Caution: Scud crossing

To the wilder eyed among conservationists, the Endangered Species Act of 1973 has been elevated to a fetish. Not the remotest habitat of the rarest gnat shall tremble at the tread of man. Now, right here in Potomac River City, we have an instance in which the Endangered Species Act is being used in a fashion that can be construed as a perversion of its intent: The Case of the Hay's Spring Scud.

The District has become annoyed by the discharge into Rock Creek of effluent from a Montgomery County waste-treatment plant. The plant uses an advanced purifying treatment process. The federal Environmental Protection Agency issued a discharge permit for the plant. But the District government went to court to prevent the effluent discharge into the creek and contended that the EPA, in issuing the permit, did not conduct studies on the impact of the discharge on Rock Creek's flora and fauna.

Two weeks ago, as The Star's Brad Holt reported, a half-inch, shrimp-like crustacean — the Hay's Spring scud — was officially considered extinct. But, lo, a zoologist poking around in Rock Creek in April discovered that the little beast was not a goner: John Holsinger, of Old Dominion University and an authority on scuds, cornered several of the species in a small National Zoo spring that empties into Rock Creek. Said spring is now believed to be the only place where this particular brand of scud exists.

When the boys at the Interior Department's Office of Endangered Species read of Professor Holsinger's scud scoop in The Star, they hurried themselves into action. The Hay's Spring variety of the small crustacean is now being added to the list of endangered species.

The District was apprised of the discovery of the putatively extinct scud, and promptly added this to their argument against the discharge of effluent by Montgomery County into Rock Creek. "That reinforces the position we've taken on the serious implications of the operation of this plant," said John C. Salyer, an assistant D.C. corporation counsel. "It's another example of why it's necessary to have a full environmental review." Is it? Or is it another example of using any stick to beat a dog?

But comes now the loveliest irony. One of the biologists dispatched to Hay's Spring reported that close by the crustacean's home he detected "a distinct stench" from "ground water pollution . . . sewage seeping from nearby creeks, apparently sewage from the District and not from Maryland."

His observation illustrated the speciousness of the District's position on the county's effluent discharge: That is a highly treated product — but the District's system of interconnected storm and sewage drains results in the frequent discharge into Rock Creek of raw sewage from the District (our emphasis).

A not illogical deduction this might be that the Hay's Spring scud — as pointed out by former Montgomery County Councilman Norman Christeller in a letter to The Star — apparently thrives on raw sewage from D.C.'s own drainage system. "If so, perhaps we should ask Montgomery County to lower its treatment standards?" he rhetorically wondered.

The moral of this queer tale is that the energies of the city government might be more beneficially directed to remediating its own pollution.

But, of course, the Hay's Spring scud will diligently be added to the list of endangered species and battalions of lawyers will wrestle over Rock Creek and the shrimp-like crustacean.

Unless the Supreme Court inserts a degree of needed sanity into the endangered species hooplah, The notorious case of the snail darter and the Tennessee Valley Authority is pending before the high court.
Mr. Justice Powell, dissenting.

In my view § 7 of the Endangered Species Act, 16 U. S. C. (Supp. V) § 1536 (the Act), cannot reasonably be interpreted as applying to a project that is substantially completed when its threat to an endangered species is discovered. It seems to me that the Court, in reaching a different conclusion, reflects seriously, however unintentionally, on the judgment and common sense of the Congress of the United States. The Tellico Dam and Reservoir Project (Tellico Project), serving important public purposes, was duly authorized by Congress in 1966, and since has been funded by annual appropriations to the extent of $110 million. Tr. of Oral Arg. 19. This project, substantially completed,1 is now to be halted by court injunction because the planned impoundment of water may endanger a recently discovered species of small perch that are largely indistinguishable from a number of other species of the perch family.

If it were clear from the language of the Act and its legislative history that Congress intended to authorize a result that fairly may be called irrational, this Court would be

1 Attorney General Bell advised us at oral argument that the dam had been completed, that all that remains is to “close the gate,” and to complete the construction of “some roads and bridges.” The “dam itself is finished. All the landscaping has been done. . . . It is completed.” Tr. of Oral Arg., at 18.
compelled to enforce it. It is not our province to rectify policy or political judgments by the Legislative Branch, however egregiously they may disserve the public interest. But where the statutory language and legislative history, as in this case, need not be construed to reach an absurd result, I view it as the duty of this Court to adopt a permissible construction that accords with some modicum of commonsense and the public weal. It is highly unlikely that any Member of Congress, much less a majority of each House, knowingly would vote for a statute that compels abandonment of even the most meritorious federal project—in this case a multimillion dollar dam and reservoir complex—solely to preserve a small number of three-inch fish that serve no known useful purpose. Yet abandonment is precisely what this Court holds Congress did intend. I dissent from this holding.

I

The facts demonstrate that Congress never intended this bizarre result.

In 1966, Congress authorized and appropriated initial funds for the construction by the Tennessee Valley Authority (TVA) of the Tellico Dam and Reservoir Project (Tellico Project), a federal multipurpose dam and reservoir on the Little Tennessee River in eastern Tennessee. The project is a comprehensive water resource and regional development project designed to control flooding, provide water supply, promote industrial and recreational development, generate some additional electric power within the TVA system, and generally improve economic conditions in an economically depressed area. As recently described, the area is “characterized by under-utilization of human resources and outmigration of young people.”

*Tr. of Oral Arg. 143-145. See also n. 4, infra.

Hearings on Public Works for Water and Power Development and Energy Research Appropriation Bill, 1977, before a Subcommittee of the
Construction began in 1967, and Congress has voted funds for the project in every year since. In August 1973, when the Tellico Project was half completed, a new species of fish known as the snail darter was discovered in the portion of the Little Tennessee River that would be impounded behind Tellico Dam. The Endangered Species Act was passed the following December. 87 Stat. 884 (1973), 16 U. S. C. (Supp. V) §1531 et seq. More than a year later in January 1975, pursuant to §4 of the Act, respondents joined others in petitioning the Secretary of the Interior to list the snail darter as an endangered species. On November 10, 1975, when the Tellico Project was 75% completed, the Secretary placed the snail darter on the endangered list and concluded that the “proposed impoundment of water behind the proposed Tellico Dam would result in total destruction of the snail darter’s habitat.” 40 Fed. Reg. 47506 (1975). In respondents’ view, the Secretary’s action meant that completion of the Tellico Project would violate §7 of the Act, 16 U. S. C. (Supp. V) §1536:

“All . . . Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species listed pursuant to section


There are approximately 130 species of darters, all members of the perch family. Record 107, 131. Eighty-five to 90 darter species are found in Tennessee alone, id., at 131, 40 to 45 in the Tennessee River system, id., at 130, 11 in the Little Tennessee, id., at 38 n. 7. New species of darters are discovered in Tennessee at the rate of about one per year. Id., at 131. Eight to 10 have been discovered in the last five years. Ibid. It is difficult even for ichthyologists familiar with the snail darter to distinguish it from several related species. Id., at 131, 138. The darter is not a sporting fish, it is not edible, and is not suitable either as bait or for fertilizer. See n. 2, supra.
1533 of this title and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary . . . to be critical."

TVA nevertheless determined to continued with the Tellico Project in accordance with the prior authorization by Congress. In February 1976, respondents filed the instant suit to enjoin its completion. By that time the Project was 80% completed.

In March 1976, TVA informed the House and Senate Appropriations Committees about the Project's threat to the small darter and about the lawsuit. Both committees were advised by TVA that it was engaged in attempts to preserve the fish by relocating them to the Hawassee River, which closely resembles the Little Tennessee. It stated explicitly, however, that the success of those efforts could not be guaranteed.5

In a decision of May 25, 1976, the District Court for the Eastern District of Tennessee held that "the Act should not be construed as preventing completion of the project." 6

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6 The Court of Appeals interpreted the District Court opinion as holding the TVA's continuation of the Tellico Project would violate the Act, but that the requested injunction should be denied on equitable grounds. 549 F. 2d 1064, 1069-1070 (CA6 1977). This interpretation of the District Court opinion appears untenable in light of that opinion's conclusion that the Act could "not be construed as preventing completion of
F. Supp. 753, 755 n. 2 (1976). An opposite construction, said the District Court, would be unreasonable:

"At some point in time a federal project becomes so near completion that a court of equity should not apply a statute enacted long after inception of the project to produce an unreasonable result. Arlington Coalition on Transportation v. Volpe, 458 F. 2d 1323, 1331-32 (4th Cir.), cert. den. 409 U. S. 1000, 93 S. Ct. 312, 34 L. Ed. 2d 261 (1972). Where there has been an irreversible and irretrievable commitment of resources by Congress to a project over a span of almost a decade, the Court should proceed with great circumspection." Id., at 760.

Observing that respondents' argument, carried to its logical extreme, would require a court to enjoin the impoundment of water behind a fully completed dam if an endangered species were discovered in the river on the day before the scheduled impoundment, the District Court concluded that Congress could not have intended such a result." Accordingly, it denied the prayer for an injunction and dismissed the action.

In 1975, 1976, and 1977 Congress, with full knowledge of

the project. 419 F. Supp. 753, 755 n. 2 (ED Tenn. 1976) (emphasis added). Moreover, the District Court stated the issue in the case as whether "it is reasonable to conclude that Congress intended the Act to halt the Tellico Project at its present stage of completion." Id., at 760. It concluded that the "Act should be construed in a reasonable manner to effectuate the legislative purpose," ibid., and "that the Act does not operate in such a manner as to halt completion of this particular project," id., at 763. From all this, together with the District Court's reliance on cases interpreting the National Environmental Policy Act as inapplicable to substantially completed projects, see id., at 760-761, it seems clear that the District Court interpreted § 7 as inapplicable to the Tellico Project.

"The District Court found that $53 million out of more than $78 million then expended on the Project would be unrecoverable if completion of the dam were enjoined. 419 F. Supp., at 760. As more than $110 million has now been spent on the Project, it seems probable that abandonment of the dam would entail an even greater waste of tax dollars.
the Tellico Project's effect on the snail darter and the alleged violation of the Endangered Species Act, continued to appropriate money for the completion of the Project. In doing so, the Appropriations Committees expressly stated their view that the Act did not prohibit the Project's completion, a view that Congress presumably accepted in approving the appropriations each year. For example, in June 1976, the Senate Committee on Appropriations released a report noting the District Court decision and recommending approval of TVA's full budget request for the Tellico Project. The Committee observed further that it did "not view the Endangered Species Act as prohibiting completion of the Tellico project at its advanced stage," and it directed "that this project be completed as promptly as possible in the public interest." The appropriations bill was passed by Congress and approved by the President.

The Court of Appeals for the Sixth Circuit nevertheless reversed the District Court in January 1977. It held that the Act was intended to create precisely the sort of dramatic conflict presented in this case: "Where a project is on-going and substantial resources have already been expended, the conflict between national incentives to conserve living things and the pragmatic momentum to complete the project on schedule is most incisive." 549 F. 2d 1064, 1071 (1977). Judicial resolution of that conflict, the Court of Appeals reasoned, would represent usurpation of legislative power. It quoted the District Court's statement that respondents' reading of the Act, taken to its logical extreme, would compel a court to halt impoundment of water behind a dam if an endangered species were discovered in the river on the day before the scheduled impoundment. The Court of Appeals, however, rejected the District Court's conclusion that such a reading was unreasonable and contrary to congressional intent, holding instead that "[c]onscientious enforcement of the Act requires that it

be taken to its logical extreme." *Ibid.* It remanded with instructions to issue a permanent injunction halting all activities incident to the Tellico Project which would modify the critical habitat of the snail darter.

In June 1977, and after being informed of the decision of the Court of Appeals, the Appropriations Committees in both Houses of Congress again recommended approval of TVA's full budget request for the Tellico Project. Both Committees again stated unequivocally that the Endangered Species Act was not intended to halt projects at an advanced stage of completion:

"[The Senate] Committee has not viewed the Endangered Species Act as preventing the completion and use of these projects which were well under way at the time the affected species were listed as endangered. If the act has such an effect, which is contrary to the Committee's understanding of the intent of Congress in enacting the Endangered Species Act, funds should be appropriated to allow these projects to be completed and their benefits realized in the public interest, the Endangered Species Act notwithstanding." 9

"It is the [House] Committee's view that the Endangered Species Act was not intended to halt projects such as these in their advanced stage of completion, and [the Committee] strongly recommends that these projects not be stopped because of misuse of the Act." 10

Once again, the appropriations bill was passed by both Houses and signed into law.

Today the Court, like the Court of Appeals below, adopts a reading of § 7 of the Act that gives it a retroactive effect and disregards 12 years of consistently expressed congressional intent to complete the Tellico Project. With all due respect, I

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view this result as an extreme example of a literal, legalistic construction of statutory language without regard to the manifest purpose and intent of the entire Act. The Court’s result is not compelled by the language of the Act, and it ignores established canons of statutory construction.

A

The starting point in statutory construction is, of course, the language of §7 itself. I agree that it can be viewed as a textbook example of fuzzy language, which can be read according to the “eye of the beholder.” The critical words direct all federal agencies to take “such action [as may be] necessary to insure that actions authorized, funded or, carried out by them do not jeopardize the continued existence of . . . endangered species . . . or result in the destruction or modification of [a critical] habitat of such species . . . .” Respondents—as did the Sixth Circuit—read these words as sweeping as possible to include all “actions” that any federal agency ever may take with respect to any federal project, whether completed or not. Although the Court today seems reluctant to project the shadow of its opinion quite this far, it offers no logical stopping place for the effect of its interpretation. The hypothetical example posed by the District Court identifies the dilemma unanswered by the Court’s opinion: if the Act is applied to alter a project 80% complete, it also must halt a great dam project the day before impoundment is scheduled to take place. And, as respondents insist, the “actions” that an agency would be prohibited from “carrying out” also would include maintenance necessary to preserve the continued operation of a completed, multimillion

11 The purpose of this Act is admirable. Protection of endangered species long has been neglected. This unfortunate litigation—wasteful for taxpayers and likely in the end to be counterproductive in terms of respondents’ purpose—may have been invited by careless draftsmanship of meritorious legislation.
dollar hydroelectric plant 12 or the Nation's most essential defense installation. The only precondition, according to respondents, to thus destroying the usefulness of even the most important federal project in our country would be a finding by the Secretary of the Interior that a continuation of the project would threaten the survival or critical habitat of a newly discovered species of water spider or cockroach. 13

12 Opinion of the Court, ante, at —. At oral argument, respondents clearly stated this as their view of § 7:

"QUESTION: ... Do you think—it is still your position, as I understand it, that this Act, Section 7, applies to completed projects? I know you don't think it occurs very often that there'll be a need to apply it. But does it apply if the need exists?

"MR. PLATER: To the continuation—

"QUESTION: To completed projects. Take the Grand Coulee dam—

"MR. PLATER: Right. Your Honor, if there were a species there—

"—it wouldn't be endangered by the dam.

"QUESTION: I know that's your view. I'm asking you not to project your imagination—

"MR. PLATER: I see, your Honor.

"QUESTION: —beyond accepting my assumption.

"MR. PLATER: Right.

"QUESTION: And that was that an endangered species might turn up at Grand Coulee. Does Section 7 apply to it?

"MR. PLATER: I believe it would, Your Honor. The Secretary of the Interior—

"QUESTION: That answers my question.

"MR. PLATER: Yes, it would." Tr. of Oral Arg., at 57–58.

13 The Act covers every animal and plant species, subspecies, and population in the world needing protection. There are approximately 1.4 million full species of animals and 900,000 full species of plants in the world. Various authorities calculate as many as 10% of them—some 200,000—may need to be listed as Endangered or Threatened. When one counts subspecies, not to mention individual populations, the total could increase to three to five times that number." Keith Shreiner, Associate Director and Endangered Species Program Manager of the U. S. Fish and Wildlife Service, quoted in a letter from A. J. Wagner, Chairman TVA, to Chairman, House Committee on Merchant Marine and Fisheries, dated
The critical word in § 7 is "actions" and its meaning is far from "plain." It is part of the phrase: "actions authorized, funded or carried out." If the verb "carried out" is read in pari materia with "authorized" and "funded," as it should be, it seems evident that the actions referred to are not all actions that an agency can ever take, but rather actions that the agency is deciding whether to authorize, to fund, or to carry out. In short, these words reasonably may be read as applying only to prospective actions, i.e., actions with respect to which the agency has reasonable decisionmaking alternatives still available. 

"[F]requently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act." Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892).

The result that will follow in this case by virtue of the Court's reading of § 7 makes it unreasonable to believe that Congress intended that reading.

Moreover, § 7 may be construed in a way that avoids an "absurd result" without doing violence to its language. At the time respondents brought this lawsuit, the Tellico Project was 80% complete at a cost of more than $7 million. Under the prospective reading of § 7 described above, the action had already been "carried out," in terms of reasonable decision-making power. Cf. National Wildlife Federation v. Coleman, April 25, 1977, quoted in Wood, On Protecting an Endangered Statute: The Endangered Species Act of 1973, 37 Federal Bar Journal 25, 27 (1978).

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This is a reasonable construction of the language and also is supported by the presumption against construing statutes to give them a retroactive effect. As this Court stated in United States Fidelity & Guaranty Co. v. Struthers Wells Co., 209 U. S. 306, 314 (1908), the "presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other." This presumption has been recognized in cases under the National Environmental Policy Act, 42 U. S. C. § 4331 et seq., holding that the requirement of filing an environmental impact statement cannot reasonably be applied to projects substantially completed. E. g., Pizitz, Inc. v. Volpe, 467 F. 2d 208 (CA5 1972); Egliland v. Mueller, 460 F. 2d 1196; Greene County Planning Board v. FPC, 455 F. 2d 412, 424 (CA2), cert. denied, 409 U. S. 849 (1972). The Court of Appeals for the Fourth Circuit explained these holdings:

"Doubtless Congress did not intend that all projects ongoing at the effective date of the Act be subject to the requirements of Section 102. At some stage of progress, the costs of altering or abandoning the project could so definitely outweigh whatever benefits that might accrue therefrom that it might no longer be 'possible' to change the project in accordance with Section 102. At some stage, federal action may be so 'complete' that applying the Act could be considered a 'retroactive' application not intended by the Congress." Arlington Coalition on Transportation v. Volpe, 458 F. 2d 1323, 1331 (CA4), cert. denied sub nom. Fugate v. Arlington Coalition on Transportation, 409 U. S. 1000 (1972).

Similarly under § 7 of the Endangered Species Act, at some stage of completion of a federal project, the agency no longer has a reasonable choice to terminate the project. When that
point reached as clearly it was in this case, the presumption against retrospective interpretation is at its strongest. The Court today gives no weight to that presumption.

B

The Court also essentially ignores the rule that the first purpose of statutory construction is to ascertain the intent of the legislature. E. g., United States v. American Trucking Assn., 310 U. S. 534, 542 (1940). There is no evidence of an intent to apply § 7 to projects completed or substantially completed, and the only revealed intention is clearly and indisputably to the contrary.

To be sure, the record evidence at the time the Endangered Species Act was adopted does not address with any degree of specificity the issue of retroactive application. In my view, however, this silence reinforces the conclusion that the Court's reading of § 7, which produces such an unreasonable result, could not have been intended by Congress. If the relevant Committees that considered the Act, and the Members of Congress when called upon to vote on it, had been aware that the Act could be used to terminate major federal projects authorized years earlier and nearly completed, or to require the abandonment of essential and long-completed federal in-


16 The Senate sponsor of the bill, Senator Tunney, apparently thought that it would not withdraw from the agency the final decision on completion of the project:

"... [A]s I understand it, after the consultation process took place, the Bureau of Public Roads, or the Corps of Engineers, would not be prohibited from building a road if they deemed it necessary to do so.

"... [A]s I read the language, there has to be consultation. However, the Bureau of Public Roads or any other agency would have the final decision as to whether such a road should be built. That is my interpretation of the legislation at any rate." 119 Cong. Rec. 25689-25690 (1973).

See also Sierra Club v. Froehlke, 534 F. 2d 1289, 1303-1304 (CAS 1976).
stallations and edifices," we can be certain that there would have been hearings, testimony, and debate concerning consequences so wasteful, so inimical to purposes previously deemed important, and so likely to arouse public outrage. The absence of any such consideration by the Committees or in the floor debates indicates beyond reasonable doubt that no one participating in the legislative process considered these consequences as being authorized by the Act.

This view of legislative intent at the time of enactment

"The initial proposed rulemaking under the Act made it quite clear that such an interpretation was not intended:

"Neither [the Fish and Wildlife Service of the Department of the Interior] nor [the National Marine Fisheries Service of the Department of Commerce] intends that section 7 bring about the waste that can occur if an advanced project is halted. . . . The affected agency must decide whether the degree of completion and extent of public funding of particular projects justify an action that may be otherwise inconsistent with Section 7."


After the decision of the Court of Appeals in this case, however, the quoted language was withdrawn, and the agencies adopted the view of the court. 43 Fed. Reg. 870, 872, 875 (1978).

This case thus presents the spectacle of two cabinet-level departments confronting each other in the federal courts on an issue of considerable importance to the country. Although not a party, the Secretary of the Interior now fully supports respondents' sweeping reading of § 7, disagreeing with the Attorney General. Indeed, the Secretary requested the Attorney General to present the Interior Department's views to the Court. See Brief for Petitioner Ia-13a. No criticism of the Attorney General is implied, as I understand it to be his duty to support the position of TVA. When asked at oral argument why the Executive Branch had not resolved its differences before coming to this Court, the Attorney General replied:

"ATTORNEY GENERAL BELL: Well, in this case, where we should speak with one voice, we speak with two, because the Court will permit it, is the argument made to me. It's the only time we've done it since I've been Attorney General.

"I don't favor it. But I'm glad I had a chance to say so." Tr. of Oral Arg. 31.
is abundantly confirmed by subsequent actions and expressions by Congress. As noted above, in each of the three years since this controversy developed—in 1975, 1976, and 1977—with full knowledge of the asserted effect on the snail darter, Appropriation Committees of both Houses explicitly recorded their understanding that the Endangered Species Act does not prohibit the completion of this project "at its advanced stage." With this interpretation before it, in the Committee reports, Congress approved the recommended appropriations and the President also approved.

We have held, properly, that post-enactment statements by individual Members of Congress as to the meaning of a statute are entitled to little or no weight. See, e.g., Regional Rail Reorganization Act Cases, 419 U. S. 102, 132 (1974). The Court also has recognized that subsequent appropriation acts themselves are not necessarily entitled to significant weight in determining whether a prior statute has been superseded. See United States v. Langston, 118 U. S. 389, 313 (1886). But these precedents are inappropriate. There was no effort here to "bootstrap" a post-enactment view of prior legislation by isolated statements of individual congressmen. Nor is this a case where Congress, without explanation or comment upon the statute in question, merely has voted apparently inconsistent financial support in subsequent appropriations acts. Testimony on this precise issue was presented before congressional committees, and the committee reports for three consecutive years addressed the problem and affirmed their understanding of congressional intent. We cannot assume that Congress, when it continued each year to approve the recommended appropriations, was unaware of the contents of the supporting committee reports. All this amounts to strong corroborative evidence that the interpretation of § 7 as not applying to substantially completed projects reflects the initial legislative intent. See, e.g., Fleming v. Mohawk Wrecking & Lumber Co., 331 U. S. 111, 116 (1947); Brooks v. Dewar, 313 U. S. 354 (1941).
III

I have little doubt that Congress will accept the Court's invitation, ante, at ——, to amend the Endangered Species Act in order to prevent the serious consequences of today's decision. Few, if any, Members of that body will wish to defend an interpretation of the Act that requires the waste of at least $53 million, denies the people of the Tennessee valley area the benefits of the reservoir intended by the Congress, and which—if the Act remains unamended—would threaten countless other projects with the same fate. There will be little sentiment to leave this dam standing before an empty reservoir, serving no purpose other than a conversation piece for bemused tourists.

If Congress acts expeditiously, as may be anticipated, the delay occasioned by the Court's decision probably will have no lasting adverse consequences. But I had not thought it to be the province of this Court to force Congress into otherwise unnecessary action by interpreting a statute to produce a result no one intended.
MR. JUSTICE POWELL, dissenting.

In my view § 7 of the Endangered Species Act, 16 U. S. C. (Supp. V) § 1536 (the Act), cannot reasonably be interpreted as applying to a project that is substantially completed when its threat to an endangered species is discovered. The Court today adopts a contrary interpretation, reflecting seriously on the good judgment of Congress. The Tellico Dam and Reservoir Project (Tellico Project), serving important public purposes, was duly authorized by Congress in 1966, and has received annual appropriations totaling $110 million. Tr. of Oral Arg. 19. This project, substantially completed, is now to be terminated by court injunction because the planned impoundment of water may endanger a recently discovered species of small perch that are largely indistinguishable from a number of other species of the perch family.

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the public interest. But where the statutory language and legislative history, as in this case, need not be construed to reach a result no rational person could have intended, I view it as the duty of this Court to adopt a permissible construction that accords with some modicum of commonsense and the public weal. It is highly unlikely that any Member of Congress, much less a majority of each House, knowingly would vote for a statute that compels abandonment of even the most meritorious federal project—in this case a multimillion dollar dam and reservoir complex—to preserve a small number of three-inch fish that serve no useful purpose. Yet abandonment is precisely what this Court holds Congress did intend. I dissent from this holding.

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known as the snail darter 4 was discovered in the portion of the Little Tennessee River that would be impounded behind Tellico Dam. The Endangered Species Act was passed the following December. 87 Stat. 884 (1973), 16 U.S.C. (Supp. V) § 1531 et seq. More than a year later in January 1975, respondents joined others in petitioning the Secretary of the Interior to list the snail darter as an endangered species. On November 10, 1975, when the Tellico Project was 75% completed, the Secretary placed the snail darter on the endangered list and concluded that the “proposed impoundment of water behind the proposed Tellico Dam would result in total destruction of the snail darter’s habitat.” 40 Fed. Reg. 47506 (1975). In respondents’ view, the Secretary’s action meant that completion of the Tellico Project would violate § 7 of the Act, 16 U.S.C. (Supp. V) § 1536:

“All . . . Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species listed pursuant to section 1533 of this title and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary . . . to be critical.”

4 There are approximately 130 species of darters, all members of the perch family. Record 107, 131. Eighty-five to 90 darter species are found in Tennessee alone, id., at 131, 40 to 45 in the Tennessee River system, id., at 130, and 11 in the Little Tennessee, id., at 38 n. 7. New species of darters are discovered in Tennessee at the rate of about one per year. Id., at 131. Eight of 10 have been discovered in the last five years. Ibid. It is difficult even for ichthyologists familiar with the snail darter to distinguish it from several related species.
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In a decision of May 25, 1976, the District Court for the Eastern District of Tennessee held that "the Act should not be construed as preventing completion of the project."5


5 The Court of Appeals interpreted the District Court opinion as holding the TVA's continuation of the Tellico Project would violate the Act, but that the requested injunction should be denied on equitable grounds. 549 F. 2d 1064, 1069-1070 (CA6 1977). This interpretation of the District Court opinion appears untenable in light of that opinion's conclusion that the Act could "not be construed as preventing completion of the project, 419 F. Supp. 753, 755 n. 2 (ED Tenn. 1976) (emphasis added). Moreover, the District Court stated the issue in the case as whether "it is reasonable to conclude that Congress intended the Act to halt the Tellico Project at its present stage of completion." Id., at 760. It concluded that the "Act should be construed in a reasonable manner to effectuate the legislative purpose," ibid., and "that the Act does not operate in such a manner as to halt completion of this particular project," ibid., at 763. From all this, together with the District Court's reliance on cases interpreting the National Environmental Policy Act as inapplicable to substantially completed projects, see id., at 760-761, it seems clear that
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Observing that respondents' argument, carried to its logical extreme, would require a court to enjoin the impoundment of water behind a fully completed dam if an endangered species were discovered in the river on the day before the scheduled impoundment, the District Court concluded that Congress could not have intended such a result.6 Accordingly, it denied the prayer for an injunction and dismissed the action.

In 1975, 1976, and 1977 Congress, with full knowledge of the Tellico Project's effect on the snail darter and the alleged violation of the Endangered Species Act, continued to appropriate money for the completion of the Project. In doing so, the Appropriations Committees expressly stated that the Act did not prohibit the Project's completion, a view that Congress presumably accepted in approving the appropriations each year. For example, in June 1976, the Senate Committee on Appropriations released a report noting the District Judge Taylor correctly interpreted § 7 as inapplicable to the Tellico Project.

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The Court of Appeals for the Sixth Circuit nevertheless reversed the District Court in January 1977. It held that the Act was intended to create precisely the sort of dramatic conflict presented in this case: "Where a project is on-going and substantial resources have already been expended, the conflict between national incentives to conserve living things and the pragmatic momentum to complete the project on schedule is most incisive." 549 F. 2d 1064, 1071 (1977). Judicial resolution of that conflict, the Court of Appeals reasoned, would represent usurpation of legislative power. It quoted the District Court's statement that respondents' reading of the Act, taken to its logical extreme, would compel a court to halt impoundment of water behind a dam if an endangered species were discovered in the river on the day before the scheduled impoundment. The Court of Appeals, however, rejected the District Court's conclusion that such a reading was unreasonable and contrary to congressional intent, holding instead that "[c]onscientious enforcement of the Act requires that it be taken to its logical extreme." Ibid. It remanded with instructions to issue a permanent injunction halting all activities incident to the Tellico Project which would modify the critical habitat of the snail darter.

In June 1977, and after being informed of the decision of the Court of Appeals, the Appropriations Committees in both Houses of Congress again recommended approval of TVA's full budget request for the Tellico Project. Both Committees

again stated unequivocally that the Endangered Species Act was not intended to halt projects at an advanced stage of completion:

"[The Senate] Committee has not viewed the Endangered Species Act as preventing the completion and use of these projects which were well under way at the time the affected species were listed as endangered. If the act has such an effect, which is contrary to the Committee's understanding of the intent of Congress in enacting the Endangered Species Act, funds should be appropriated to allow these projects to be completed and their benefits realized in the public interest, the Endangered Species Act notwithstanding."

"It is the [House] Committee's view that the Endangered Species Act was not intended to halt projects such as these in their advanced stage of completion, and [the Committee] strongly recommends that these projects not be stopped because of misuse of the Act."

Once again, the appropriations bill was passed by both Houses and signed into law.

Today the Court, like the Court of Appeals below, adopts a reading of § 7 of the Act that gives it a retroactive effect and disregards 12 years of consistently expressed congressional intent to complete the Tellico Project. With all due respect, I view this result as an extreme example of a literalist construction, not required by the language of the Act, and undertaken without regard to its manifest purpose. Moreover, it ignores established canons of statutory construction.

A

The starting point in statutory construction is, of course,
TVA v. HILL

the language of § 7 itself. Blue Chip Stamps v. Manor Drug Stores, 421 U. S. 723, 756 (1975) (Powell, J., concurring). I agree that it can be viewed as a textbook example of fuzzy language, which can be read according to the "eye of the beholder."11 The critical words direct all federal agencies to take "such action [as may be] necessary to insure that actions authorized, funded or, carried out by them do not jeopardize the continued existence of . . . endangered species . . . or result in the destruction or modification of [a critical] habitat of such species . . . ." Respondents—as did the Sixth Circuit—read these words as sweeping as possible to include all "actions" that any federal agency ever may take with respect to any federal project, whether completed or not.

Although the Court today seems reluctant to project the shadow of its opinion quite this far, it offers no logical stopping place for the sweep of its interpretation. The hypothetical example posed by the District Court identifies the dilemma unanswered by the Court's opinion: if the Act is applied to alter a project 80% complete, it also must halt a great dam project the day before impoundment is scheduled to take place. And, as respondents insist, the "actions" that an agency would be prohibited from "carrying out" also would include maintenance necessary to preserve the continued operation of a completed, multimillion dollar hydroelectric plant12 or the Nation's most essential defense installation.

11 The purpose of this Act is admirable. Protection of endangered species long has been neglected. This unfortunate litigation—wasteful for taxpayers and likely in the end to be counterproductive in terms of respondents' purpose—may have been invited by careless drafting of otherwise meritorious legislation.

12 Opinion of the Court, ante, at . At oral argument, respondents clearly stated this as their view of § 7:

"QUESTION: . . . Do you think—it is still your position, as I understand it, that this Act, Section 7, applies to completed projects? I know
The only precondition, according to respondents, to thus destroying the usefulness of even the most important federal project in our country would be a finding by the Secretary of the Interior that a continuation of the project would threaten the survival or critical habitat of a newly discovered species of water spider or cockroach. 13

"[F]requently words of general meaning are used in a statute, words broad enough to include an act in question, you don't think it occurs very often that there'll be a need to apply it. But does it apply if the need exists?"

"QUESTION: To completed projects. Take the Grand Coulee dam—"

"MR. PLATER: Right. Your Honor, if there were a species there—"

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"MR. PLATER: I believe it would, Your Honor. The Secretary of the Interior—"

"QUESTION: That answers my question."

"MR. PLATER: Yes, it would." Tr. of Oral Arg., at 57-58.

13 "The act covers every animal and plant species, subspecies, and populations in the world needing protection. There are approximately 1.4 million full species of animals and 690,000 full species of plants in the world. Various authorities calculate as many as 10% of them—some 200,000—may need to be listed as Endangered or Threatened. When one counts subspecies, not to mention individual populations, the total could increase to three to five times that number." Keith Shreiner, Associate Director and Endangered Species Program Manager of the U. S. Fish and Wildlife Service, quoted in a letter from A. J. Wagner, Chairman TVA, to Chairman, House Committee on Merchant Marine and Fisheries, dated April 25, 1977, quoted in Wood, On Protecting an Endangered Statute: The Endangered Species Act of 1973, 37 Federal Bar Journal 26, 27 (1978).
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and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act." Church of the Holy Trinity v. United States, 143 U. S. 427, 459 (1892).14 The result that will follow in this case by virtue of the Court's reading of § 7 makes it unreasonable to believe that Congress intended that reading. Moreover, § 7 may be construed in a way that avoids an "absurd result" without doing violence to its language.

The critical word in § 7 is "actions" and its meaning is far from "plain." It is part of the phrase: "actions authorized, funded or carried out." In terms of planning and executing various activities, it seems evident that the "actions" referred to are not all actions that an agency can ever take, but rather actions that the agency is deciding whether to authorize, to fund, or to carry out. In short, these words reasonably may be read as applying only to prospective actions, i. e., actions with respect to which the agency has reasonable decisionmaking alternatives still available, actions not yet carried out. At the time respondents brought this lawsuit, the Tellico Project was 80% complete at a cost of more than $78 million. Under the prospective reading of § 7 described about, the action already had been "carried out," in terms of reasonable decisionmaking power. Cf. National Wildlife Federation v. Coleman, 529 F. 2d 359, 363, and n. 5 (CA5), cert. denied sub nom. Boteler v. National Wildlife Federation, 429 U. S. 979 (1976).

This is a reasonable construction of the language and also is supported by the presumption against construing statutes

to give them a retroactive effect. As this Court stated in *United States Fidelity & Guaranty Co. v. Struchers Wells Co.*, 209 U. S. 306, 314 (1908), the "presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other." This is particularly true where a statute enacts a new regime of regulation. For example, the presumption has been recognized in cases under the National Environmental Policy Act, 42 U. S. C. § 4331 et seq., holding that the requirement of filing an environmental impact statement cannot reasonably be applied to projects substantially completed. *E. g., Pizitz, Inc. v. Volpe*, 467 F. 2d 208 (CA5 1972); *Ragland v. Mueller*, 460 F. 2d 1196; *Greene County Planning Board v. FPC*, 455 F. 2d 412, 424 (CA2), cert. denied, 409 U. S. 849 (1972). The Court of Appeals for the Fourth Circuit explained these holdings.

"Doubtless Congress did not intend that all projects ongoing at the effective date of the Act be subject to the requirements of Section 102. At some stage of progress, the costs of altering or abandoning the project could so definitely outweigh whatever benefits that might accrue therefrom that it might no longer be ‘possible’ to change the project in accordance with Section 102. At some stage, federal action may be so ‘complete’ that applying the Act could be considered a ‘retroactive’ application not intended by the Congress." *Arlington Coalition on Transportation v. Volpe*, 458 F. 2d 1323, 1331 (CA4), cert. denied sub nom. *Fugate v. Arlington Coalition on Transportation*, 409 U. S. 1000 (1972).

Similarly under § 7 of the Endangered Species Act, at some stage of completion of a federal project, the agency no longer has a reasonable choice to terminate the project. When that point is reached as clearly it was in this case, the presumption against retrospective interpretation is at its strongest. The Court today gives no weight to that presumption.
B

The Court also essentially ignores the rule that the first purpose of statutory construction is to ascertain the intent of the legislature. *E. g.*, *United States v. American Trucking Assn.*, 310 U. S. 534, 542 (1940). There is no evidence of an intent to apply § 7 to projects completed or substantially completed, and the only revealed intention is clearly and indisputably to the contrary.

To be sure, the legislative history of the Endangered Species Act does not address with any degree of specificity the issue of retroactive application. In my view, however, this silence reinforces the conclusion that the Court’s reading of § 7, which produces such an unreasonable result, could not have been intended by Congress. If the relevant Committees that considered the Act, and the Members of Congress when called upon to vote on it, had been aware that the Act could be used to terminate major federal projects authorized years earlier and nearly completed, or to require the abandonment of essential and long-completed federal installations and edifices,

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16 The Senate sponsor of the bill, Senator Tunney, apparently thought that the Act was merely precatory and would not withdraw from the agency the final decision on completion of the project: "... [A]s I understand it, after the consultation process took place, the Bureau of Public Roads, or the Corps of Engineers, would not be prohibited from building a road if they deemed it necessary to do so. ... [A]s I read the language, there has to be consultation. However, the Bureau of Public Roads or any other agency would have the final decision as to whether such a road should be built. That is my interpretation of the legislation at any rate." 119 Cong. Rec. 25689-25690 (1973).

See also *Sierra Club v. Froehlke*, 534 F. 2d 1289, 1303-1304 (CA8 1976).
17 The initial proposed rulemaking under the Act made it quite clear that such an interpretation was not intended: "Neither [the Fish and Wildlife Service of the Department of the Interior] nor [the National Marine Fisheries Service of the Department of Com-
we can be certain that there would have been hearings, testimony, and debate concerning consequences so wasteful, so inimical to purposes previously deemed important, and so likely to arouse public outrage. The absence of any such consideration by the Committees or in the floor debates indicates quite clearly that no one participating in the legislative process considered these consequences as within the intention of the Act.

This view of legislative intent at the time of enactment is abundantly confirmed by the subsequent congressional actions and expressions noted above. We have held, properly, that post-enactment statements by individual Members of Congress as to the meaning of a statute are entitled to little or no weight. See, e.g., Regional Rail Reorganization Act Cases, 419 U. S. 102, 132 (1975). The Court also has recognized that subsequent appropriation acts themselves are not necessarily entitled to significant weight in determining whether a prior statute has been superseded. See United States v. Langston, 118 U. S. 389, 313 (1886). But these precedents are inapposite. There was no effort here to "bootstrap" a post-enactment view of prior legislation by isolated statements of individual congressmen. Nor is this a case where Congress, without explanation or comment upon the statute in question, merely has voted apparently inconsistent financial support in subsequent appropriations acts. Testimony on this precise issue was presented before congressional committees, and the committee reports for three consecutive years

mercel] intends that section 7 bring about the waste that can occur if an advanced project is halted. . . . The affected agency must decide whether the degree of completion and extent of public funding of particular projects justify an action that may be otherwise inconsistent with Section 7." 42 Fed. Reg. 4868, 4869 (1977).

After the decision of the Court of Appeals in this case, however, the quoted language was withdrawn, and the agencies adopted the view of the court. 43 Fed. Reg. 870, 872, 975 (1978).
addressed the problem and affirmed their understanding of the original congressional intent. We cannot assume that Congress, when it continued each year to approve the recommended appropriations, was unaware of the contents of the supporting committee reports. All this amounts to strong corroborative evidence that the interpretation of § 7 as not applying to substantially completed projects reflects the initial legislative intent. See, e.g., *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 116 (1947); *Brooks v. Dewar*, 313 U.S. 354 (1941).

III

I have little doubt that Congress will accept the Court's invitation, ante, at —, to amend the Endangered Species Act in order to prevent the serious consequences of today's decision. Few, if any, Members of that body will wish to defend an interpretation of the Act that requires the waste of at least $53 million, see n. 6, supra, denies the people of the Tennessee Valley area the benefits of the reservoir intended by the Congress, and which—if the Act remains unamended—would threaten countless other projects with the same fate. There will be little sentiment to leave this dam standing before an empty reservoir, serving no purpose other than a conversation piece for bemused tourists.

If Congress acts expeditiously, as may be anticipated, the delay occasioned by the Court's decision probably will have no lasting adverse consequences. But I had not thought it to be the province of this Court to force Congress into otherwise unnecessary action by interpreting a statute to produce a result no one intended.
MR. JUSTICE POWELL, dissenting.

In my view §7 of the Endangered Species Act, 16 U. S. C. (Supp. V) §1536 (the Act), cannot reasonably be interpreted as applying to a project that is substantially completed when its threat to an endangered species is discovered. The Court today adopts a contrary interpretation, reflecting seriously on the good judgment of Congress. The Tellico Dam and Reservoir Project (Tellico Project), serving important public purposes, was duly authorized by Congress in 1966, and has received annual appropriations totaling $110 million. Tr. of Oral Arg. 19. This project, substantially completed, is now to be terminated by court injunction because the planned impoundment of water may endanger a recently discovered species of small perch that are largely indistinguishable from a number of other species of the perch family.

If it were clear from the language of the Act and its legislative history that Congress intended to authorize this bizarre result, this Court would be compelled to enforce it. It is not our province to rectify policy or political judgments by the Legislative Branch, however egregiously they may disserve

1 Attorney General Bell advised us at oral argument that the dam had been completed, that all that remains is to "close the gate," and to complete the construction of "some roads and bridges." The "dam itself is finished. All the landscaping has been done. . . . It is completed." Tr. of Oral Arg., at 18.
the public interest. But where the statutory language and legislative history, as in this case, need not be construed to reach a result no rational person could have intended, I view it as the duty of this Court to adopt a permissible construction that accords with some modicum of common sense and the public weal. It is highly unlikely that any Member of Congress, much less a majority of each House, knowingly would vote for a statute that compels abandonment of even the most meritorious federal project—in this case a multimillion dollar dam and reservoir complex—to preserve a small number of three-inch fish that serve no useful purpose. Yet abandonment is precisely what this Court holds Congress did intend. I dissent from this holding.

I

The facts demonstrate that Congress never intended this result.

In 1966, Congress authorized and appropriated initial funds for the construction by the Tennessee Valley Authority (TVA) of the Tellico Dam and Reservoir Project on the Little Tennessee River in eastern Tennessee. The project is a comprehensive water resource and regional development project designed to control flooding, provide water supply, promote industrial and recreational development, generate some additional electric power within the TVA system, and generally improve economic conditions in an economically depressed area “characterized by under-utilization of human resources and outmigration of young people.”

Construction began in 1967, and Congress has voted funds for the project in every year since. In August 1973, when the Tellico Project was half completed, a new species of fish

known as the snail darter * was discovered in the portion of the Little Tennessee River that would be impounded behind Tellico Dam. The Endangered Species Act was passed the following December. 87 Stat. 884 (1973), 16 U. S. C. (Supp. V) § 1531 et seq. More than a year later in January 1975, respondents joined others in petitioning the Secretary of the Interior to list the snail darter as an endangered species. On November 10, 1975, when the Tellico Project was 75% completed, the Secretary placed the snail darter on the endangered list and concluded that the "proposed impoundment of water behind the proposed Tellico Dam would result in total destruction of the snail darter's habitat." 40 Fed. Reg. 47506 (1975). In respondents' view, the Secretary's action meant that completion of the Tellico Project would violate § 7 of the Act, 16 U. S. C. (Supp. V) § 1536:

"All . . . Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species listed pursuant to section 1533 of this title and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary . . . to be critical."

*There are approximately 130 species of darters, all members of the perch family. Record 107, 131. Eighty-five to 90 darter species are found in Tennessee alone, id., at 131, 40 to 45 in the Tennessee River system, id., at 130, and 11 in the Little Tennessee, id., at 38 n. 7. New species of darters are discovered in Tennessee at the rate of about one per year. Id., at 131. Eight to 10 have been discovered in the last five years. *Id.* It is difficult even for ichthyologists familiar with the snail darter to distinguish it from several related species. *Id.*, at 131, 138.
TVA nevertheless determined to continue with the Tellico Project in accordance with the prior authorization by Congress. In February 1976, respondents filed the instant suit to enjoin its completion. By that time the Project was 80% completed.

In March 1976, TVA informed the House and Senate Appropriations Committees about the Project's threat to the snail darter and about respondents' lawsuit. Both committees were advised that TVA was attempting to preserve the fish by relocating them to the Hiwassee River, which closely resembles the Little Tennessee. It stated explicitly, however, that the success of those efforts could not be guaranteed.

In a decision of May 25, 1976, the District Court for the Eastern District of Tennessee held that "the Act should not be construed as preventing completion of the project." 419 F. Supp. 753, 755 n. 2 (ED Tenn. 1976) (emphasis added). Moreover, the District Court stated the issue in the case as whether "it is reasonable to conclude that Congress intended the Act to halt the Tellico Project at its present stage of completion." Id., at 760. It concluded that the "Act should be construed in a reasonable manner so as to effectuate the legislative purpose," ibid., and "that the Act does not operate in such a manner as to halt completion of this particular project." Id., at 763. From all this, together with the District Court's reliance on cases interpreting the National Environmental Policy Act as inapplicable to substantially completed projects, see id., at 760-761, it seems clear that

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"It is the [House] Committee's view that the Endangered Species Act was not intended to halt projects such as these in their advanced stage of completion, and [the Committee] strongly recommends that these projects not be stopped because of misuse of the Act." 9

Once again, the appropriations bill was passed by both Houses and signed into law.

II

Today the Court, like the Court of Appeals below, adopts a reading of § 7 of the Act that gives it a retroactive effect and disregards 12 years of consistently expressed congressional intent to complete the Tellico Project. With all due respect, I view this result as an extreme example of a literalist 10 construction, not required by the language of the Act, and adopted without regard to its manifest purpose. Moreover, it ignores established canons of statutory construction.

The starting point in statutory construction is, of course, the language of § 7 itself. *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 756 (1975) (Powell, J., concurring). I agree that it can be viewed as a textbook example of fuzzy language, which can be read according to the “eye of the beholder.” The critical words direct all federal agencies to take “such action [as may be] necessary to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence of . . . endangered species . . . or result in the destruction or modification of [a critical] habitat of such species . . . .” Respondents—as did the Sixth Circuit—read these words as sweepingly as possible to include all “actions” that any federal agency ever may take with respect to any federal project, whether completed or not.

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"QUESTION: That answers my question."

"MR. PLATER: Yes, it would." Tr. of Oral Arg., at 37-38.

13 "The act covers every animal and plant species, subspecies, and population in the world needing protection. There are approximately 1.4 million full species of animals and 600,000 full species of plants in the world. Various authorities calculate as many as 10% of them—some 200,000—may need to be listed as Endangered or Threatened. When one counts subspecies, not to mention individual populations, the total could increase to three to five times that number." Keith Shreiner, Associate Director and Endangered Species Program Manager of the U. S. Fish and Wildlife Service, quoted in a letter from A. J. Wagner, Chairman TVA, to Chairman, House Committee on Merchant Marine and Fisheries, dated April 25, 1977, quoted in Wood, On Protecting an Endangered Statute: The Endangered Species Act of 1973, 37 Federal Bar Journal 25, 27 (1978).
and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act.” Church of the Holy Trinity v. United States, 143 U. S. 457, 459 (1892). The result that will follow in this case by virtue of the Court’s reading of § 7 makes it unreasonable to believe that Congress intended that reading. Moreover, § 7 may be construed in a way that avoids an “absurd result” without doing violence to its language.

The critical word in § 7 is “actions” and its meaning is far from “plain.” It is part of the phrase: “actions authorized, funded or carried out.” In terms of planning and executing various activities, it seems evident that the “actions” referred to are not all actions that an agency can ever take, but rather actions that the agency is deciding whether to authorize, to fund, or to carry out. In short, these words reasonably may be read as applying only to prospective actions, i.e., actions with respect to which the agency has reasonable decisionmaking alternatives still available, actions not yet carried out. At the time respondents brought this lawsuit, the Tellico Project was 80% complete at a cost of more than $78 million. Under a prospective reading of § 7, the action already had been “carried out,” in terms of reasonable decisionmaking power. Cf. National Wildlife Federation v. Coleman, 529 F. 2d 359, 363 and n. 5 (CA5), cert. denied sub nom. Boteler v. National Wildlife Federation, 429 U. S. 979 (1976).

This is a reasonable construction of the language and also is supported by the presumption against construing statutes to give them a retroactive effect. As this Court stated in

United States Fidelity & Guaranty Co. v. Struthers Wells Co., 209 U. S. 306, 314 (1908), the "presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other." This is particularly true where a statute enacts a new regime of regulation. For example, the presumption has been recognized in cases under the National Environmental Policy Act, 42 U. S. C. § 4331 et seq., holding that the requirement of filing an environmental impact statement cannot reasonably be applied to projects substantially completed. E. g., Pizitz, Inc. v. Volpe, 467 F. 2d 208 (CA5 1972); Ragland v. Mueller, 460 F. 2d 1196; Greene County Planning Board v. FPC, 455 F. 2d 412, 424 (CA2), cert. denied, 409 U. S. 849 (1972). The Court of Appeals for the Fourth Circuit explained these holdings.

"Doubtless Congress did not intend that all projects ongoing at the effective date of the Act be subject to the requirements of Section 102. At some stage of progress, the costs of altering or abandoning the project could so definitely outweigh whatever benefits that might accrue therefrom that it might no longer be 'possible' to change the project in accordance with Section 102. At some stage, federal action may be so 'complete' that applying the Act could be considered a 'retroactive' application not intended by the Congress." Arlington Coalition on Transportation v. Volpe, 458 F. 2d 1323, 1331 (CA4), cert. denied sub nom. Furgate v. Arlington Coalition on Transportation, 409 U. S. 1000 (1972).

Similarly under § 7 of the Endangered Species Act, at some stage of completion of a federal project, the agency no longer has a reasonable choice to terminate the project. When that point is reached as clearly it was in this case, the presumption against retrospective interpretation is at its strongest. The Court today gives no weight to that presumption.
The Court also essentially ignores the rule that the first purpose of statutory construction is to ascertain the intent of the legislature. E.g., United States v. American Trucking Ass'n, 310 U.S. 534, 542 (1940). There is no evidence of an intent to apply § 7 to projects completed or substantially completed, and the only revealed intention is clearly and indisputably to the contrary.

To be sure, the legislative history of the Endangered Species Act does not address with any degree of specificity the issue of retroactive application. In my view, however, this silence reinforces the conclusion that the Court's reading of § 7, which produces such an unreasonable result, could not have been intended by Congress. If the relevant Committees that considered the Act, and the Members of Congress when called upon to vote on it, had been aware that the Act could be used to terminate major federal projects authorized years earlier and nearly completed, or to require the abandonment of essential and long-completed federal installations and edifices,


16 The Senate sponsor of the bill, Senator Tunney, apparently thought that the Act was merely precatory and would not withdraw from the agency the final decision on completion of the project: "... [A]s I understand it, after the consultation process took place, the Bureau of Public Roads, or the Corps of Engineers, would not be prohibited from building a road if they deemed it necessary to do so.

17 The initial proposed rulemaking under the Act made it quite clear that such an interpretation was not intended:

"Neither [the Fish and Wildlife Service of the Department of the Interior] nor [the National Marine Fisheries Service of the Department of Com-

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The Court also essentially ignores the rule that the first purpose of statutory construction is to ascertain the intent of the legislature. E.g., United States v. American Trucking Ass'n, 310 U.S. 534, 542 (1940). There is no evidence of an intent to apply § 7 to projects completed or substantially completed, and the only revealed intention is clearly and indisputably to the contrary.

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we can be certain that there would have been hearings, testimony, and debate concerning consequences so wasteful, so
inimical to purposes previously deemed important, and so likely to arouse public outrage. The absence of any such
consideration by the Committees or in the floor debates indicates quite clearly that no one participating in the legislative
process considered these consequences as within the intend­
ment of the Act.

This view of legislative intent at the time of enactment
is abundantly confirmed by the subsequent congressional
actions and expressions noted above. We have held, properly,
that post-enactment statements by individual Members
of Congress are entitled to little or no weight. See, e. g., Regional Rail Reorganization Act Cases, 419 U. S. 102, 132 (1975). The Court also has recognized
that subsequent appropriation acts themselves are not neces­sarily entitled to significant weight in determining whether a
prior statute has been superseded. See United States v.
Langston, 118 U. S. 389, 313 (1886). But these precedents
are inapposite. There was no effort here to "bootstrap" a
post-enactment view of prior legislation by isolated state­
ments of individual congressmen. Nor is this a case where
Congress, without explanation or comment upon the statute
in question, merely has voted apparently inconsistent finan­
cial support in subsequent appropriations acts. Testimony on
this precise issue was presented before congressional commit­
tees, and the committee reports for three consecutive years

merely intends that section 7 bring about the waste that can occur if an
advanced project is halted. . . . The affected agency must decide whether
the degree of completion and extent of public funding of particular proj­
ete justly an action that may be otherwise inconsistent with Section 7."
After the decision of the Court of Appeals in this case, however, the
quoted language was withdrawn, and the agencies adopted the view of the
addressed the problem and affirmed their understanding of the original congressional intent. We cannot assume that Congress, when it continued each year to approve the recommended appropriations, was unaware of the contents of the supporting committee reports. All this amounts to strong corroborative evidence that the interpretation of § 7 as not applying to substantially completed projects reflects the initial legislative intent. See, e.g., Fleming v. Mohawk Wrecking & Lumber Co., 331 U. S. 111, 116 (1947); Brooks v. Dewar, 313 U. S. 354 (1941).

III

I have little doubt that Congress will accept the Court's invitation, ante, at ——, to amend the Endangered Species Act in order to prevent the serious consequences of today's decision. Few, if any, Members of that body will wish to defend an interpretation of the Act that requires the waste of at least $53 million, see n. 6, supra, denies the people of the Tennessee valley the benefits of the reservoir intended by the Congress, and which—if the Act remains unamended—would threaten countless other projects with the same fate. There will be little sentiment to leave this dam standing before an empty reservoir, serving no purpose other than a conversation piece for incredulous tourists.

If Congress acts expeditiously, as may be anticipated, the delay occasioned by the Court's decision probably will have no lasting adverse consequences. But I had not thought it to be the province of this Court to force Congress into otherwise unnecessary action by interpreting a statute to produce a result no one intended.