

# Politics, Science, and the Fate of the Alabama Sturgeon

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**“We don’t want these ugly fish in the state of Alabama.”**

– State Rep. Johnny Ford, D-Tuskegee

**T**he Alabama sturgeon (*Scaphirhynchus suttkusi*) is probably the rarest fish in North America. In 1898, an estimated 19,000 specimens were caught by commercial fishermen (Mayden and Kuhajda, 1997). Over a century later, from 1989 to the present, only *nine* specimens have been found despite concerted efforts to collect them.

Once a wide-ranging resident of the Alabama, Tombigbee and Cahaba River systems in the Mobile Basin of Alabama, the 30-inch, three-pound, tawny-orange sturgeon has vanished from 85 percent of its natural range. Habitat degradation and modification caused by dredging, mining, and dams are implicated in its decline. Scientists fear that not enough mature specimens exist to sustain a reproducing population. If ever there was a fish that needed protection, and quickly, it is the Alabama sturgeon.

The U.S. Fish and Wildlife Service (FWS) has twice proposed listing the Alabama sturgeon as a federally endangered species, and both times the fish has been at the center of a heated and often bitter clash between politics and science. On one side are under-funded biologists and environmentalists who fear the Alabama sturgeon will go extinct if not afforded federal protection. On the other side is a deep-pocketed group of corporate leaders and politicians, known collectively as the Alabama-Tombigbee Rivers Coalition, who fear that listing the sturgeon as an endangered species will bring economic ruin upon Alabama. Caught in the middle are the FWS and its boss, Interior Secretary Bruce Babbitt, trying to fulfill their legal duties as dictated by the Endangered Species Act, yet under intense pressure to do otherwise from politicians

who see little value in disrupting a bustling waterway to save a commercially insignificant fish.

The Alabama-Tombigbee Rivers Coalition believes that, should the Alabama sturgeon be listed, habitat protection measures mandated by the Endangered Species Act would curtail or halt the maintenance dredging that keeps barges from running aground on the Alabama River (a claim that’s refuted by the FWS and the U.S. Army Corps of Engineers; see below). The Coalition also believes that such restrictions or prohibitions would shut down barge navigation altogether, costing up to \$11.3 billion in lost revenue over the next 10 years and cutting 20,000 jobs from the Alabama economy.

However, according to Ray Vaughan, an environmental lawyer who twice successfully sued the FWS to propose the Alabama sturgeon’s listing, the Coalition is motivated not just by parochial economic concerns, but by a larger political agenda. In his legal analysis of the Endangered Species Act (ESA) published in the *Alabama Law Review*, Vaughan argued that the Coalition fought the Alabama sturgeon listing in order to attack the ESA, which was up for reauthorization in Congress. In support of his claim, Vaughan pointed to the fact that over 20 species are federally protected in the Mobile Basin. Yet no one spoke out when they were listed.

“What is happening is that the Alabama Sturgeon is being used as a surrogate scapegoat for the ESA itself,” Vaughan wrote, “and due to the timing of the ESA’s reauthorization, the Alabama Sturgeon just happened to be the species whose number came up when industry was ready to act” (Vaughan, 1995).

The following account of what took place leading up to the FWS’s 1994 decision is based largely on Vaughan’s study. The account of what has taken place from 1994 to the present is based on my own analysis.

**If it's Alive, Then it's Not a Species;  
If it's a Species, Then it's Extinct**

The FWS first announced its proposal to list the Alabama sturgeon in June 1993. Soon after, the anti-sturgeon Coalition embarked on a campaign, to use Vaughan's words, of "delay, confusion, obfuscation and public disinformation." The Coalition attempted to cast doubt on scientific data about the Alabama sturgeon by hiring a Samford University (Birmingham) ichthyologist, Mike Howell, to "prove" that it is not a distinct species, but a population or subspecies of the common shovelnose sturgeon (*Scaphirhynchus platorhynchus*). The business interests now had their own "science" and a compelling media message: Why risk the economic prosperity of a region on a fish that's not unique? (Actually, the argument is moot; subspecies and distinct populations of species can be and are protected under the ESA.)

The Coalition also began to spread word that the Alabama sturgeon, not seen by scientists since 1985, was probably extinct. Their point of view resonated with politicians and editorial writers: What's the sense in devastating the local economy in order to save a fish that is already beyond saving? However, the Coalition had no scientific evidence to support its claim of extinction. When the sturgeon was last seen in 1985, young specimens and gravid females were documented. Between 1985 and 1993, fishermen claim to have repeatedly seen and captured the supposedly extinct fish. And since Alabama sturgeon live up to 40 years of age, it must be assumed that these fish continue to exist, albeit in critically small numbers. The fact that a "scientist" had not caught one since 1985 is not conclusive evidence of extinction.

Even the Coalition's claims that the sturgeon listing would eliminate maintenance dredging and shut down barge traffic, and thereby destroy the local economy, were not valid. The FWS and the U.S. Army Corps of Engineers have made it abundantly clear that maintenance dredging removes unconsolidated substrates (sand, mud, and silt). Alabama sturgeon, however, feed and spawn over relatively stable substrates like rock and gravel, and do not generally swim over the unconsolidated substrates that must be annually removed to maintain navigation. Therefore, maintenance dredging is not perceived to be a threat to the sturgeon and would not need to be eliminated, modified, or altered in any significant way. The Coalition's dire economic projections were all based on the erroneous assumption that navigation on the Alabama and Tombigbee Rivers would grind to a halt after the sturgeon's listing.

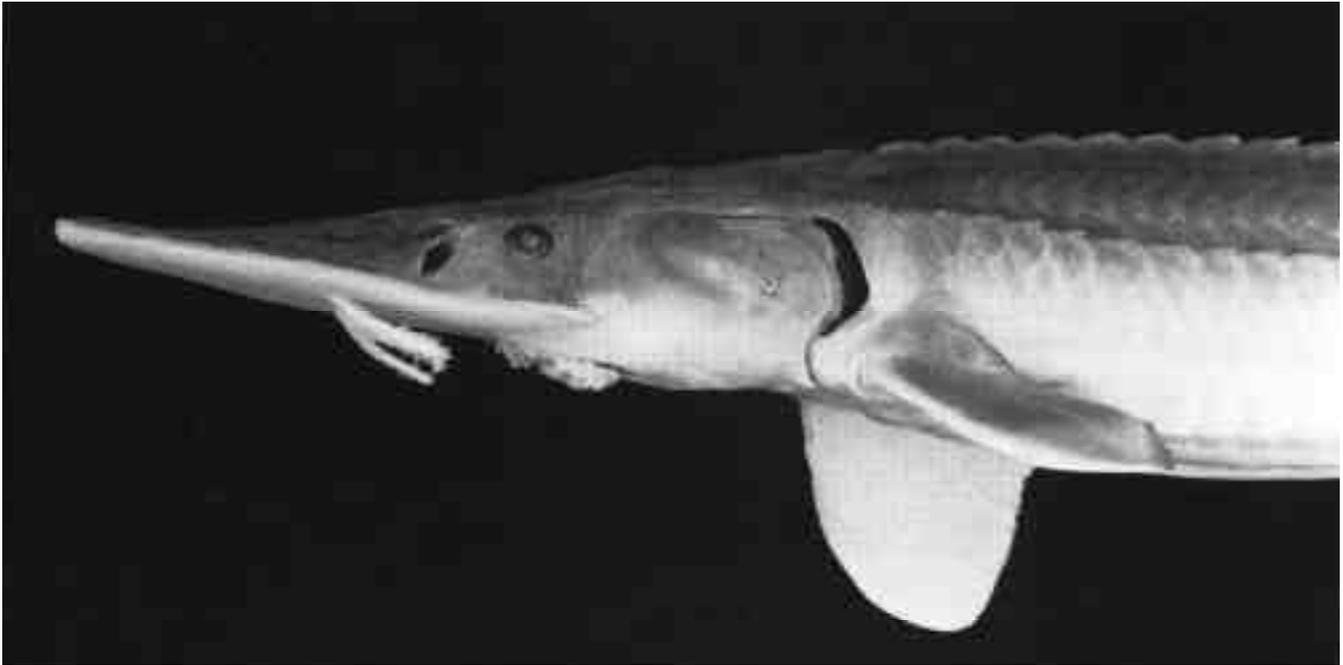
Sturgeon advocates believed they had science on their side. What they did not have would ultimately prove fatal to their cause—access or influence within the highest levels of the Department of the Interior. Coalition members and Alabama senators Richard Shelby and Howell Heflin met with Secretary Babbitt in order to insist that the proposal to list the Alabama sturgeon be withdrawn. Using Mike Howell's unpublished and non-peer-reviewed analysis to cast doubt on the peer-reviewed and published conclusions of other scientists, the Coalition got Babbitt to agree on a special scientific panel to determine if the Alabama sturgeon is indeed a distinct species and if it is extinct. The Coalition was in a win-win situation. If Babbitt refused to call the panel, then the Coalition would sue claiming that the FWS did not use all available scientific data. If Babbitt called the panel and the panel agreed with Dr. Howell, then the FWS would be embarrassed. And if the panel disagreed with Dr. Howell, then the Coalition would sue Babbitt and claim that the panel was illegally convened under the Federal Advisory Committee Act (see below).

### An Evening of Sturgeon Bashing

On October 4, 1993, the FWS held its public hearing on the proposal, in which anyone was invited to state or submit his or her opinions regarding the listing. It was an evening of sturgeon bashing. According to Vaughan, anti-sturgeon advocates outnumbered pro-sturgeon advocates by at least 500 to 10. Angry and scared paper mill workers arrived in buses and crowded the hearing room. So many people were turned away due to space limitations that the FWS scheduled a second public hearing for November 10.

A few weeks later, Babbitt's sturgeon review panel got together to review the scientific evidence. Consisting of nine ichthyologists—including one from the Alabama Power Company, a major Coalition supporter—the panel unanimously concluded that the Alabama sturgeon is a taxonomically valid species and is not extinct. The Coalition promptly filed suit over the panel's formation. Citing the Federal Advisory Committee Act (FACA)—which, explained Vaughan, "prevents secret bodies from giving secret advice to the government without the public knowing about it"—the Coalition was able to suppress the "secret" report it had originally secretly asked for!

On December 2, 1993, during a hearing on the FACA suit, Justice Department lawyers made a surprising announcement: Another Alabama sturgeon had been found, the first one in a decade. Coalition lawyers were stunned.



Their argument that the species was extinct was shattered. Still, they pressed on with their suit, forcing the FWS to schedule and postpone the second public hearing twice. When that hearing finally took place, on January 31, 1994, the panel's findings regarding the taxonomic validity of the sturgeon were absent and forbidden from being entered into the record.

#### **"Insufficient Information"**

The FWS was supposed to rule on the sturgeon's listing by June 14, 1994. Instead, Secretary Babbitt announced a six-month extension in order to further assess the species' existence, presumably ignoring the fact that a living specimen had been captured just six months before (it eventually died in captivity). Babbitt was censured by both pro-sturgeon advocates, who claimed he had ignored science and buckled under political pressure, and by the anti-sturgeon Coalition, which sued Babbitt for not withdrawing the proposal right then and there.

During the six-month extension, two genetic tests were performed on tissue taken from the recently caught sturgeon. A FWS test found that the Alabama sturgeon is genetically identical to both the shovelnose sturgeon and the endangered pallid sturgeon (*Scaphirhynchus albus*). A second, more thorough genetic study done for the U.S. Army Corps of Engineers contradicted the FWS's findings by showing that the Alabama sturgeon is indeed genetically distinct from both its pallid and shovelnose cousins. The results of the second test

**Fig 1.**  
Lateral view of head of the holotype of the Alabama sturgeon, *Scaphirhynchus suttkusi* (reprinted from Williams and Clemmer, 1991).

were kept under wraps until pro-sturgeon lawyers filed a Freedom of Information Act request demanding them.

Despite an extensive search, no Alabama sturgeons were caught during the six-month extension. So on December 12, 1994, the FWS stunned both sides of the debate when it announced it would not place the Alabama sturgeon on the Endangered Species List, stating there was "insufficient information to justify listing a species that may no longer exist" (FWS, 1994). Although the FWS and Babbitt never explicitly stated the Alabama sturgeon had gone extinct, that's the meaning everyone took away from their ruling.

#### **Will Eight More Sturgeons Suffice?**

So ended round one. Shortly thereafter, two events occurred that helped force a round two. Ray Vaughan, through his environmental law firm, filed suit against Bruce Babbitt and the FWS for their decision not to list the Alabama sturgeon. And between 1995 and 1999, eight more Alabama sturgeon were found, documenting the continued survival of the species. The first specimen was captured in April 1995 by fishermen and turned over to FWS biologists. It was examined, radio-tagged, returned to the river, and tracked for four days until the tag fell off. A month later FWS biologists located another specimen. It too was tagged and

released. A short while later it was found entangled and dead in a vandalized gill net on the bottom of the river (FWS, 1999a). Eleven months later, in April 1996, a third specimen was captured, photographed, and released by a commercial fisherman (ADCNR et al., 2000).

With the discovery of three specimens, the FWS, the Alabama Department of Conservation and Natural Resources (ADCNR), the U.S. Army Corps of Engineers, and the Alabama-Tombigbee Rivers Coalition, joined together to begin developing a voluntary, State-managed conservation plan. This plan was both a genuine measure to protect the Alabama sturgeon in lieu of federal listing and a politically shrewd maneuver. Fearing that the discovery of more Alabama sturgeons would renew efforts to list the species, and that this time the sturgeon would win, Sen. Richard Shelby got Congress to fund his state's Alabama sturgeon recovery efforts (despite the fact that he did not and still does not believe the fish is a valid species!). Sen. Shelby has not been coy about his objectives. "The entire purpose of developing, implementing, and funding a voluntary conservation plan for the sturgeon," he said, "was to avoid the political controversy of a listing and the adverse economic and social impact to the region that would come with a listing" (Shelby, 1999).

Aided by a \$2 million, five-year Congressional grant, the State of Alabama constructed hatchery facilities and intensified the search for sexually mature specimens to provide broodstock for captive propagation and eventual reintroduction into the wild. In March 1997, as many as four crews were on the river at any one time using gill nets and trot lines. Their efforts resulted in two sturgeons, a mature male and a mature female with immature eggs. Both sturgeons were sent to ADCNR's Marion State Fish Hatchery. It took 11 months to locate another specimen, a reproductively inactive male.

In response to the Ray Vaughan lawsuit and "rediscovery" of the species, the FWS did what Sen. Shelby hoped his \$2 million largesse would prevent: the agency put the Alabama sturgeon back on its candidate species list in 1997, and in March 1999 proposed the species for listing as endangered once again.

Since the March listing, two more Alabama sturgeons have been captured. In April 1999, commercial fishermen caught a specimen, which was sent to the Marion hatchery. In July 1999, commercial fishermen caught another specimen, but they released it instead. ADCNR personnel recaptured what they believe was the same sturgeon 19 days later, only to have it die at the Marion hatchery apparently from stress due to being captured and handled twice (ADCNR et al., 2000).

In March 1999, the mature male and female captured in 1997 were induced to spawn. The female produced about 4,000 mature eggs, but the male failed to produce sperm, so the first (and so far only) attempt at spawning the Alabama sturgeon was unsuccessful. A month later, the female died from a bacterial infection that was apparently caused by the spawning procedure (FWS, 2000b).

In February 2000, the Marion hatchery suffered another setback. The sturgeon captured in April 1999 died following a biopsy that was performed to determine its sex (FWS, 2000b). It was a female. The two surviving sturgeons are males.

### **The Alabama Sturgeon is Rare Because "There is No Such Fish"**

Today, seven years after the debate over the sturgeon began, the Endangered Species Act still awaits reauthorization. Congress approved a moratorium on new ESA listings from 1994 to 1996. In 1999, several bills were introduced redefining the ESA, some of them weakening its provisions, others strengthening them. With renewed interest in the ESA's future, opposition against the 1999 Alabama sturgeon proposal was just as strong as it had been in 1993-94.

Business leaders renewed the debate over the Alabama sturgeon's taxonomic validity, despite the publication of a peer-reviewed study that added new data further separating *S. suttkusi* from *S. platorhynchus* (Mayden and Kuhajda, 1996), and despite the absence of any published, peer-reviewed ichthyological studies to the contrary. This time the Coalition accused the FWS of suppressing scientific evidence. In September 1999, Coalition lawyers announced that the FWS had blocked the completion of a new genetic study of sturgeon because its initial findings ran counter to the agency's desire to list the Alabama species (Brumas, 1999).

The genetic study in question showed how a specific DNA marker can help authorities recognize when protected sturgeon species are illegally poached by the caviar industry. But the DNA marker failed to distinguish between the three species of *Scaphirhynchus*. Here, presumably, was scientific evidence that the Alabama and shovelnose sturgeons are one and the same species. And, as Coalition lawyers charged, the FWS was sitting on it.

"The American people have to be confident that the government is not lying to them," said Jo Bonner, Rep. Sonny Callahan's (R-Mobile) chief of staff (Brumas, 1999). Sen. Richard Shelby was equally outraged. "Their [FWS] efforts to stifle the work of their own scientists," he said, "are just another

example of why few people believe they are operating in good faith” (Brumas, 1999). The FWS denied any impropriety; the reason the study was not completed, the agency said, was because it had been “tied up in an unrelated lawsuit in New York brought on by a company whose caviar shipments had been seized” (Brumas, 1999).

It was over three months later when the FWS finally released a draft of the “suppressed” study. Why the agency waited so long is unclear, for all the study shows is that while one particular DNA marker can identify 15 of 27 sturgeon and paddlefish species, it cannot identify between *S. suttkusi* and *S. platorhynchus*. The study does not claim that the two species are the same, although it mentions that some scientists regard them as the same species (Fain et al., 1999).

A month later, the FWS withdrew the study from the public record and replaced it with one that focuses exclusively on the genus *Scaphirhynchus*. Again, the findings show that the DNA marker is useless in distinguishing between *Scaphirhynchus* species. This time an explanation was offered: “. . . river sturgeons, like many other forensically relevant species, are only recently diverged. In these situations the fixed allelic differences that diagnostic species tests require are rare” (Fain et al., 2000). In other words, researchers have not located the genetic markers that can distinguish between sturgeons that have only recently evolved.

On March 13, 2000, the drawn-out and convoluted debate over the taxonomic status of the Alabama sturgeon reached a zenith of sorts—it became a joke on *The Tonight Show*. During a semi-regular segment featuring unintentionally funny newspaper headlines from around the country, host Jay Leno held up a clipping from an unidentified newspaper which read: “Scientist say[s] the reason the Alabama sturgeon is so rare as to seem endangered is that there is no such fish.”

### **Opposing an Endangered Species Listing in the Name of Conservation**

Business leaders continued to decry the sturgeon listing’s supposed catastrophic effects on barge navigation and the local economy. An anti-sturgeon website featured a series of letters citizens could download and send to the FWS protesting the proposed listing. One letter read: “I cannot believe that Washington DC is going to put the life of a fish over the lives of *tax-paying citizens!* If this fish is listed as endangered, I will surely lose my job, and there isn’t anything else around here that I could do. I work hard, pay my taxes, go to church and now the government wants to call a fish ‘endangered’ and

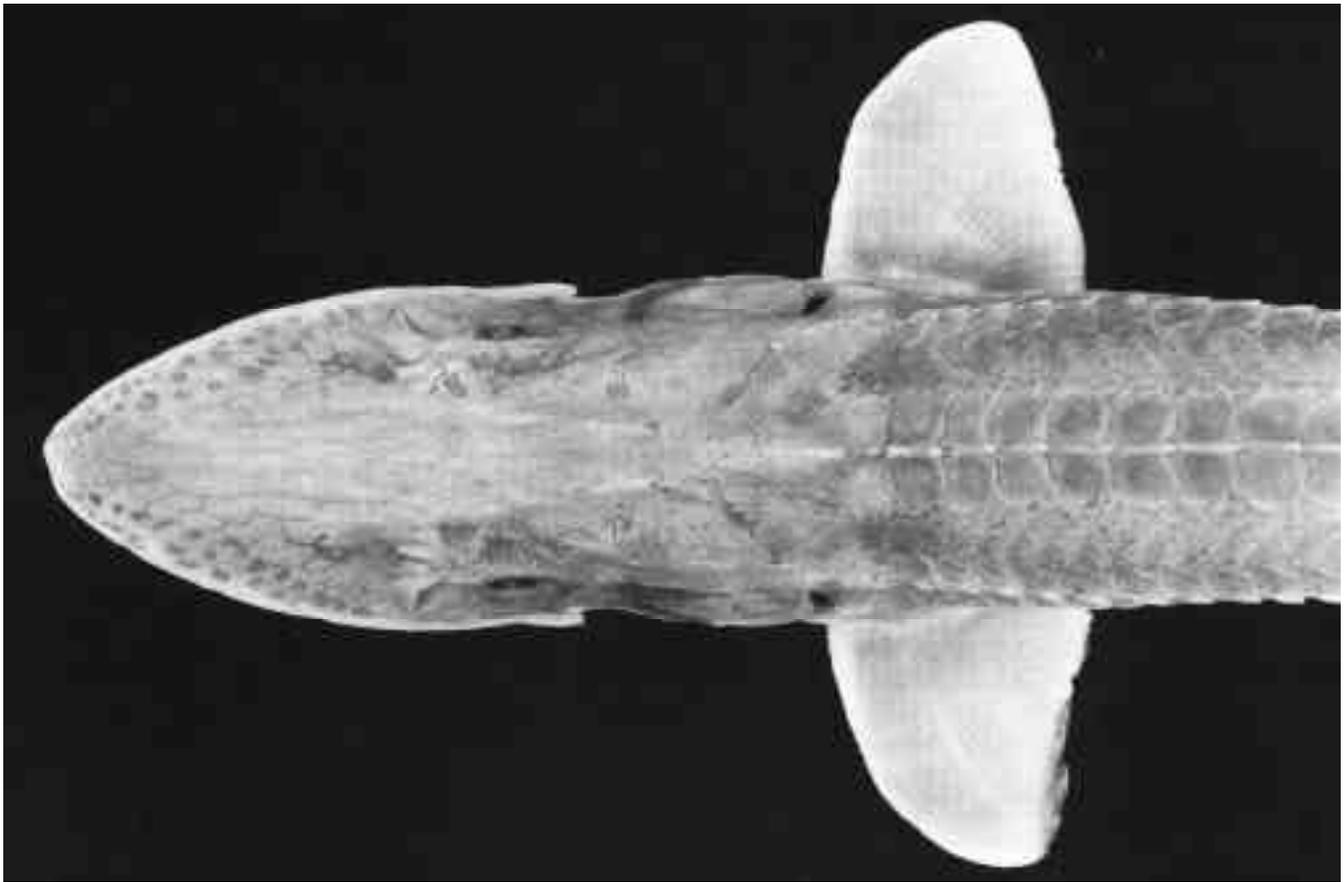
possibly end my job! Well, I say it is the common worker who is endangered!” (BCA, 1999).

Having lost the argument that the Alabama sturgeon was extinct, anti-sturgeon advocates came up with another reason to oppose federal listing: Placement on the endangered species list would cut off funds already allocated for the State conservation program. Suddenly, and disingenuously, these anti-sturgeon crusaders had become pro-sturgeon!

Sen. Shelby charged that “Politically motivated bureaucrats in Washington have basically ignored . . . the best interests of the fish” (Pace, 1999), and that “Listing the sturgeon will only delay the conservation process and therefore the recovery of the species” (Shelby, 1999).

Sen. Trent Lott (R-Miss.) also rushed to the sturgeon’s “defense.” He complained that the State of Alabama’s program “has fallen to pieces, because the FWS pulled the plug by taking the dedicated funds and proceeding directly to a formal listing under the Endangered Species Act” (Lott, 1999). Sen. Lott, however, was completely mistaken. The FWS pulled no such “plug.” In fact, the agency had clearly stated that current funding would not be lost because it would not make its final listing decision until March 2000, long after the Federal budget year began in October 1999 (FWS, 1999b). What’s more, the FWS plans to retain Alabama’s conservation program as the centerpiece of any federal recovery efforts (Pace, 1999). Apparently this news was lost on Sen. Lott, who attempted to paint the FWS as the anti-sturgeon bad guy: “It is my belief that Alabama’s Federal partner is not motivated by a desire to restore the sturgeon. . . . We all must continue to press forward in this fight to do the right thing for the Alabama Sturgeon in spite of these actions by FWS.”

And what was the right thing to do? Based on the actions of Sen. Shelby, it was to sneak a rider that would block the sturgeon’s listing onto an emergency spending bill for Central American hurricane relief and the NATO air war over Yugoslavia (Pianin and Eilperin, 1999). Such “back door” tactics are common on Capitol Hill. By tagging pet pieces of legislation onto larger, more popular bills, often at the last minute, politicians hope that potentially controversial items get approved without their colleagues ever knowing what they’re voting for. Shelby’s rider, however, didn’t slip through. House-Senate conferees on the spending bill refused to accept Shelby’s language, but the Senator got what he wanted anyway: The FWS promised that it would not accelerate the listing process, and that it would not make its decision regarding the Alabama sturgeon prior to its originally intended deadline of March 2000 (Wolf, 1999).



### An Evening of Sturgeon Bashing II

At the FWS's June 24, 1999 public hearing on the Alabama sturgeon, over 800 people packed the Montgomery Civic Center meeting room until the last person was heard sometime after 1 A. M. Timber companies trucked in workers, and congressional leaders voiced their opposition via satellite (Sznajderman, 1999). Hundreds wore "Don't Endanger My Job" T-shirts (Atchison, 1999). U.S. Rep. Spencer Bachus from Alabama (R-Vestavia Hills) said the listing would "threaten your retirement," while State Rep. Johnny Ford expressed his hatred for the "ugly fish" (Finch, 1999). U.S. Rep. Earl F. Hilliard (D-Birmingham) added, "I'll take our system of navigable waterways and the economic opportunity they represent over a bunch of ugly bottom-dwellers any day of the week!" (Hilliard, 1999). The few pro-sturgeon advocates in attendance reiterated the FWS's and U.S. Army Corps of Engineers' claims that listing the sturgeon would not upset barge traffic. The presence of three federally endangered molluscs that inhabit the same gravel bars as the Alabama sturgeon, they pointed out, has not affected barge operations at all. Listing the Alabama sturgeon would not be any different.

### Fig. 2.

Dorsal view of the holotype of the Alabama sturgeon, *Scaphirhynchus suttkusi* (reprinted from Williams and Clemmer, 1991).

Even though the public hearing amounted to what was mostly another long evening of sturgeon bashing, the FWS found itself in political hot water on Capitol Hill simply for holding the hearing in the first place. For some reason, Sonny Callahan, the senior Republican of the House Appropriations Committee, believed that by holding the public hearing the FWS was breaking its promise not to decide on the sturgeon's listing until March 2000. (These hearings are standard procedure in endangered species listing proposals.) As punishment, Callahan threatened to cut the FWS's 2000 budget or in some way restrict the agency's actions on the sturgeon listing (Pace, 1999).

Callahan also joined Shelby and Lott in charging the FWS with undermining the State conservation program: "We have found one of these endangered Alabama sturgeons that looks remarkably like the Mississippi [shovelnose] sturgeon. And there are billions of them. But . . . [we] have now established a program for breeding a sturgeon that looks like what they say is endangered. So we are right in the middle of a 5-year study. Fish and Wildlife, knowing this, just suddenly

decided that they wanted to go ahead and list it before we were successful in our endeavor” (Callahan, 1999).

To question the taxonomic validity of a species then defend its conservation within the same statement is political doublespeak of the highest order.

### A “Secret” Conservation Agreement?

On February 16, 2000, an announcement was made that many believed signaled the end of the Alabama sturgeon’s chances of ever being granted federal endangered species protection. The ADCNR, the FWS, the U.S. Army Corps of Engineers, and the Alabama-Tombigbee Rivers Coalition unveiled the strategy behind their voluntary, State-managed conservation agreement. The goal of the agreement “is to eliminate or significantly reduce current threats to the Alabama sturgeon and its habitat to the extent necessary to foreclose the possibility that the Alabama sturgeon will become extinct throughout its currently occupied habitat, or the likelihood that the Alabama sturgeon will become endangered within the foreseeable future . . .” (ADCNR et al., 2000). It was this last phrase—“foreclose . . . the likelihood that the Alabama sturgeon will become endangered”—that alarmed sturgeon supporters. It certainly appeared as if the FWS was ready to skirt federal listing in lieu of a voluntary conservation plan.

The conservation agreement certainly reads like a recovery plan, which the FWS usually drafts and presents *after* a species is federally listed. Twenty-nine specific “action plan” steps are described. They include doubling the amount of time spent searching for potential broodstock for the hatchery; outfitting Marion State Fish Hatchery with new holding tanks and a security system (presumably to keep out intruders who want the sturgeon gone for good); and conducting intensive habitat studies. The total five-year budget for the plan is \$3,959,000, with almost 11 percent (\$433,000) of the money coming from the very Coalition that believes the sturgeon does not exist (ADCNR et al., 2000).

In a move that should not have surprised either the FWS or the Coalition, Ray Vaughan sued the FWS for the same reason the Coalition sued the FWS in 1993: violation of the Federal Advisory Committee Act (FACA). Vaughan argued that the FWS developed the conservation agreement “in secret” (Vaughan, 2000), just as the Coalition had successfully argued that a panel of ichthyologists had secretly and illegally convened to validate the sturgeon’s taxonomic status in 1993. In that case, the findings of the ichthyologists could not be considered in the listing decision process. Vaughan wanted

the conservation agreement similarly thrown out. The FWS countered that “agreements with states, other federal government entities and other interested private parties to accomplish mutual goals is a routine practice of the Service,” and “not the type of activities that are subject to FACA” (FWS, 2000b).

Vaughan described another problem with the conservation agreement: it is legally non-binding. According to Vaughan, “courts have uniformly held that ‘conservation agreements’ cannot be used to prevent a listing of a species under the ESA unless the ‘conservation agreements’ have mandatory and binding provisions that equal the level of legal protection given by listing itself” (Vaughan, 2000). In other words, any of the four participating parties could walk away from the agreement leaving the unlisted sturgeon in the lurch.

### A Simple Matter of Law

So if listing the Alabama sturgeon as federally endangered will not affect barge navigation and river dredging, and if a detailed conservation plan has been agreed upon and funded, then why is the FWS risking future funding and drawing the ire of powerful politicians in order to get the species listed? There are two answers:

One, the conservation agreement, assuming it succeeds, is not enough to save the Alabama sturgeon. An ESA listing helps protect the habitat itself. Dredging may not be an immediate threat, but other factors are: pollution, damming, water flow, irrigation, land development, farming, road and bridge construction, manufacturing, waste water management. Without a broader recovery plan that protects the sturgeon’s habitat from all and future threats, even the most successful captive breeding program is for naught. What’s the point of releasing baby Alabama sturgeons into a river that will kill them before they mature and reproduce?

The second answer is, the FWS is legally mandated by the ESA to list species that are in danger of extinction. The Ray Vaughan lawsuit simply forced the FWS into doing what it should have done on its own. Listing a species as endangered or threatened is a legal imperative—a matter of law that can only be undone by writing another law. This brings us back to Vaughan’s belief that the battle over the Alabama sturgeon is actually over the Endangered Species Act itself. Perhaps what Rep. Johnny Ford really meant when he muttered his “ugly fish” remark was, “We don’t want this ugly law telling us to put the environment first.”

A new endangered species law is in the works—H.R. 3160, the “Common Sense Protections for Endangered

Species Act.” This Republican-sponsored bill, among other things, would give those with economic interests in endangered species listings greater rights to block listings in court. However, the bill would take away legal rights from private citizens and attorneys like Ray Vaughan should a species *not* be listed. In the words of Heather Weiner, Chair of the Endangered Species Coalition for the Earthjustice Legal Defense Fund, H.R. 3160 would give “an investment company in New Jersey . . . a greater right to intervene in a salmon case in California than the person who lives by the salmon river and has a biological or personal interest in the case” (Weiner, 2000).

Frustration and anger over the proposed Alabama sturgeon listing is playing a role in Congress’ consideration of H.R. 3160. Testifying before the U.S. House Resources Committee, Donald G. Waldon of the Tennessee-Tombigbee Waterway Development Authority was quick to trounce the sturgeon and the FWS: “If this committee is looking for a case study to examine why the endangered species program needs reform, the Alabama sturgeon proposal is an excellent case. [But] time does not permit me to describe all the unethical and illegal steps the U.S. Fish and Wildlife Service has taken in its attempt to list the sturgeon” (Waldon, 2000).

Forgotten amidst all the politicking is the general public whom our laws are supposed to benefit. Government, in theory, is for the people, not the special interests. So what did the majority of Alabamians who were not trucked to the public hearing by their employers have to say? Despite all the anti-sturgeon rhetoric and media frenzy—or perhaps because of it—public support appears to favor the sturgeon. According to a *Mobile Register*-University of South Alabama poll, about two-thirds of Alabama’s voters support the Alabama sturgeon’s protection under Endangered Species Act (Finch, 1999).

On May 2, 2000, after nine years of rancorous debate and misinformation, the voters of Alabama got what they wanted. The U.S. Fish and Wildlife service decided to list *Scaphirhynchus suttkusi* as an endangered species under the authority of the Endangered Species Act.

### The Fate of the Alabama Sturgeon

In its 24-page *Federal Register* ruling to list the Alabama sturgeon, the FWS confirmed the taxonomic validity of the fish. The FWS also judged that the conservation agreement does not remove threats to the sturgeon to such a degree that precludes its listing under the ESA. This time science clearly triumphed over politics. “In the final analysis,” said Sam Hamilton, the FWS’s regional director for the Southeast

Region, “we are required to go where the science takes us, and the science tells us that this fish needs all the protection it can get” (FWS, 2000a).

Anti-sturgeon advocates were disappointed, if not flat-out steamed. Alabama’s two Republican senators, Richard Shelby and Jeff Sessions, both condemned the listing. Shelby repeated his claim that the listing would “impede the recovery of the sturgeon because it sets back the cooperative efforts already in place and will reduce the amount of resources being used to the save the fish” (Mitchell, 2000). Shelby was referring to Congress’ five-year annual \$400,000 appropriation for the State-managed conservation plan, which could be affected by the transfer of authority for the sturgeon from Alabama to the FWS. Shelby may also have been hinting at the Coalition’s \$433,000 share of the commitment. To no one’s surprise, the Coalition backed out of the agreement three days after the FWS announced its decision (Finch, 2000).

Although the Alabama sturgeon has won its legal battles, it may not win its battle against extinction. Unless unknown populations of the fish lurk in the murky waters of the Alabama River and its tributaries, captive propagation may be the only chance the Alabama sturgeon has to remain alive. As of this writing, two Alabama sturgeons, both males, remain in captivity at the Marion State Fish Hatchery.

The search for a sexually mature female continues.

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