

## The God Squad Targets the Natural World

By Kenneth J. Warren\*

On March 31, 2026, the Endangered Species Committee formed under the Endangered Species Act (ESA) took the rare and controversial step of exempting federal actions relating to oil and gas exploration and development in the Gulf of America (f/k/a Gulf of Mexico) from the restrictions of the ESA. If sustained on appeal, this decision of the “God Squad” as the Committee is colloquially named will likely hamper conservation efforts in the Gulf and open the door to the similar removal of ESA protections in other important ecosystems.

The Gulf is one of the nation’s most productive fisheries. It also provides habitat to numerous endangered and threatened species (listed species) including the Rice’s whale, loggerhead, green leatherback and Kemp’s Ridley sea turtles, Gulf sturgeon, rufa red knot birds, manatees, and many others. The public outrage at the Deepwater Horizon oil spill that killed countless forms of life in the Gulf serves as a reminder of the national importance of this ecosystem. Oil spills continue in the Gulf to this day.

Congress enacted the ESA in 1973 to conserve listed species and the habitat on which they depend. The ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of their designated habitat. In *TVA v. Hill*, 437 U.S. 153 (1978), the U.S. Supreme Court ruled that the ESA required conservation of an endangered fish, the snail darter, even if doing so halted construction of the Tellico dam. In response, Congress amended the ESA to provide a mechanism to exempt an agency’s actions from the ESA’s restrictions under rare and compelling circumstances.

When a federal agency, the Governor of a State, or an applicant for a permit or license requests an exemption decision, the Endangered Species Committee comprised largely of federal Cabinet officials and chaired by the Secretary of the Interior adjudicates the request. The ESA prescribes procedures for the adjudication including notifying the Governors of each affected state and soliciting their recommendations for additional Committee members, reviewing an application for the exemption, conducting hearings, and examining a report prepared by the Secretary of the Interior analyzing whether the request meets the standard for the exemption.

The Committee may grant an exemption only if there are no reasonable and prudent alternatives to the agency action, the benefits of the action clearly outweigh the benefits of alternative actions that would conserve the species, and the action is of regional or national significance. When granting an exemption, the Committee must establish reasonable mitigation and enhancement measures. Because an agency can almost always incorporate reasonable and prudent alternatives into its actions, the Committee has granted only two exemptions in its history.

The 1978 ESA amendments also contain an exemption for national security reasons: “Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.” ESA, § 7(j), 16 U.S.C. § 1536(j). *See also*, 50 C.F.R. § 453.03(d). The ESA is silent on which, if any, procedures must be followed before granting a national security exemption and whether the Committee may scrutinize the reasons for the assertion of national security necessity. Until last month, this provision had never been invoked.

On March 13, 2026, at the invitation of the Department of Interior, Secretary of War (f/k/a/ Secretary of Defense) Pete Hegseth found it necessary for reasons of national security to

exempt oil and gas exploration and development activities in the Gulf from the ESA. To support his finding, Hegseth pointed to the need for oil from the Gulf to support military operations. He further stated that oil and gas development is essential to support economic security which in turn is fundamental to national security. He predicted that ongoing and future ESA litigation would interfere with oil and gas production, thereby necessitating issuance of an ESA exemption.

In response, Secretary of the Interior Doug Burgum convened a Committee meeting on March 31, 2026, that lasted seventeen minutes. At the meeting's conclusion, the God Squad voted to grant the requested exemption. This vote removed ESA protections for all listed species exposed to the effects of oil and gas activities in the Gulf.

To justify its truncated process, the Committee stated that pursuant to § 7(j) of the ESA, ESA requirements and standards do not apply when the Secretary of War makes the requisite finding of national security necessity. The Committee similarly concluded that no mitigation and enhancement measures are required when the national security exemption is invoked, although its decision incorporated measures contained in existing federal resource agency biological opinions. 91 Fed. Reg. 16966 (April 3, 2026). The Committee did not explain why it failed to appoint a member from each affected State. It likewise did not balance the benefits to national security with potential harm to listed species.

Had they given Hegseth's findings a hard look, the Committee would have recognized that his findings are based on considerable speculation and an overly broad conception of national security. Hegseth does not contend that oil and gas exploration and development in the Gulf has already ceased or substantially diminished. In fact, the contrary is true – production is at all time highs. His dire predictions are based on speculation that federal resource agencies

cannot design reasonable and prudent alternatives acceptable to other federal agencies, private parties, and the courts.

The efforts of federal resource agencies to reconcile oil and gas production in the Gulf with the ESA are ongoing. Section 7 of the ESA requires federal agencies to consult with a federal resource agency, either the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS), whenever an agency action may affect a listed species or its critical habitat. If the resource agency concludes that the action is likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat, the resource agency prepares a biological opinion (BiOp) containing reasonable and prudent alternatives to mitigate the proposed action. The BiOp may also contain an incidental take statement.

In 2025, NMFS issued a BiOp covering all oil and gas exploration and development activities in the Gulf associated with the Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement's Outer Continental Shelf Oil and Gas Program. FWS likewise issued a BiOp in 2018 and reinstated consultation in 2025. Litigation challenging these BiOps is ongoing. Oil and gas production is likewise ongoing at record levels.

Hegseth found that if courts vacate the BiOps and incidental take statements, oil and gas activities in the Gulf may halt. He further stated that even short of vacatur, litigation diverts agencies from their priorities and creates regulatory uncertainty that disrupts oil operations.

Not surprisingly, several environmental and conservation groups brought suit challenging the Committee's grant of an exemption and Hegseth's finding that the exemption is necessary for reasons of national security. In resolving these cases, courts will need to determine whether the procedures in the ESA apply when adjudicating a request for a Section 7(j) exemption and whether the basis for Hegseth's finding was arbitrary and capricious.

If not vacated on judicial review, the Committee's decision sets a precedent for dramatically limiting the ESA's reach nationwide. The connection between private oil and gas activities in the Gulf and military needs is indirect, and oil and gas activities in the Gulf have not to date been curtailed. Economic concerns alone do not constitute national security necessity. If speculative economic interests support an ESA exemption, so too may potential ESA impacts on mining rare earth elements and other critical minerals, extracting coal, generating electricity, producing steel, operating data centers, or countless other economic activities that may have military use. The God Squad has opened the door to removing ESA protections based on an Administration's policy preferences. What today allows the oil and gas industry to jeopardize or take listed species may later protect a different Administration's favorite industry to the detriment of the natural world.

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