at survival, Congress surely did not intend to make it the only chance at survival.

The court's decision in the *Defenders of Wildlife* case hits the nail on the head. The ESA encourages state/federal cooperative efforts to protect and restore species before listing is required. This goal is supported further by the Services' own regulations, which authorize Candidate Conservation Agreements between the Services, states, and private entities. These agreements are "designed with the goal of precluding or removing any need to list the covered species," a goal shared by the Maine Salmon Conservation Plan. The Services' stated policies, too, profess to "[u]tilize the expertise of State

agencies in designing and implementing prelisting stabilization actions \* \* \* for species and habitat to remove or alleviate threats so that listing priority is reduced or listing as endangered or threatened is not warranted." The Services also are working to establish criteria for evaluating the certainty of implementation and effectiveness of formalized state conservation efforts in order to facilitate the development of such efforts. Again, the goal is to make listing a species as threatened or endangered unnecessary.

In short, the Services are well-aware that the ESA encourages cooperative, responsible conservation efforts such as Maine's plan. Three years ago Commerce Department official Terry Garcia celebrated the Plan as "highlight[ing] the ESA's flexibility and [the Services'] willingness to consider state-designed plans." Today, the Plan has been rejected as not "adequately address[ing] the increasing threats salmon are facing from aquaculture, fish disease, habitat modification and catch-and-release fishing." No compelling record has been established indicating that the Plan has not met its interim goals. No request was made to modify the Plan. It was simply abandoned.

The Services contend that the proposed rule was the direct result of a status review that they conducted some time in 1999 and issued in October of that year. Yet, the Status Review is riddled with logical fallacies and unsupportable conclusions. Moreover, its timing presents cause for concern.

Under the ESA, "species" is defined to include any "distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." In other words, a subpopulation of a given species can be listed under the ESA if, indeed, it is distinct and self-contained. In the current circumstance, the Services rely on a supposed distinct population segment of Atlantic salmon remarkable only for its genealogical diversity. The population segment proposed for listing includes salmon in eight Maine rivers—each of which has long been under an intensive federal stocking program—and, curiously, does not include Atlantic salmon stocked in the Merrimack and Connecticut Rivers.

As far back as 1979, Congress expressed great concern about the Services' misuse of distinct population segments. In the report accompanying the bill to re-authorize the Endangered Species Act that year, the Senate Committee on Environment and Public Works, while acknowledging there may be some instances where different population segments of a single species are appropriate stated, "Nevertheless, the committee is aware of the great potential abuse of this authority and expects the FWS to use the ability to list populations sparingly and only when the bi-

ological evidence indicates that such action is warranted." In this case, the population distinction proposed by the Services fails to meet the standard set by Congress due to both a long-running stocking effort and the use of a territorial boundary that has little to do with reproductive isolation.

The July 1999 Status Review documents a stocking effort in the Kennebec, Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers that dates back to 1871. Up until 1992, these various stocking efforts took no account of the river-specific genetics that form the basis of this proposed listing. In 1871, 1,500 parr from the Canadian province of Ontario were released into the Sheepscot River. That was the first of many instances of planned introduction of foreign salmon for the purpose of interbreeding into what the Services now claim to be a genetically distinct population segment. Over eight years in the 1960s, 136,500 parr and 65,700 smolt—100 percent of which came from rivers in Canada—were stocked in the Sheepscot river. As late as 1990 and 1991, 13 percent of a substantial stocking effort used fish from New Brunswick.

In fact, from 1970 to 1992, while many substantial stocking efforts occurred putting millions of fry, parr, and smolt in these Maine rivers, not a single effort used salmon from the home river. In a stocking program 128 years old, only in the last seven years have river-specific salmon been used. For the Services now to try to claim that the fish in the eight rivers constitute a distinct population segment after this massive, century-long effort designed purposefully to introduce fish from other rivers and other countries into the eight is plainly disingenuous.

The Biological Review Team acknowledges that historic stocking practices may have had an adverse effect upon the genetic integrity of local stocks but claims that the limited stocking abilities of these early efforts minimized interference with the genetic purity of these river stocks. This is inconsistent with other assertions in the biological review.

The Services claim escaped aquaculture salmon pose a grave threat to the river-specific genetics of the salmon they propose to list. On the one hand, the Services argue that the enormous stocking of non-river specific species did not change the genetic composition of these stocks because the 128-year stocking effort was primitive, even in 1991. Yet, on the other hand, the Services claim an estimated 113 suspected adult escapees in the last ten years from aquacultural facilities in the Gulf of Maine pose a grave threat to genetic makeup of these river-specific salmon. Simply put, the Services' position defies logic.

The ESA requires that a listing decision be made on the basis of scientific

data relating to the status of the species taking into account state protection and conservation efforts. Nowhere does the ESA permit a listing decision to be driven by a national interest group's lawsuit meant to force a listing to occur. Yet, it appears this sort of motivation may underlie the Services' decision to abandon the Plan. I wrote Secretary Babbitt and then-Secretary Daley requesting documents concerning the listing process and, in particular, the decision to conduct the Status Review. The Status Review appears to have commenced shortly after a lawsuit was filed to force an emergency listing of the salmon. The documents shed light on the Services' motivations in ordering the Status Review and, ultimately, deciding to list Maine's Atlantic salmon.

I would like to take a few minutes today to share with my Senate colleagues what I found when I examined the documents provided to me by the Services, some pursuant to subpoena. I do so because the documents reflect a listing process that appears to have been badly out of step with the letter and spirit of the ESA.

It is important to keep some dates in mind. On December 18, 1997, the Services withdrew a proposed rule to list the very same Atlantic salmon under the ESA. Again, the withdrawal was made with much fanfare and was based in large part on the State's adoption of the Maine Salmon Conservation Plan. On January 27, 1999, Defenders of Wildlife and other plaintiffs filed suit against the Services claiming that the withdrawal was an arbitrary and capricious decision and seeking an emergency listing of the Atlantic salmon. Some time thereafter, the Services began a biological review of the status of Atlantic salmon in Maine. According to the Services, the review was completed in July 1999, though it was not released until October of the same year. In August 1999, a second lawsuit was filed against the Services. The two cases were eventually consolidated. Then, on November 17, 1999, the Services issued a proposed rule to list the Atlantic salmon as endangered. That proposed rule led to the recent listing decision.

More than anything else, the documents I requested show that concerns about losing the lawsuits influenced the Services ultimately to abandon the Maine Salmon Conservation Plan and to proceed toward an ESA listing. But the decision to abandon the plan was not easily reached. The documents show that, throughout much of 1999, the Services were in disagreement over whether to abandon the State plan. In a March 31, 1999 e-mail, for example, Department of Interior officials express dismay over the position of the Department of Commerce legal team, which purportedly believed that "the state should be given every oppor-

tunity to accomplish the conservation measures accepted under the 1997 non-listing decision." According to this same e-mail, the Commerce Department legal team felt that NMFS could "maintain a more productive relationship with the state if eventually forced to list by the court (as opposed to willingly listing)."

For its part, the Interior Department legal team apparently did not want NMFS to give the Maine plan a further chance. In an April 2, 1999 e-mail, an Interior Department lawyer wrote to a colleague at the Commerce Department that he had heard NOAA's general counsel had, "without consulting [the Fish & Wildlife Service], recommended that NMFS give the state a list of conservation plan deficiencies and a delay of several months to address them." The e-mail continues: "Today, I heard that NOAA Assistant Administrator for Oceans & Atmosphere Terry Garcia has picked up the idea and is running with it." The Interior Department lawyer went on to express his concern that giving Maine time to implement and improve the plan "will appear political, and will be difficult to defend on scientific grounds."

Another Interior Department attorney expressed her opposition to the NMFS proposal more pointedly. She argued that giving the State of Maine more time to conserve and restore Atlantic salmon through its plan would risk a loss in the ongoing salmon litigation. In her words, "racking up another loss on conservation agreements" such as Maine's would "threaten" the Service's ability to rely on such plans in the future in lieu of listing.

Yet this view was not shared equally by each Service. It appears that the Commerce Department was more optimistic that the Maine Salmon Conservation Plan could be relied upon as an effective defense to the ongoing litigation. Another e-mail, dated March 30, 1999 and between two Interior Department attorneys, notes a NMFS official's view that the state plan could provide "a viable defense" in the ongoing litigation. The Interior Department attorney disagreed, citing "serious litigation risks" and the potential for setting an adverse precedent that could "extend to future actions in lieu of listing."

The Services' differing stances on whether to support or abandon the State plan lasted at least into August 1999, mere months before the listing proposal was issued. An e-mail between two Interior Department attorneys, and which appears to have been written in August 1999, notes that "NOAA management apparently still feels ESA listing over state opposition is wrong." The e-mail goes on to characterize a Commerce Department attorney's "best scenario" as the State of Maine

agreeing to a "friendly listing, perhaps as threatened." The notion of a "friendly" threatened listing also appears in an August 17, 1999 e-mail between the same two Interior Department lawyers. The e-mail discusses the view of the Commerce Department attorney as follows: "The Services could either immediately propose a threatened listing and start working on a 4(d) rule, or propose as endangered and back off to a threatened listing if the state plays ball for the next few months."

These documents are disturbing because they show that legal considerations—and not "solely . . . the best scientific and commercial data available," as required by law—motivated the Services' decision to abandon the state plan and list Atlantic salmon in the Gulf of Maine as endangered. Granted, there is a clear link between science and the viability of the Maine Salmon Conservation Plan. The plan is either effective in conserving and restoring Atlantic salmon, or it is not. But the fact that the Services differed as to whether the state plan could be relied upon as an effective defense in the salmon suits makes the decision to list appear more like a matter of litigation strategy than a matter of science. Indeed, in another e-mail, an Interior Department attorney explains the effort to complete the 1999 salmon status review as a means "to support whatever action [the Services] take next."

Ultimately, I believe that the Services should be able to rely on appropriate, effective state conservation plans in lieu of listing. At the same time, a state that makes the effort to craft an effective plan in cooperation with the Services, should be afforded assurances by the Services that the plan will not be abandoned, as Maine's plan was, after only one full year of implementation. A state should be encouraged to propose effective conservation plans and should be able to count on the Services' consistent support. A listing decision should not be affected by whether or not a state "plays ball." It should be affected by the actions a state has made and commits to make to conserve and restore a given species.

I wanted to speak to my colleagues today in the hope that the experience Maine has undergone will not be repeated. One potential solution was suggested five years ago, by President Clinton. In a 1995 white paper recommending changes to the Endangered Species Act, this administration wrote the following:

To encourage states to prevent the need to protect species under the ESA, the ESA should explicitly encourage and recognize agreements to conserve a species within a state among all appropriate jurisdictional state and federal agencies. If a state has approved such a conservation agreement and the Secretary determines that it will remove the threats to the species and promote its recovery within the state, then the Secretary

should be required to concur with the agreement and suspend the consequences under the ESA that would otherwise result from a final decision to list a species. The suspension should remain in place as long as the terms or goals of the agreement are met.

Were such a standard adopted by policy or statute, Maine and other states would have the incentive to devise and fully implement effective conservation agreements. The alternative is what has taken place in Maine. A plan is announced with great fanfare and a listing proposal is withdrawn. One year and a lawsuit later, the Services reverse course, deeming the plan as unfit to rely upon as a litigation defense. This is the wrong result, and I would hope that during the next Congress, we can change the Services' policy or change the law to encourage responsible, effective state conservation plans.

Mr. President, in order to avoid taxpayer expense, I will not ask that the documents I referred to be printed in the RECORD. Instead, I will post the documents on my Web site. Thank you.

Mr. President, I yield the floor and, seeing no one seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### THE IMPORTANCE OF GETTING IT RIGHT

Mr. DODD. Mr. President, I rise to share for a few moments this afternoon, before we adjourn for the day, if not for the week, some thoughts on the ongoing events, most obviously, the 2000 Presidential election.

I will talk about some of the mechanics of this and some of the comments made earlier in the day by my colleagues from Iowa and Pennsylvania, and some thoughts that they shared.

Before getting to the substance of that, I am a Democrat. Obviously, as a Democrat, I am hopeful AL GORE and my colleague from Connecticut, JOE LIEBERMAN, will be elected President and Vice President. Certainly, I fully understand how colleagues of a different political persuasion and other Americans hope that George Bush and Dick Cheney will win the election. I suspect maybe the Presiding Officer may share those views.

The most important belief everyone ought to have is that this process, at the end of it, whenever that comes—whether it is the end of this week or sometime over the next several days or weeks—that if it takes a little time, that is uncomfortable, but the most important conclusion is that it be one

the American people support, even those who would have wished a different outcome in the election.

I served on the Select Committee on Assassinations 20 years ago in which we reopened the investigation of the assassinations of John Kennedy and Dr. Martin Luther King. What possible analogy could those two events have with this? Well, my colleague from Rhode Island and others may recall that the Warren Commission, which did the initial investigation into the tragic assassination of President Kennedy, was urged at the time to hurry up, to rush to get the job done, and they did. In retrospect, they did as well as they could have under the circumstances. But there was sufficient pressure to get the job done. Several years later, we had all sorts of questions raised that the Warren Commission did not address during the period of its consideration. I don't think we ever would have satisfied some of the elements who are always going to be convinced of conspiracy theories. But for an awful lot of other Americans, had the Commission taken a bit more time and gone through the facts a bit more carefully, we could have avoided the problems that ensued thereafter, including a whole new investigation of the assassination some 13 years after the events occurred in 1963.

The analogy is this: Obviously, we are not talking about that length of time, but while I hear people urging a quick decision, a fast decision, we all understand, while we like clarity and we would like a decision made immediately, we need to place at least as much emphasis, if not more, on this decision being the right decision, that the decision is seen as being fair and just and an expression, as close as we can have in an election involving more than 100 million people across the country, of the will of the American people.

That is going to be difficult because of the closeness of the race. It is important to get this done quickly, but it is more important to get it done correctly.

We do not want a substantial percentage of the American public questioning the legitimacy of the 43rd President of the United States—whether that is AL GORE or Gov. George Bush. The American people should support that choice and have confidence that the choice was the right one. I hope that, while there are those clamoring for a quick decision, we get the right decision. Utilizing the courts and utilizing manual counting ought not to frighten people. Courts are used in our country when there is a dispute that can't be resolved, where facts and theories of law are in dispute. If that is the case, you go to court and try to get an answer. You would do that if you were talking about county commissioner or secretary of State. In the State of Flor-

ida, we should do no less with the office of the President of the United States. In the final analysis, the new President will look back and be grateful that we took the time to get it right; that we did not rush to a quick judgment here for the sake of what may appear to be sort of an early way to achieve a win.

Having said all of that, there will be much talk in the coming weeks about what went wrong here, what could have been done differently, and issues around the electoral college, whether we ought to keep it, abandon it, or reform it. Are there things we can do from a Federal standpoint to assist our respective States so we don't have the kind of confusion that has emerged here and regarding some of the ballot choices and equipment used to record people's votes? There will be all sorts of ideas shared.

My first suggestion and hope would be that people take time to step back and examine our current situation. I get nervous when people have quick solutions for an immediate problem that has emerged, such as here with this close election. Let's not forget that we have been a republic for 211 years. This will be the fourth such election out of 43 Presidential races where there has been a close race, where the popular vote and the electoral votes—and we don't know the final outcome of this one—have a different result.

Before we decide we want to radically abandon this system, my strong suggestion to my colleagues and others who will be commenting, is to take some time to think it through carefully and not rush out and be offering proposals and bills that we may come to regret. There have been some 200 proposals made to amend the Constitution regarding the electoral college over the last 200 years, many of which have been suggested over the last 40 years. Before we jump to these proposals, I suggest that we think them through.

I listened with interest earlier this day to our colleague from Pennsylvania, Senator SPECTER, discuss two issues that are obviously timely and important ones at this moment about reform in the electoral college. I wish to address those issues for a few minutes. First, let me join my colleague from Iowa, Senator HARKIN, in congratulating Senator SPECTER for introducing the concept of a bipartisan commission to examine whether we might—at least in federal elections—develop more accurate and uniform methods of recording and reporting the votes cast by the citizens of our Nation. I know at least one newspaper in the country—the New York Times—has already editorialized on this topic in favor of modernizing what many consider to be a ballot system that is in many respects and in many areas of the country fairly archaic in terms of its technological sophistication. I will