

ENDANGERED AND THREATENED SPECIES
 CONSERVATION ACT OF 1973

JULY 27, 1973.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and
 Fisheries, submitted the following

REPORT

[To accompany H.R. 371

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 37) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute which appears in the reported bill in italic type.

The other amendment modifies the title of the bill to make it conform to the changes made by the amendment to the text.

PURPOSE OF THE LEGISLATION

There is presently in effect a series of Federal laws designed to protect species of fish and wildlife which may face extinction without that protection. The first of these laws was passed in 1966 and the second in 1969; at the time they were enacted, they were adequate to meet the demands as they then existed.

Subsequent events, however, have demonstrated the need for greater flexibility in endangered species legislation, more closely designed to meet their needs. In response to this need, legislation was proposed in the last Congress, but failed of passage. The Congress is now in a position to move in this critical area.

H.R. 37, as amended, combines features of the Administration bill (H.R. 4758), and the original H.R. 37. It is designed to widen the protection which can be provided to endangered species under the laws now on the books.

The principal changes to be effected by the new legislation include:

1. It extends protection to animals which may become endangered, as well as to those which are now endangered.
2. It permits protection of animals which are in trouble in any significant portion of their range, rather than threatened with worldwide extinction.
3. It makes taking of such animals a Federal offense.
4. It eliminates existing dollar ceilings (\$15 million, already consumed) on acquisition of critical habitat areas.
5. It gives management authority for marine species to the Department of Commerce.
6. It authorizes the use of counterpart funds, where proper.
7. It allows states to adopt more restrictive legislation than the Federal laws.
8. It clarifies and extends the authorities of the Department of Agriculture to assist landowners to carry out the purposes of the Act.
9. It directs a study of the problems involved in the domestic regulation of trade in endangered plants.

A recent international Convention produced a draft treaty which responds to the needs of endangered species and imposes a worldwide pattern of restrictions upon the unfettered trade in species of animals and plants which may face extinction. The legislation considered and reported by the Committee attempts to work into this framework those steps which may be necessary or desirable to accomplish this purpose as well.

LEGISLATIVE BACKGROUND

According to the Department of the Interior, there may be more than 100 species of fish and wildlife which are presently threatened with extinction within the United States. The recently concluded international Convention on International Trade in Endangered Species of Wild Fauna and Flora listed 375 species of animals as imminently threatened with extinction throughout the world and another 250 species of animals as not yet threatened with extinction but requiring additional controls over their trade.

The threat to animals may arise from a variety of sources: principally pollution, destruction of habitat and the pressures of trade. For the most part, United States executive and legislative attention in recent years has concentrated upon the latter factor in attempting to enforce legislation designed to reduce or eliminate the financial incentives to trading in endangered species of fish and wildlife.

Prior to enactment of endangered species legislation, United States efforts to protect fish and wildlife were concentrated on enforcement of the Lacey and Black Bass Acts, which made it illegal for any person to transport in interstate commerce any fish or wildlife taken in violation of national, state or foreign laws. These Acts are still on the books, and some conservationists feel that they are even now inadequately utilized in the interests of protecting endangered species.

In 1966 the Congress adopted the first "Endangered Species Preservation Act" (P.L. 89-699). This Act directed the Secretary of the Interior to carry out a program to conserve and encourage the growth

of replacements for selective species of *native* fish and wildlife that he found to be threatened with extinction. Addressing itself to the issue of habitat protection, the Act also consolidated and expanded the authority of the Secretary of the Interior relating to the administration of the National Wildlife Refuge System.

The next step took place when the 91st Congress enacted the Endangered Species Conservation Act of 1969 (P.L. 91-135). This Act expanded the 1966 Act in several ways:

- (1) It authorized the establishment of a list of fish and wildlife threatened with extinction and prohibited the importation from foreign countries of any such species. Exceptions were provided to allow importations for scientific, educational, zoological, and/or propagational purposes and to allow one-year economic hardship exemptions in specified cases.
- (2) It made it unlawful to buy or sell any animal taken in violation of the laws of any State or foreign country.
- (3) It increased the authorization for funds to a limit of \$2.5 million per area, or \$5 million per year, with a total overall ceiling of \$15 million.
- (4) It designated certain ports of entry for the importation of fish and wildlife and their products.

In the years since 1969, the need for further amendment of the domestic endangered species legislation has become clear. Accordingly, the Administration proposed a bill for this purpose in the 2nd Session of the 92nd Congress (H.R. 13081), to substitute a new and more comprehensive endangered species act for those enacted in 1966 and 1969. Hearings were held on that legislation, but due to lack of time neither body acted upon it.

The Administration bill was reoffered early this year as Executive Communication No. 442 and introduced by Mr. Dingell for himself and several other members as H.R. 4758. Mr. Dingell had earlier introduced, for himself and others, an alternative form of legislation based on the 1972 hearings (H.R. 37). These bills, and a number of similar and identical bills, were before the Committee when it held hearings on this question on March 15, 26 and 27, 1973.

These hearings were held on the heels of an international meeting of technical experts and national representatives in Washington on these and similar questions in February and March. This meeting was a direct outgrowth of earlier U.S. endangered species legislation, which had mandated such an international ministerial meeting for the purpose of developing effective international controls on the unrestricted trade in endangered species. The result of that meeting was the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973—a Convention which has been widely acclaimed as eminently successful in devising forceful and practical mechanisms for controlling these problems.

Essentially, the Convention requires creation of 3 types of endangered species lists:

Appendix I lists species of animals and plants imminently threatened with extinction which are or may be affected by trade and which therefore may be traded only upon approval by the countries of both import and export, when not to be used for commercial purposes.

Appendix II lists species of plants and animals which are not yet necessarily threatened with extinction but which may become so unless subjected to strict regulation. Export permits only will be required for trade in species on Appendix II.

Appendix III is provided as a means for countries to list species protected within their jurisdiction for the purpose of preventing or restricting their exploitation, whether or not these species are threatened with extinction. These will also require an export permit, once listed.

Because of the short interval between the conclusion of the Convention and the consideration of this legislation, it was not possible to develop a complete consensus on the additional steps that might and should be taken to implement the Convention. Technically, of course, it is unnecessary to do this since the Convention has not yet been ratified and is not yet effective. It was and is the Committee's view, however, that it would be proper for this country to take every appropriate step at this time to bring our own laws into conformity with the Convention procedures, so that no further legislation will be necessary to implement it, once it has become effective.

BACKGROUND AND NEED FOR THE LEGISLATION

Throughout the history of the world, as we know it, species of animals and plants have appeared, changed, and disappeared. The disappearance of a species is by no means a current phenomenon, nor is it an occasion for terror or panic.

It is however, at the same time an occasion for caution, for self-searching and for understanding. Man's presence on the Earth is relatively recent, and his effective domination over the world's life support systems has taken place within a few short generations. Our ability to destroy, or almost destroy, all intelligent life on the planet became apparent only in this generation. A certain humility, and a sense of urgency, seem indicated.

From all evidence available to us, it appears that the pace of disappearance of species is accelerating. As we homogenize the habitats in which these plants and animals evolved, and as we increase the pressure for products that they are in a position to supply (usually unwittingly) we threaten their—and our own—genetic heritage.

The value of this genetic heritage is, quite literally, incalculable. The blue whale evolved over a long period of time and the combination of factors in its background has produced a certain code, found in its genes, which enables it to reproduce itself, rather than producing sperm whales, dolphins or goldfish. If the blue whale, the largest animal in the history of this world, were to disappear, it would not be possible to replace it—it would simply be gone. Irretrievably. Forever.

One might analogize the case to one in which one copy of all the books ever printed were gathered together in one huge building. The position in which we find ourselves today is that of custodians of this building, and our choice is between exercising our responsibilities and ignoring them. If these theoretical custodians were to permit a madman to enter, build a bonfire and throw in at random any volume he

selected, one might with justification suggest that others be found, or at least that they be censored and told to be more careful in the future. So it is with mankind. Like it or not, we are our brothers' keepers, and we are also keepers of the rest of the house.

From the most narrow possible point of view, it is in the best interests of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask.

To take a homely, but apt, example: one of the critical chemicals in the regulation of ovulation in humans was found in a common plant. Once discovered, and analyzed, humans could duplicate it synthetically, but had it never existed—or had it been driven out of existence before we knew its potentialities—we would never have tried to synthesize it in the first place.

Who knows, or can say, what potential cures for cancer or other scourges, present or future, may lie locked up in the structures of plants which may yet be undiscovered, much less analyzed? More to the point, who is prepared to risk being those potential cures by eliminating those plants for all time? Sheer self-interest impels us to be cautious.

The institutionalization of that caution lies at the heart of H.R. 37, as ordered reported to the Congress. Several scores of nations have similarly endorsed the need for comparable legislation within their own countries by signing the recent Convention which takes a giant step in this direction.

Man can threaten the existence of species of plants and animals in any of a number of ways, by excessive use, by unrestricted trade, by pollution or by other destruction of their habitat or range. The most significant of those has proven also to be the most difficult to control: the destruction of critical habitat.

Clearly it is beyond our capability to acquire all the habitat which is important to those species of plants and animals which are endangered today, without at the same time dismantling our own civilization. On the other hand, there are certain areas which are critical which can and should be set aside. It is the intent and purpose of this legislation to see that our ability to do so, at least within this country, is maintained. H.R. 37 articulates and enhances this purpose and ability. Restrictions upon the otherwise unfettered trade in these plants and animals are a significant weapon in the arsenal of those who are interested in the protection of these species. The recent International Convention on International Trade in Endangered Species of Wild Fauna and Flora was directed primarily at this problem: most of the provisions of H.R. 37 are also designed to deal with the problem in one way or another.

It is paradoxical that the scarcer an animal may be, the more people may be willing to pay to acquire it. The great whales may be said to have been involuntary beneficiaries of such an equation; the same is true of the so-called "spotted cats"—tigers, jaguars, cheetahs and others—whose skins have been sought by furriers and hunters around the world. The inevitable effect of this popularity has been to make them scarce, and perhaps to endanger their survival.

Their very scarcity and value, however, may be used as a lever to promote their protection. If the countries in which these and other valuable animals may be found are sufficiently alert and enlightened, this should encourage them to maintain healthy and viable stocks of these animals as a resource. The nurture and protection of these resources may ultimately prove to be the greatest incentive for their protection. H.R. 37 encourages such programs in a number of ways. Honesty compels us to admit that steps taken by H.R. 37 to close the U.S. market to trade in endangered and threatened species may not be sufficient, in and of themselves, to remove pressure and thus to allow these species to recover. Passage of this legislation is, however, of importance—both because the United States is an important market, and because of the precedent that it will create. The Convention was especially significant in this respect; it was built upon the model that had already been created in this country, and it exerts a strong pressure upon other countries to follow suit.

Existing United States legislation was, when first proposed and adopted, adequate to meet the pressures upon endangered species at the time. Changing patterns of trade and exploitation have, however, created a situation in which this legislation is no longer entirely adequate. At times, present laws are too broad, and at others, they are too narrow and restrictive.

The events of the past few years have shown the critical nature of the interrelationships of plants and animals between themselves and with their environment. Another word for the study of these interrelationships is "ecology." The hearings proved (if proof is still necessary) that the ecologists' shorthand phrase "everything is connected to everything else" is nothing more than cold, hard fact.

In practically every circumstance endangered species are at the outer edges pushed out of that environment, harried and hunted by those who would use them for their own advantage. Any program for the protection of endangered species must necessarily concern itself with more than a simple "hands-off" attitude toward the animals and plants themselves.

Such an attitude lies at the heart of the legislation here presented to the House. The basic purpose of the Act is clearly stated in the legislation: to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, protected or restored. In furtherance of this purpose, the bill declares a policy that Federal agencies are to use the authorities that are available to them in carrying out the objectives of the bill.

During the hearings on the legislation, it became apparent that there was little controversy as to the need for a bill of the types before the Committee. Both H.R. 37 and H.R. 4758, the Administration bill, followed essentially the same pattern; and as reported by the Committee, H.R. 37 adopts elements of both.

The principal areas of discussion during the hearings and in markup of the legislation centered on the proper role of the state and Federal governments with regard to endangered species programs, and the protection of plants. As regards both of these issues, there is fairly general agreement on the nature of the problem, but there was no clear agreement as to the best course to follow.

Any bill which is designed to deal with the complicated issues involved in protection of endangered species must do so in the light of at least two competing considerations: first, protection of endangered species is not a matter that can be handled in the absence of coherent national and international policies; the results of a series of uncoordinated and disorganized policies and programs by various states might well be confusion compounded. Second, however, the states are far better equipped to handle the problems of day-to-day management and enforcement of laws and regulations for the protection of endangered species than is the Federal government. It is true, and indeed desirable, that there are more fish and game enforcement agents in the state system than there are in the Federal government. Any reasonable and responsible program designed to protect these species must necessarily take account of this fact.

Balancing these two factors produced the legislation in the form in which it is presented to the Congress. The bill places the essential responsibility for establishment of the lists of endangered species, and amendment of these lists, in the Secretary. At the same time it is expected and required that there be good faith consultation between the Secretary and the states, as well as with other interested and knowledgeable parties. The states have no veto over the listing or delisting of endangered species, but they do have the power to discuss the problems and to make recommendations as to their resolution.

Regulatory jurisdiction is given to the Federal government under this legislation, and if a cooperative agreement is successfully negotiated and signed, to the states as well. The subject of cooperative agreements was discussed extensively within the Committee and with other knowledgeable people. It was and is contemplated that representatives of the state and Federal governments, who would in any case be working together, would negotiate these agreements. These might or might not include financial incentives to assist in the operation of endangered species programs.

Where a cooperative agreement has been put into effect, the bill allows concurrent jurisdiction over the species affected in both the state and Federal judicial systems. The ultimate approval or disapproval of these cooperative agreements lies within the discretion of the Secretary, who has been given broad powers of review, together with the authority to intervene and to suspend any such agreement in the interests of the species affected, if he feels that the agreement is not being properly carried out or if he feels that new circumstances require additional steps to be taken that had not been contemplated at the time the original agreement had been prepared.

The question of preemption of state laws was of great interest during the hearings, due in part to the fact that the language in the Administration bill was susceptible of alternative interpretations. Accordingly, the Committee rewrote the language of the Administration bill to make it clear that the states would and should be free to adopt legislation or regulations that might be more restrictive than that of the Federal government and to enforce the legislation. The only exception to this would be in cases where there was a specific Federal permission for or a ban on importation, exploitation or inter-

state commerce; in any such case the State could not override the Federal action. In every other respect, the State powers to regulate in a more restrictive fashion or to include additional species remain unimpaired.

Because the State roles with regard to endangered species are so significant, the Committee felt it desirable to incorporate a program allowing financial assistance for those programs. Any such program might be a part of, or independent from, arrangements under which the states would agree to manage and protect such species on the Federal list as might be found within their borders. The Committee provided a separate authorization in this regard, to make it clear that any funds to be paid to the states under this section should come from that specific authorization, rather than from the general authorization contained in Section 15 of the bill.

PLANTS

The hearings demonstrated that the protection of plants must also be a matter of urgent concern. The Administration bill did not address itself to the problem, while H.R. 37, as introduced, treated plants in like manner as animals. There were vigorous objections to this approach by some, to the effect that the circumstances and the regulatory mechanisms respecting animals were not and should not be the same for plants.

It must be recognized that plant species and subspecies are even more vulnerable to man's intervention than are animals, since they cannot move to more hospitable circumstances when necessary. Until recent times, it should also be pointed out, most species of plants were not under the same kinds of heavy pressures that affect animals. Variations in plant species typically occur in areas where land development pressures were traditionally least intense: variations in grasses found at the eastern and western fringes of the American Great Plains before the advent of the white man would be almost insignificant, whereas plant communities in high mountain valleys, on the other hand, might vary significantly within a few miles of each other. It has only been in the past few years that these more remote areas have come under intense development pressures, and so it is that plant protection has become correspondingly more urgent.

The Secretary of Agriculture presently exercises considerable authority in the regulation of the importation and exportation of plants, and it appears that these authorities can be used and adequate enforcement mechanisms devised for the purposes of the Act without significantly changing existing programs. This was preserved in H.R. 37. Further, the recent Convention laid upon signatory members a responsibility for devising adequate programs to control the importation and exportation of both plants and animals that might be or become endangered. At the same time, however, the question of regulation of interstate commerce in species of plants raises a number of unresolved issues which, with justification, might be termed thorny.

The Committee resolved the issue by rewriting the legislation to provide authority for the acquisition of critical habitat of plants in the U.S., the regulation of their importation and exportation, and foreign assistance programs consistent with the purposes and policies of the Act. The additional questions of national regulation of endangered

species of plants were assigned to the Smithsonian Institution, which was directed to study the problems of management on a national scale, and to prepare lists of present and potential endangered species of plants. It was also directed to report back on the results of its study within one year of the effective date of the legislation. It is expected that at that time, the Committee will be in a position to consider the matter and to recommend any further amendments to his legislation that may appear appropriate and desirable.

LAND ACQUISITION

The protection of the habitat of endangered species is clearly a critical function of any legislation in this area. The earlier Acts of the Congress in 1966 and 1969 provided an ultimate authorization of fifteen million dollars for the protection of habitat. That fifteen million dollars has now been used up, and the authority no longer exists. The Administration recommended that this authority be expanded to allow the Secretary to use funds from the Land and Water Conservation Fund without specific authorizations, and to use authorities under this legislation, under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act. The Committee agreed with this approach, and the bill so provides.

IMPLEMENTATION OF CONVENTION

The International Convention was signed on March 3; it has not yet been formally ratified by any country. Notwithstanding that fact, however, the Committee felt strongly that it was desirable to take any steps that might be appropriate at this time, so that when the Convention does come into force, as it almost certainly will, no further legislation will be needed at that time to implement it.

OTHER LEGISLATION

As reported, H.R. 37 provides ample authority for the Secretary of the Interior—authority which the Committee expects him to exercise—to provide protection for species such as the Everglades Kite and the pupfish. These species are already listed as endangered, but require additional protection in the form of habitat acquisition and/or the enforcement of strict regulations. In this way, the bill will render unnecessary other legislation presently pending before the Committee which deals specifically with these species.

SECTION-BY-SECTION ANALYSIS

SHORT TITLE

Sec. 1. This Act may be cited as the "Endangered and Threatened Species Act of 1973."

FINDINGS, PURPOSES AND POLICY

Sec. 2. (a) The findings by Congress are to the effect that the decline and disappearance of species and subspecies is a matter of national and international concern, and that it is necessary to take steps for the benefit of all people to halt and, if possible, to reverse this decline.

(b) The essential purpose of the Act is to provide a means for protecting the ecosystems upon which we and other species depend. Another, allied purpose is to provide a specific program for the protection of endangered species,¹ and a third allied purpose is to take the necessary steps to implement international conventions and treaties which bear upon this objective.

(c) The policy of the legislation is to state a national purpose that all Federal agencies and instrumentalities will take steps within their authorities to protect endangered species.

DEFINITIONS

Sec. 3. (1) "Convention" means the recently concluded Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) The term "Endangered Species" means any species of fish or wildlife which is in danger of extinction throughout its entire range, or any portion of its range. This definition is a significant shift in the definition in existing law, which considers a species to be endangered only when it is threatened with worldwide extinction. It includes the possibility of declaring a species endangered within the United States where its principal range is in another country, such as Canada or Mexico, and members of that species are only found in this country insofar as they exist on the periphery of their range.

(3) The term "fish or wildlife" means all wild animals, whether or not raised in captivity. Thus, in addition to controlling trade in captive animals, the bill makes it clear that an animal which has been raised in captivity and released, or which escaped, would be subject to protection under the provisions of this Act. The term also includes any parts or products of these animals.

(4) "Foreign commerce" is defined quite broadly and evidences a clear intent of the Congress to reach acts committed beyond the boundaries of the United States, including those on the high seas and in foreign countries, if those actions were taken by persons subject to U.S. jurisdiction.

(5) "Import" means any introduction into areas subject to U.S. jurisdiction, or attempt to introduce into those areas, regardless of whether this constitutes an importation under Custom laws.

(6) "Person" is defined broadly enough to cover any person or entity, including employees of state or Federal agencies.

(7) "Plant" means any member of an endangered or threatened species within the plant kingdom, or any part of such plant.

(8) "Secretary" incorporates the split in jurisdiction contained in the 1970 Reorganization Plan, which had the effect of assigning management authority for certain animals to the Department of the Interior and for certain other animals to the Department of Commerce. That reorganization did not purport to change responsibilities specifically assigned to the Secretary of the Interior with regard to the listing of endangered species, and those responsibilities are not affected by this bill. "Secretary" means the Secretary of Agriculture with regard to the importation or exportation of terrestrial plants;

¹ In this discussion the words "endangered species" will be taken, in the interests of space and time, to include threatened species unless the context clearly indicates otherwise.

marine plants would be a matter of concern to the Secretary of Commerce.

(9) "Species" is defined broadly enough to include any subspecies of fish or wildlife or plants, or any population of such species.

(10) "State" means any state, territory or possession.

(11) "Take" is defined broadly. It includes harassment, whether intentional or not. This would allow, for example, the Secretary to regulate or prohibit the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young.

(12) "Threatened species" means any species which may become endangered. It would certainly include those species which are presently on the decline and those which have achieved a stabilized position, or even were on the increase, so long as the Secretary was satisfied that a measurable risk to those species could be said to exist.

A species could be determined to be "threatened," even in cases where it is commercially harvested at the time the determination is made, if inadequately regulated harvesting has resulted in a serious decline of population stocks throughout all or a significant portion of its range and the Secretary determines that regulations controlling activities affecting the species would serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act set forth in section 2(b).

(13) "United States" includes all states as defined in the Act.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

Sec. 4. (a) This paragraph gives to the Secretary the authority to determine whether any fish or wildlife species is endangered because of any of a combination of several listed events. The section is drawn broadly to allow the Secretary to declare endangered or threatened any species for any legitimate reason.

(b) This section requires the Secretary to make determinations of endangered status on the basis of the best available evidence, after consultation with individuals, organizations, states or foreign countries, as appropriate. Where any such species exists within the boundaries of a given state, the Secretary is required to consult with the appropriate agencies within that state before making a final determination. The section requires the Secretary to give full consideration to efforts being currently made by any foreign country to protect fish or wildlife species within that country, in making a determination as to whether or not those species are endangered or threatened. There is provided ample authority and direction to the Secretary to consider the efforts of such countries in encouraging the maintenance of stocks of animals for purposes such as trophy hunting. If, on the other hand, the Secretary feels that inadequate measures are being taken by those countries, he is authorized and expected to take any steps necessary to discourage activities which might be inimical to those species by persons subject to U.S. jurisdiction. The Secretary is also required to consider, in establishing such lists, any animal which has been designated by any foreign country, or pursuant to any international convention, as requiring protection from unrestricted commerce.

(c) The Secretary is required to publish lists of endangered species and threatened species in the Federal Register. If any person proposes that a species be listed or delisted, the Secretary must review the status of that species when he determines in good faith that substantial evidence has been presented in support of the proposed action. The Committee intends, by this section, to require that the discretion of the Secretary be exercised so as to provide adequate protection to any species of fish or wildlife which is or which might become endangered. The section preserves designations under current law by requiring republication of existing lists. Until such republication, those species continue to be protected; there will be no hiatus pending such republication.

(d) The Secretary is authorized to issue appropriate regulations to protect endangered or threatened species; he may also make specifically applicable any of the prohibitions with regard to threatened species that have been listed in section 9(a) as are prohibited with regard to endangered species. Once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species.

With regard to threatened species, the section goes on to indicate that if a cooperative agreement has been reached, the Federal enforcement powers will thereafter be coextensive and concurrent with the state powers of enforcement. This will allow both state and Federal management officials to seek enforcement through both state and Federal courts—which ever seems most appropriate in the circumstances of a given case. The element of concurrent jurisdiction with regard to threatened species, and, as will later appear, with regard to endangered species, is a vital element of the protective scheme contemplated under this Act.

(e) This paragraph provides authority to the Secretary to regulate species which resemble, either in the natural state or in the form in which they enter the country, species which are listed under the authority of section 4. If the enforcement agencies are confronted by a situation in which they cannot adequately distinguish between listed and nonlisted species of animals, they are authorized to ban the importation of the "look-alikes." It is not the intention of the Committee to grant absolutely unrestricted authority to the Secretary in this regard, but if there is a legitimate problem and the Secretary is confronted by those who claim that the product in question does not derive from an endangered species, he may act to resolve the uncertainty by listing the species.

(f) This section requires that the rule-making procedures of the Administrative Procedures Act shall be applied to regulations adopted under this Act.

LAND ACQUISITION

Sec. 5. This section allows the Secretary to use broad authorities under this Act, the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act for the purpose of acquiring lands, waters and partial or total interests therein in order to establish programs contemplated under the Act or

international Convention. The section authorizes the Secretary to use funds available to him under the Land and Water Conservation Act without regard to the appropriation ceilings provided elsewhere.

The Department of the Interior, which will be exercising primary authorities with regard to the use of these Land and Water Conservation Fund moneys, was unable to provide a specific set of figures as to anticipated habitat acquisition under this section, but indicated that its present expectations were that the funds requested would not exceed \$1.4 million in fiscal year 1974, \$8.5 million in fiscal 1975 and \$12.5 million in fiscal 1976.

COOPERATION WITH THE STATES

Sec. 6 (a) This subsection requires the Secretary to consult with the affected States in carrying out any program authorized under the Act. That consultation includes discussions before acquiring lands or any other action taken under the authority of this Act.

(b) The Secretary is authorized to enter into agreements with any State regarding the administration and management of lands acquired for purposes of this Act. Revenues received are subject to existing legislation concerning state participation in revenues from the National Wildlife Refuge System.

(c) The Secretary is given authority and direction to enter into cooperative agreements, which may involve financial assistance regarding the management of endangered species, with those state jurisdictions. Any such cooperative agreement must be pursuant to a finding by the Secretary that the state has adequate statutory and regulatory authority in its fish or game agencies, or the combined agency, as the case may be, to maintain a program; that the programs are in fact consistent with the purposes of the Act and are acceptable; that the agency has sufficient authority to perform necessary investigations on the status of endangered species or their requirements; that the state agency is authorized to establish programs, including land acquisition programs, to carry out the provisions of this Act; and that there is adequate provision for public participation in state endangered species programs.

(d) The Secretary is authorized to allocate funds for financial assistance to the states to assist state programs. With regard to the moneys authorized under the Act, the Secretary is required to consider several listed factors in determining which state gets how much money. Any funds allocated which are unobligated as of the end of the fiscal year may be expended until the end of the next fiscal year; lapsed funds may be reallocated by the Secretary pursuant to the Act. Any cooperative agreements executed pursuant to this authority must describe the responsibilities of the parties, the benefits expected to be derived, the costs of the programs and the state and Federal share of those costs. Under no circumstances may the Federal share exceed % of the total program costs, except that the Federal government may assume % of the program costs if two or more states develop a joint or regional program which is acceptable to the Secretary. He is given authority to advance funds to the state on a reimbursable basis.

(e) The Secretary is required to review any such cooperative and cost-sharing agreements at least annually. This authority would allow

the Secretary to intervene at any time if the circumstances were so changed as to render it imperative in his judgment that the cooperative agreement be terminated or that a new agreement be negotiated. The Committee expects the Secretary to provide reasonable notice to the states and other affected parties, wherever possible, of his intentions in making any such modification.

(f) This paragraph indicates that the states are to be free to develop regulatory mechanisms which are more stringent or more restrictive than those of the Federal government. Existing state endangered species programs would, for example, be in a position to include species which were not on the Federal list. The only exception to this is contained in the language which expressly prohibits the state from voiding actions specifically permitted by Federal agencies or from permitting specific actions forbidden by Federal agencies. In all other regards, the state law is not pre-empted, but is merely subject to the Federal "floor" of regulations under the Act. Thus, laws already passed in States such as New York, California and Hawaii, which list additional species or prohibit such activities as sales within their jurisdiction would remain unaffected.

(g) This paragraph authorizes the Secretary to promulgate any appropriate regulations to carry out the section regarding financial assistance.

(h) This paragraph authorizes the Secretary such funds as may be necessary to carry out the purposes of the section. It is not anticipated that such funds will exceed \$10 million any fiscal year.

INTERAGENCY COOPERATION

Sec. 7. (a) This subsection requires the Secretary and the heads of all other Federal departments and agencies to use their authorities in order to carry out programs for the protection of endangered species, and it further requires that those agencies take the necessary action that will not jeopardize the continuing existence of endangered species or result in the destruction of critical habitat of those species. To the extent that those actions involve the protection of habitat, the states must be consulted. Under the authority of this paragraph, for example, the Director of the Park Service would be required to conform the practices of his agency to the need for protecting the rapidly dwindling stock of grizzly bears within Yellowstone Park. These bears, which may be endangered, and are undeniably threatened, should at least be protected by supplying them with carcasses from excess elk within the park by curtailing the destruction of habitat by clearing National Forests surrounding the Park, and by preventing hunting until their numbers have recovered sufficiently to withstand these pressures.

(b) This paragraph authorizes the Secretary of Agriculture to carry the full cost, or any portion thereof, of any program which is considered desirable to carry out the purposes of this Act and which involves installation of any facility or program on private lands. Any such program must be directed at assisting private land owners to take actions consistent with the preservation and protection of endangered species where the landowners wish to do so. The Secretary of Agriculture is also authorized to conduct research programs in order to further the purposes of this Act. Any such research may be carried

on jointly by the appropriate Secretary and the Secretary of Agriculture.

INTERNATIONAL COOPERATION

Sec. 8. (a) This paragraph authorizes the use of counterpart funds in foreign countries, where those countries are agreeable, to provide assistance in the development and management of programs which the Secretary finds to be important to endangered species. The President, under the appropriate provision of law, is authorized to do anything that is mutually considered as desirable. There is a restriction on the use of counterpart funds, however, which indicates that in a case where counterpart funds are available, they will be used in preference to those authorized under section 15 of this Act.

(b) The Secretary is authorized and directed to encourage foreign countries to develop adequate programs for the protection of endangered species, to encourage the development of bilateral and multilateral agreements for the protection of endangered species and to encourage foreign persons who take endangered species of plants or animals for importation to use such practices as will encourage appropriate conservation practices and protection of endangered species.

(c) After consultation with the Secretary of State, the Secretary is authorized to use Federal employees to develop personnel programs relating to endangered species, and to provide training for foreign personnel in this country or elsewhere, in the management of endangered species.

(d) The Secretary is authorized, in cooperation with the Secretary of the Treasury, to develop programs for law enforcement and research, as necessary to carry out the purposes of the Act.

(e) This section authorizes the establishment of appropriate management and scientific authorities as required pursuant to the terms of the International Convention, when it becomes effective. It also requires appropriate action under the Convention on Nature Protection in the Western Hemisphere. It is anticipated that the agencies designated under this section will perform appropriate functions necessary to assure effective administration of the responsibilities of the United States under the Convention and to advise the public of export and import controls and the species subject to controls under the Convention.

PROHIBITED ACTS

Sec. 9. (a) Subparagraphs (1) through (5) of this paragraph spell out a number of activities which are specifically prohibited with respect to endangered (not threatened) species for persons subject to the jurisdiction of the United States. It includes, in the broadest possible terms, restrictions on the taking, importation and exportation, and transportation of such species, as well as other specified acts. Concurrent jurisdiction with states is provided for, where the taking of such species violates the provisions of an existing cooperative agreement. Subparagraph (6) makes it unlawful for any person to violate any regulation promulgated by the Secretary with respect to a threatened species. In this respect the Secretary is given authority to prohibit activities with respect to threatened species which have specifically been prohibited with respect to endangered species.

(b) It is unlawful for any person subject to the jurisdiction of the United States to do anything which would result in a violation of the international Convention. The reference to the definitions in the Convention is required because a number of terms used in that Convention, such as "specimen" and "introduction from the sea," were defined with special care in that Convention and have highly specific meanings. This paragraph provides that an export permit covering the shipment of nonendangered species on Appendix II of the Convention will be presumed to be valid and issued in good faith, unless the Secretary has reliable evidence to offset the presumption of validity. In all other respects, of course, the requirements and regulations of the Act, including the requirement that such goods be brought in through designated ports of entry, accompanied by appropriate documentation, must be followed by the importer; the purpose of paragraph (b) (2) is to allow the Secretary to look behind an export permit only where he has evidence that it does not correctly reflect the situation in the country in which the animal or plant was originally taken, or that the permit itself is not valid.

(c) It is illegal to engage in business as an importer or exporter of fish or wildlife without a permit; this category includes zones, brokers, forwarders and taxidermists. The only exception to this requirement is provided in the case of businessmen dealing in nonendangered and nonthreatened species of shellfish and fish which are imported for recreational purposes or taken in U.S. waters or on the high seas for recreational purposes. Permit holders or licensees under this section are required to keep adequate records, permit inspection of these records and their premises by the Secretary, and file all required reports. The Secretary is also authorized to prescribe regulations under which these requirements are to be carried out.

(d) It is illegal for anyone (except in the specified conditions of the proviso), whether a businessman or otherwise, to fail to file declarations or reports required by the Secretary in conjunction with the enforcement of this Act or of the Convention. The filing of a false or misleading report would be a violation of this section.

The subsection is designed to provide the Secretary with the information which he must have on the wildlife shipments which presently cross U.S. borders in order for this country to participate effectively in the Convention, which requires a workable system of worldwide information in this area.

(e) This paragraph makes it illegal for anyone (except in the specified conditions of the proviso), whether a businessman or otherwise, to bring in fish or wildlife or plants in any port other than one designated by the Secretary. The requirement can be waived or modified at the discretion of the Secretary. Ports already designated under existing law will continue to be designated in the future, except as specifically changed.

(f) It is illegal to conspire to commit, or to attempt to commit, a violation of the Act.

EXCEPTIONS

Sec. 10. (a) The Secretary is allowed to issue permits for actions otherwise prohibited for scientific purposes or for the purpose of enhancing the propagation or survival of the species affected. The restrictions upon the discretion of the Secretary lie in the requirements

of subsection (c), as later described. Any such activities to encourage propagation or survival may take place in captivity, in a controlled habitat or even in an uncontrolled habitat so long as this is found to provide the most practicable and realistic opportunity to encourage the development of the species concerned. They might even, in extraordinary circumstances, include the power to cull excess members of a species where the carrying capacity of its environment is in danger of being overwhelmed.

(b) This paragraph provides the so-called "hardship exemption", authorizing the Secretary to exempt for a period of not to exceed one year from the date that a species is first proposed for inclusion on the list persons who can show that the listing of that species will create an undue economic hardship for them. Like subsection (a), exemptions to be provided under this subsection would be subject to the overall policy requirements of subsection (c) of this section. The paragraph does not prevent or forestall existing hardship exemptions under the Act; it does, however, require that no economic hardship exemption be granted covering an animal which is on Appendix I of the Convention if the use of the animal is for primarily commercial purposes. The Secretary is authorized to obtain any information necessary for him to decide whether or not the issuance of such an exemption is justified, and any information so received is to be a matter of public record. If the applicant concludes that this will result in the public release of information which he would prefer to remain private, he may, of course, decide not to submit his application or to attempt to persuade the Secretary not to require that information.

(c) This paragraph prescribes the circumstances under which the Secretary may grant exemptions under subsections (a) and (b) of this section. It provides overall policy guidance, requiring that the Secretary find and publish his finding that the exemption application was applied for in good faith (and is not for the purpose of stockpiling animals or products), is not to the disadvantage of the species, and will be consistent with the purposes and policies stated in Section 2. The effect of this subsection is to limit substantially the number of exemptions that may be granted under the act, but given that these exemptions apply to species which are in danger of extinction, the restrictions imposed by this paragraph seem entirely reasonable.

(d) This subsection extends the exception provided in the Marine Mammal Protection Act of 1972 (P.L. 92-552) regarding taking of endangered species by Alaskan natives. Under that Act, certain types of taking of endangered species of animals are permitted subject to the overriding power of the Secretary to intervene and restrict or prohibit further taking in the interests of protecting the species or stocks of those animals. The same powers of intervention are thus preserved by this Act. While any such taking would not be a violation of either the Marine Mammal Protection Act or this Act, the taking would still be subject to whatever stricter state regulations apply to the taking of the animals concerned.

PENALTIES AND ENFORCEMENT

Sec. 11. (a) Civil penalties are provided for anyone who violates any provision of the Act, or permits or certifies issued pursuant to the Act, or regulations.

All violations prescribed by statute, including those of Section 9(a) (6), are punishable by a \$10,000 fine, as are all violations of any permit or certificate. It should be noted, however, that only violations of 9(a) (6) regulations are punishable to this extent insofar as they implement or parallel restrictions specifically enumerated in section 9(a) (1-5), 9(b), 9(c), 9(e) or 9(f). Violations of any other regulations, if knowingly committed, are punishable by a \$5,000 penalty.

The subsection is subject to the requirement that violators be given an opportunity for a hearing and requires the Secretary to sue in a Federal district court to collect any penalties assessed. Penalties may be remitted or mitigated by the Secretary upon finding of proper cause. Hearings by the Secretary are required to be conducted subject to the existing adjudicatory hearing requirements of the Administrative Procedure Act and the Secretary is given authority to issue subpoenas and other process necessary to determine the facts of the case.

(b) Criminal penalties are also provided for any acts which are knowingly taken and which violate the provisions of the Act, or of any permit or certificate. Violation of certain regulations will carry the full penalty, as in the case of civil penalties, and violations of other regulations will carry lesser penalties. The section incorporates a "finders' fee provision", authorizing payment of a portion of the criminal fines to any person who furnishes information, not in the course of his Federal or state employment, which leads to conviction under this subsection.

The subsection also authorizes Federal officials to terminate or modify any outstanding Federal grazing lease or other agreement allowing the use of Federal lands upon conviction of a violation under this Act. It makes mandatory the cancellation of any Federal fish or game permit in similar circumstances for up to one year from the date of conviction.

(c) Jurisdiction over offenses and violations under this Act is vested in United States District Courts. Under the principle of concurrent jurisdiction, set out earlier, state courts may also be vested with proper jurisdiction in some cases.

(d) This paragraph authorizes Federal agencies to issue enforcement regulations and allows the use of other Federal personnel and facilities, with or without reimbursement. It authorizes U.S. judges and magistrates to issue warrants for violations of the Act, and allows authorized agents to open packages, serve warrants, and seize and hold goods pending their disposal of the case in the courts. If the Secretary permits it, bonds or other sureties may be posted to permit recovery of property so seized.

This subsection changes existing law by providing an *in rem* procedure under which the Secretary may seek forfeiture of the goods at any time, or in lieu of a civil penalty. This is required, for example, by cases in which no consignee could be found within the United States, or the item was received as a "gift", without constituting a formal importation.

The section provides for forfeiture of illegal goods, which may, but need not, take place in conjunction with civil or criminal proceed-

ings. It is expected that goods properly seized and forfeited would not be returned if the Secretary concludes that the Act has been violated. Goods other than the prohibited fish or wildlife may also be forfeited, in the discretion of the court, upon a criminal conviction for violation of the Act or any regulations under the Act. It also preserves existing customs laws regarding seizures.

(e) The appropriate agency heads are authorized to promulgate enforcement regulations and to charge reasonable fees for expenses properly incurred under the Act. Any such fees are to be covered into the General Treasury to the credit of the appropriation covering such activity.

(f) This subsection authorizes citizen actions to enforce the provisions of the Act. It allows any person, including a Federal official, to seek remedies involving injunctive relief for violations or potential violations of the Act. The language is parallel to that contained in the recent Marine Protection, Research and Sanctuaries Act of 1972, and is to be interpreted in the same fashion.

(g) The Secretaries are directed to coordinate their activities with those of the Secretary of Agriculture to provide for enforcement of the Animal Quarantine and Tariff Acts. In no respect is the authority so provided intended to limit the authorities otherwise available to the Secretary of Agriculture.

(h) The Act specifically disclaims any intent to interfere with the responsibilities of the Secretary under the Tariff Act relating to importation of contraband animals, which may or may not also be endangered.

ENDANGERED PLANTS

Sec. 12. This section authorizes the Secretary of the Smithsonian, together with any other interested agencies of the state or Federal government, public or private, to review plant species which are or may become endangered or threatened and possible regulatory programs. The results of this study are to be communicated to the Congress at the time, and we will then be in a position to consider the necessity for further amendments to this legislation.

CONFORMING AMENDMENTS

Sec. 13. For the most part, the amendments in this section simply conform existing laws to the provisions of this Act, as reported. The Committee has made a conscientious effort to find all references to the existing laws, and to correct them to refer to the new Endangered and Threatened Species Act of 1973. It is presumed that any references to older legislation which have not been so conformed would continue to refer to this Act.

Subsection (d) of this section handles a housekeeping change which was brought to the attention of the Committee after enactment of PL 92-554 last year, dealing with the acquisition of lands in national conservation and recreation areas. As amended, the legislation will permit

the acquisition of lands within the boundaries of such areas, as well as those adjacent to them.

As to the recent Marine Mammal Protection Act of 1972, a number of changes are made to conform the reference to this Act. There is no intention whatever to repeal any portion of that Act, and it is intended that the more restrictive provisions of each law will prevail, to the extent that any conflict may later appear.

REPEALER

Sec. 14. This section repeals the existing 1966 and 1969 endangered species acts, which have been superseded by this bill.

AUTHORIZATIONS

Sec. 15. This section authorizes certain sums to the Interior and Commerce Departments for the current and next two fiscal years. The sums authorized are in line with the agency projections of program needs for the years in question, and provide a total of \$27.5 million for these three years.

EFFECTIVE DATE

Sec. 16. The effective date of the legislation is the date of its enactment.

COST OF THE LEGISLATION

In the event that this legislation is enacted into law, the Committee estimates the maximum costs to the Federal Government, on the basis of information supplied by the Executive Branch, to be as follows:

The Departments of the Interior and Commerce estimate their three year costs to be \$69.9 million, as represented by the following table:

(in millions of dollars)

	Fiscal year—		
	1974	1975	1976
Habitat acquisition (sec. 5b), Interior.....	1.4	8.5	12.5
State grants-in-aid (sec. 6), Interior.....		10.0	10.0
Program costs (sec. 15), Interior.....	6.0	8.0	10.0
Commerce.....		1.5	2.0
Total.....	7.4	28.0	34.5

It is to be noted the Department of the Interior anticipates habitat acquisition costs will be provided by the Land and Water Conservation Fund. The Smithsonian Institution and the Department of Agriculture anticipate any cost to their agencies in implementing the legislation will be borne by existing program authorizations.

After reviewing the foregoing estimate of costs with respect to this legislation, the Committee has concluded that these costs are reasonable and that the costs incurred in carrying out this legislation will be consistent with those estimates.

DEPARTMENTAL REPORTS

The departmental reports on H.R. 37, H.R. 4758, and similar and identical bills, upon which the hearings were held, along with Executive Communication No. 442 follow herewith:

[Executive Communication No. 442]

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., February 15, 1973.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR Mr. SPEAKER: There is enclosed a draft bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

We recommend that this bill, a part of the environmental program announced today by President Nixon, in his Environmental and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration, and that it be enacted.

This proposal addresses the need to identify those species or subspecies which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. We are convinced that it is far more sound to take the steps necessary to keep a species or subspecies from becoming endangered than to attempt to save it after it has reached that critical point. Therefore, the bill defines "endangered" (Section 2 (c) (1) as meaning any species or subspecies which is either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. To assure protection of all endangered species commensurate with the threat to their continued existence, we propose to (1) remove the current ceiling imposed by law on acquisition of essential wildlife habitat; (2) prohibit unauthorized import or export, taking, possession, sale, delivery, and transport of species presently threatened with extinction; (3) clarify authorities pertaining to warrantless searches and forfeiture of seized property; and, (4) allow importation at other than designated ports of entry "in the interest of health or safety of fish and wildlife."

The bill follows closely the precedent established by the Congress in 1966 and 1967, when it enacted the first legislation to provide protection for fish and wildlife determined to be threatened with extinction in the United States abroad. This proposal retains those provisions of the earlier Acts which laid the foundation for this Department's effort to protect endangered species and adds to them the authorities which, as demonstrated by experience, are needed to cope with a continuing decimation of the world's wildlife resources. It provides authority for a new program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970.

We urge the Congress to take this further step forward for the protection of our diminishing wildlife resources. The Office of Management and Budget has advised that this legislation is in accord with the President's program.

Sincerely yours,

ROBERTS C. B. MORTON,
Secretary of the Interior.

Enclosure.

(The text of the bill enclosed with this executive communication was introduced as H.R. 4758)

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., March 23, 1973.

Hon. LEONOR (Mrs. JOHN B.) SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: Your Committee has requested the views of this Department on H.R. 37, a bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes," and H.R. 2169, a bill "To implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and for other purposes." We note that there is also pending before your Committee H.R. 4758, the Administration's proposed bill, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes." In addition our comments will be directed to H.R. 3310, H.R. 3691 and H.R. 3795, bills identical to H.R. 37 and similar bills H.R. 470, H.R. 471, H.R. 1461, H.R. 1511, H.R. 2669 and H.R. 4755.

We recommend the enactment of H.R. 4758, the Administration's proposed "Endangered Species Conservation Act of 1973."

Each of these bills, except H.R. 2169, would, in some way, amend the existing laws regarding the protection and conservation of endangered species of fish and wildlife. Pursuant to these earlier laws, which have been codified as the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa-668cc; 668cc-1 through 668cc-5), and related Acts, the Secretary of the Interior has authority to promulgate separate lists of native species threatened with extinction and of foreign species threatened with worldwide extinction; to regulate the interstate transportation of native species taken contrary to State laws, and to restrict the importation of foreign species which he determines to be threatened with worldwide extinction. In addition, the Secretary has exercised authority to acquire endangered species habitat within funding limits established by Congress.

The Bureau of Sport Fisheries and Wildlife of this Department has made significant progress under existing authorities, and it can be said with assurance that enactment of endangered species legisla-

tion was a milestone in the Nation's attempt to preserve its natural environment. There exists no precise measure of our success, due primarily to a lack of technical information. Nearly 400 species are currently listed as endangered, either in the United States or worldwide and there are example or species which, thought once threatened with extinction, are now thought to have been rescued from ultimate destruction. The threat remains, however, and can be expected to grow in intensity as habitat is converted to human use and the environment is despoiled.

These bills would, among other things, expand the existing program for the conservation and protection of fish and wildlife resources by providing earlier identification of threatened species, authorizing necessary protective measures, prohibiting the taking of endangered species, and expanding the prohibition against trafficking in such species. Under the bills, the development and administration of the new program would be the joint responsibility of the Department of the Interior and the Department of Commerce, pursuant to the allocation of responsibilities by Reorganization Plan No. 4 of 1970. For the sake of convenience we will summarize the provisions of H.R. 4758 and explain the most significant differences between it and the other bills.

H.R. 4758 addresses the need to identify those species or subspecies which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. In so doing, it provides the means for taking the steps necessary to keep a species or subspecies from becoming endangered rather than attempting to have it after it has reached that critical point. Therefore, the bill defines "endangered" (Section 2 (c) (1)) as meaning any species or subspecies which is either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. To assure protection of all endangered species commensurate with the current ceiling of all endangered species commensurate with the current ceiling continued existence, H.R. 4758 would (1) remove the threat imposed by law on acquisition of essential wildlife habitat; (2) prohibit unauthorized import or export, taking, possession, sale, delivery, and transport of species presently threatened with extinction; (3) clarify authorities pertaining to warrantless searches and forfeiture of seized property, and (4) allow importation at other than designated ports of entry "in the interest of health or safety of fish and wildlife." H.R. 4758 also provides authority for this program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970. For those species or subspecies likely within the foreseeable future to become threatened with extinction, H.R. 4758 would provide discretionary authority to the Secretary to regulate the import, taking, and interstate transportation of those animals. The type and degree of control exercised in this latter instance would depend on the circumstances of each species and could include a complete or partial ban if deemed appropriate.

H.R. 37 and the other bills identical to it, are in many instances similar to H.R. 4758. However, while we support the general purposes of these bills we prefer H.R. 4758 for the following reasons:

1. We believe it desirable to include, within the definition of "take" the terms "pursue," "shoot," "wound," "trap," and "collect."

2. We believe that the separate definitions of "fish" and "wildlife" could raise ambiguities as to what animals are included under each term. Another problem is that the definition of "wildlife" in H.R. 37 includes the nebulous reference to any "other animal". It is uncertain as to what this term is meant to include. Consequently, we believe the term used in H.R. 4758, "fish and/or wildlife" defined to mean "any wild animals, whether or not raised in captivity, including without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, or crustacean, including any part, product, egg, or offspring thereof, or the dead body or parts thereof," is more appropriate.

3. Under Subsection 4 (b) of these bills, we anticipate a potential legal problem relating to the phrase "not less than annually". This language would appear to require the Secretary to establish a new list or reestablish the existing list, assuming that no changes were appropriate at that time, at least once every year. It is not inconceivable that if, through some circumstances, the Secretary failed to republish a list for which no changes were appropriate, a defendant in a civil or criminal proceeding under this Act would claim the defense that the list had legally lapsed. This problem would be avoided under H.R. 4758 which stipulates that the Secretary publish a list and allow him to revise such list "from time to time".

4. While we concur with the prohibition of acts specified under Subsection 7 (a) of H.R. 37 applying to species or subspecies presently threatened, and those referred to under Subsection 7 (b) applying to species or subspecies likely within the foreseeable future to become threatened, we believe that certain additional acts should be specifically prohibited. Accordingly, we favor the more comprehensive language in Sections 4 (a) and 4 (b), of H.R. 4758.

5. Within the definitions section of H.R. 37, Section 3, we note the inclusion of the term "Federal lands". Considering that the prohibitions apply to taking "within the United States", we do not see the need for a separate definition of "Federal lands".

6. We note that under Subsection 10 (a) (2) of H.R. 37, the Secretary is directed to convene, through the Secretary of State, an international ministerial meeting for the purpose of signing an international convention on the conservation of endangered species. Since an international meeting, recently held in Washington, D.C., resulted in an agreement on a draft treaty prepared in conjunction with the State Department, we do not believe such a provision is appropriate.

7. We do not believe that Section 11 of these bills is necessary or desirable since the Smithsonian Institution already has authority to conduct this kind of a review and the authorization of a specific appropriation merely serves to put a ceiling on the amount of funds to be expended for this purpose. The recently concluded "Convention on International Trade on Endangered Species of Wild Fauna and Flora", signed on March 3, 1973, in Washington, D.C., recognizes the critical role of flora in our total ecosystem. This Department, the Departments of Commerce and Agriculture, and the Smithsonian Institution are cooperating to develop a conservation program to preserve endangered flora pursuant to that Convention.

The above comments on H.R. 37, and the other bills identical to it, also pertain to H.R. 470, H.R. 471, and H.R. 2669, and to H.R. 1511 and H.R. 2735, H.R. 1461 and H.R. 4755, identical bills, are different from H.R. 37. However, these bills are identical to the endangered species bill

developed last year and introduced in the 92nd Congress as H.R. 13081. While H.R. 1461 and H.R. 4755 are, therefore, quite similar to the current Administration proposal discussed above, H.R. 4758, we believe that the refinements make H.R. 4758 preferable to the earlier version. Consequently, we recommend against enactment of either H.R. 1461 or H.R. 4755.

H.R. 2169 would implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere and amend the original 1966 Endangered Species Act. This bill would prohibit any person within any place subject to the jurisdiction of the United States from hunting, capturing, killing, taking, transporting, selling, or purchasing any fish or wildlife listed in the Annex to the Convention. H.R. 2169 also provides that in submitting the list of species for the Annex, the Secretary of the Interior shall include the species found by him to be rare or endangered under the terms of the 1966 Endangered Species Act. While this Department subscribes to the objectives of H.R. 2169, we believe that it offers only a partial solution to the problems associated with the preservation and conservation of endangered wildlife. We therefore, recommend the enactment of H.R. 4758 as a comprehensive approach to the protection, preservation and conservation of these animals.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of H.R. 4758 would be in accord with the program of the President.

Sincerely yours,

DOUGLAS P. WHEELER,
Acting Assistant Secretary of the Interior.

DEPARTMENT OF STATE,
Washington, D.C., March 23, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

Dear MADAM CHAIRMAN: Thank you for your letters of February 7, March 5 and March 7, 1973, affording this Department the opportunity to comment on H.R. 37, H.R. 2735, H.R. 4755 and H.R. 4758, bills to provide for the conservation, protection and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

The Department favors the enactment of H.R. 4758, which was transmitted to the Congress in conjunction with the President's State of the Union Message on Natural Resources and Environment of February 15, 1973. This bill has the following advantages over the other bills cited above.

Sec. 10(a) (2) of H.R. 37 and Section 10(a) (1) of H.R. 2735 call for the Secretary through the Secretary of State to convene an international meeting on fish and wildlife. The meeting took place in February; H.R. 4758 in effect takes note of this by not calling for it to be convened. Sec. 7 of H.R. 37 and H.R. 2735 and Sec. 5 of H.R. 4755 prohibit the taking of endangered species upon the high seas. This prohibition

should be limited to persons subject to the jurisdiction of the United States and in H.R. 4758 it is so limited.

The last sentence of Section 5(f) in both HR 37 and HR 2735 states: "The Secretary is also authorized to conduct or cause to be conducted such law enforcement investigations and research upon him by this Act." necessary to carry out the obligations imposed upon him by this Act." Investigations and research abroad may only be undertaken with the cooperation and specific consent of the interested sovereign nation. Furthermore, activities of U.S. representatives abroad must be coordinated in the light of United States foreign policy objectives. The Administration's bill would solve this problem by including in Section 7, which covers the same subject, the phrase "in consultation with the Department of State."

There is an additional problem in connection with HR 37. Section 9(g) would require any person who engages to any extent in business as an importer of fish and wildlife to register with the Secretary of the Treasury and to keep detailed records of each import of fish and wildlife and of the subsequent disposition made of such imports. The records presumably would have to cover all imports of commercial fish and fish products, many leather articles, such as shoes and bags, and clothing made of or trimmed with fur or leather. In the view of the Department of State, the detailed records required would place a costly burden on normal commercial trade. Since this requirement is only applicable to importers and not to domestic wholesalers, trappers, or manufacturers dealing in wildlife specimens, it could be considered inconsistent with Article III of the General Agreement on Tariffs and Trade. This article requires that imported products shall be accorded treatment no less favorable than that accorded to "like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

The difficulties outlined above are eased in the Administration bill, HR 4758. Section 6(e) of this bill covers the essentials of the above paragraph by allowing the Secretary to require persons importing or exporting fish and wildlife to file declarations with information which he deems necessary. However, the discretionary powers would limit the burdens which would be placed on normal commercial trade.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of HR 4758 would be in accord with the program of the President.

Sincerely,

MARSHALL WRIGHT,
*Acting Assistant Secretary
for Congressional Relations.*

DEPARTMENT OF AGRICULTURE,
*OFFICE OF THE SECRETARY,
Washington, D.C., March 23, 1973.*

Hon. LEONOR K. SULLIVAN,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives.*

Dear MADAM CHAIRMAN: This is in response to your request for a report on H.R. 37, H.R. 2735, and H.R. 4758 bills "To provide for the

conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The Department of Agriculture recommends that H.R. 4758, the Administration's proposed "Endangered Species Conservation Act of 1973", be enacted in lieu of H.R. 37 or H.R. 2735.

In general, the bills follow closely the provisions of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa-668cc; 668cc-1 through 668cc-5). They would strengthen the earlier legislation in part by broadening the definition of endangered species to include species or subspecies of fish or wildlife that may within the foreseeable future be likely to become threatened with extinction; and by prohibiting the exporting, taking, possession, sale, and interstate transportation of endangered species.

The Department of Agriculture strongly supports the objectives of the bills to protect endangered fish and wildlife. In furtherance of the existing Endangered Species Conservation Act, the Forest Service of this Department is continuing to develop management plans that would protect and enhance identified areas of endangered species habitat located on lands within the National Forest System.

Although many of the provisions of the three bills are quite similar, we recommend that H.R. 4758 be enacted. We believe the penalties and enforcement provisions of H.R. 4758 are more comprehensive and stronger than the related provisions of the other two bills. Further, we believe that it would not be appropriate for the Secretary of Agriculture to initiate a program of direct assistance to private landowners as provided by section 10(c) of H.R. 37 and H.R. 2735. If a need to assist private landowners is identified, we believe such programs could be better accomplished by strengthening the role of the States in this area.

The Office of Management and Budget advises that there is no objection to the presentation of this report, and that enactment of H.R. 4758 would be in accord with the President's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

DEPARTMENT OF JUSTICE,
Washington, D.C., June 6, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

Dear MADAM CHAIRMAN: This is in response to your request for the views of the Department of Justice on several bills before your Committee regarding "Endangered Species" namely H.R. 4758, H.R. 37, H.R. 2735 and H.R. 4755.

The Department is of the opinion that the Administration's bill H.R. 4758 incorporates all of the significant issues of the other three bills. H.R. 4758 "provides for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threat-

ened with extinction or likely within the foreseeable future to become threatened with extinction...."

We would strongly urge prompt consideration of this legislation which is consistent with the President's message on Natural Resources and the Environment (February 15, 1973).

The Office of Management and Budget has advised that there is no objection to the submission of this report, and that enactment of H.R. 4758 would be in accord with the President's program.

Sincerely,

MIKE MCKEWTY,
Assistant Attorney General.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., March 23, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

Dear MADAM CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 37, H.R. 2735, H.R. 4755 and H.R. 4758, similar bills, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The President, in his State of the Union Message of February 15, 1973, on Natural Resources and the Environment, stated that the limited scope of existing laws requires new authority to identify and protect endangered species before they are so depleted that it is too late and that he would ask the 93rd Congress to direct its attention to this problem. The Administration's proposal is contained in H.R. 4758.

In view of the foregoing, the Department recommends the enactment of H.R. 4758 in lieu of further consideration of H.R. 37, H.R. 2735 and H.R. 4755.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that enactment of H.R. 4758 would be in accord with the program of the President.

Sincerely yours,

DONALD L. E. RITGER,
Acting General Counsel.

SATTISONIAN INSTITUTION,
Washington, D.C., April 23, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives,
Washington, D.C.

Dear MADAM CHAIRMAN: Thank you for the opportunity to comment on H.R. 37, a bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that

are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes."

H.R. 37 is substantially the same as H.R. 4778, the latter of which the Smithsonian Institution already has reported on favorably to your Committee. For the reasons set forth in that Report, the Institution endorses the purposes and objectives of H.R. 37, which it is believed will improve substantially the ability of the United States to protect and preserve threatened species or subspecies of fish and wildlife.

The principal provision in H.R. 37 which deviates from H.R. 4778, and in which the Smithsonian Institution has a direct interest, is Section 11, entitled "Endangered Flora." This section provides that:

"The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species and subspecies of endangered plants, trees, and other flora, and (2) methods of providing adequate protection to such species and subspecies, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review. For the purposes of this section, there is authorized to be appropriated \$250,000." It is believed that the Smithsonian Institution already has general authority to accomplish these objectives without specific legislation. Also, it may be of interest to the Committee to know that the Smithsonian Institution has been conducting, on a limited basis, research on endangered flora with a view to compiling a list of domestically and internationally endangered flora.

The Smithsonian Institution hopes that the Committee will act favorably on legislation to give greater protection throughout the world to species threatened with extinction, or which are likely within the foreseeable future to become so threatened. The principles embodied in the pending legislation demonstrate the increased awareness of the American public in the need to treat the future existence of other living creatures, which so often depends on human decisions, with care, respect, and foresight.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress.

Sincerely yours,

S. DILLON RIPLEY, *Secretary.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 4(c) OF THE ACT OF OCTOBER 15, 1966

Sec. 4. (a) * * *

(c) No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States including natural growth, in any area of the System; or take or pos-

sess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System unless same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law. [Nothing] *With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife [including endangered species thereof.] on lands not within the System. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System.*

SECTION 10(a) OF THE MIGRATORY BIRD CONSERVATION ACT

Sec. 10. (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada, and other species of wildlife found thereon, including species that are [threatened with extinction] *listed pursuant to section 4 of the Endangered and Threatened Species Act of 1973 as endangered species or threatened species, and to restore or develop adequate wildlife habitat.*

SECTION 401(a) OF THE ACT OF JUNE 15, 1935

Sec. 401. (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United

States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are [threatened with extinction] listed pursuant to section 4 of the Endangered and Threatened Species Act of 1973 as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

SECTION 7(a)(1) OF THE LAND AND WATER CONSERVATION FUND ACT OF 1965

ALLOCATION OF MONIES FOR FEDERAL PURPOSES

Sec. 7. (a) Moneys appropriated from the fund for Federal purposes shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President to the following purposes and subpurposes:

(1) For the acquisition for land, waters, or interests in land or waters as follows:

NATIONAL PARK SYSTEM; RECREATION AREAS.—Within the exterior boundaries of areas of the national park system now or hereafter authorized or established and of areas now or hereafter authorized to be administered by the Secretary of the Interior for outdoor recreation purposes.

NATIONAL FOREST SYSTEM.—Inholdings within (a) wilderness areas of the National Forest System, and (b) other areas of national forests as the boundaries of those forests exist on the effective date of this Act which other areas are primarily of value for outdoor recreation purposes: Provided, That lands outside of but adjacent to an existing national forest boundary, not to exceed five hundred acres in the case of any one forest, which would comprise an integral part of a forest recreational management area may also be acquired with moneys appropriated from this fund: Provided further, That not more than 15 per centum of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.

THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction.]

ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered and Threatened Species Conservation Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered species of fish or wildlife or plants.

RECREATION AT REFUGES.—For the incidental recreation purposes of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k-1); and

SECTION 2 OF THE ACT OF SEPTEMBER 28, 1962

Sec. 2. [The Secretary is authorized to acquire areas of land which are suitable for—

(1) fish and wildlife-oriented recreational development, or

(2) the protection of natural resources, and are adjacent to the said conservation areas; except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps.] The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

(1) incidental fish and wildlife-oriented recreational development,

(2) the protection of natural resources,

(3) the protection of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973, or

(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps. Lands acquired pursuant to this section shall become a part of the particular conservation area to which they are adjacent.

THE MARINE MAMMAL PROTECTION ACT OF 1972

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) The term "depletion" or "depleted" means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered and Threatened Species Conservation Act of [1969] 1973; or

(C) is below the optimum carrying capacity for the species or stock within its environment.

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

Sec. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal products may be imported into the United States except in the following cases:

(1) Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if—

(A) the taking proposed in the application for any such permit, or

(B) the importation proposed to be made, is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 2 of this Act. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.

(3) (A) ***

(B) Except for scientific research purposes as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which is classified as belonging to an endangered species or threatened species pursuant to the Endangered and Threatened Species Conservation Act of [1969] 1973 or has been designated by the Secretary as depleted, and no importation may be made of any mammal.

PROHIBITIONS

Sec. 102. (a) ***

(b) Except pursuant to a permit for scientific research issued under section 104 (c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock or which has been listed as endangered under the Endangered Species Conservation Act of 1969 an endangered species or threatened species pursuant to the Endangered and Threatened Species Conservation Act of 1973; or

(4) taken in a manner deemed inhumane by the Secretary. TITLE II—MARINE MAMMAL COMMISSION

DUTIES OF COMMISSION

Sec. 202. (a) The Commission shall—

(1) ***

(6) recommend to the Secretary of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969 endangered species list and threatened species list published pursuant to section 4(c) (1) of the Endangered and Threatened Species Conservation Act of 1973, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

THE ENDANGERED SPECIES CONSERVATION ACT OF 1969 (SECTIONS 1-3 OF THE ACT OF OCTOBER 15, 1966)

That (a) the Congress finds and declares that one of the unfortunate consequences of growth and development in the United States has been the extermination of some native species of fish and wildlife; that serious losses in other species of native wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; and that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, to conserve and protect, where practicable, the various species of native fish and wildlife, including game and nongame migratory birds, that are threatened with extinction. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species of native fish and wildlife, including migratory birds, that are threatened with extinction.

(b) It is further declared to be the policy of Congress that the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense, together with the heads of bureaus, agencies, and services within their departments, shall seek to protect species of native fish and wildlife, including migratory birds, that are threatened with extinction, and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies, and services, shall pre-

serve the habitats of such threatened species on lands under their jurisdiction.

[(c) A species of native fish and wildlife shall be regarded as threatened with extinction whenever the Secretary of the Interior finds, after consultation with the affected States, that its existence is endangered because its habitat is threatened with destruction, drastic modification, or severe curtailment, or because of overexploitation, disease, predation, or because of other factors, and that its survival requires assistance. In addition to consulting with the States, the Secretary shall, from time to time, seek the advice and recommendations of interested persons and organizations including, but not limited to, ornithologists, ichthyologists, ecologists, herpetologists, and mammalogists. He shall publish in the Federal Register the names of the species of native fish and wildlife found to be threatened with extinction in accordance with this paragraph.]

[(d) For the purpose of sections 1 through 3 of this Act, the term 'fish and wildlife' means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean.]

[Sec. 2. (a) The Secretary of the Interior shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act to carry out a program in the United States of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction.]

[(b) In addition to the land acquisition authorities in such Acts, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.]

[(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating selected species of native fish and wildlife, including migratory birds, that are threatened with extinction. Not to exceed \$5,000,000 may be appropriated annually pursuant to that Act for such purpose for any fiscal year, and the total sum appropriated for such purpose shall not exceed \$15,000,000: *Provided*, That the Secretary shall, to the greatest extent possible, utilize such funds from the Land and Water Conservation Fund Act of 1965 for such purpose. Such sums shall remain available until expended. The Secretary shall not use more than \$2,500,000 to acquire lands, waters, or interests therein for any one area for such purpose unless authorized by Act of Congress.]

[(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this Act. The Secretary shall also encourage other Federal agencies to utilize, where practicable, their authorities in furtherance of the purpose of this Act and shall consult with and assist such agencies in carrying out endangered species program. The

Secretary is authorized to acquire by purchase, donation, exchange, or otherwise any privately owned land, water, or interests therein within the boundaries of any area administered by him, for the purpose of conserving, protecting, restoring, or propagating any selected species of native fish and wildlife that are threatened with extinction and each such acquisition shall be administered in accordance with the provisions of law applicable to such area, and there is authorized to be appropriated annually for fiscal years 1970, 1971, and 1972 not to exceed \$1,000,000 to carry out the provisions of this sentence.]

[Sec. 3. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species of native fish and wildlife.]

[(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species of native fish and wildlife. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935. (49 Stat. 383), as amended (16 U.S.C. 715s).]

(Sections 1-6 of the Act of December 5, 1969)

[That, for the purposes of sections 2 through 5 of this Act, the term—

[(1) "Secretary" means the Secretary of the Interior;

[(2) "fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, products, egg, or offspring thereof, or the dead body or parts thereof;

[(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam; and

[(4) "person" means any individual, firm, corporation, association, or partnership.]

[Sec. 2. Except as provided in section 3 of this Act, whoever imports from any foreign country into the United States any species or subspecies of fish or wildlife which the Secretary has determined, in accordance with the provisions of section 3 of this Act, to be threatened with worldwide extinction, shall be punished in accordance with the provisions of section 4 of this Act.]

[Sec. 3. (a) A species or subspecies of fish or wildlife shall be deemed to be threatened with worldwide extinction whenever the Secretary determines, based on the best scientific and commercial data available to him and after consultation, in cooperation with the Secretary of State, with the foreign country, or countries in which such fish or wildlife are normally found and, to the extent practicable, with interested persons and organizations and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife is, in the judgment of the Secretary, endangered due to any of the following factors: (1) the destruction, drastic modification, or severe curtailment, or the threatened destruction, drastic modification, or severe curtailment, of its habitat, or (2) its overutilization for commercial or sporting purposes, or (3) the effect on it of

disease or predation, or (4) other natural or man-made factors affecting its continued existence. After making such determination, the Secretary shall promulgate and from time to time he may revise, by regulation, a list in the Federal Register of such fish or wildlife by scientific, common, and commercial name or names, together with his determination. The Secretary shall at least once every five years conduct a thorough review of any such list to determine what, if any, changes have occurred relative to the continued existence of the species or subspecies of fish or wildlife then on the list and to determine whether such fish or wildlife continue to be threatened with worldwide extinction. Upon completion of such review, he shall take appropriate action consistent with the purposes of this Act. The Secretary shall, upon the request of any interested person, also conduct such review of any particular listed species or subspecies at any other time if he finds and publishes his finding that such person has presented substantial evidence to warrant such a review.

(b) In order to minimize undue economic hardship to any person importing any species or subspecies of fish or wildlife which are determined to be threatened with worldwide extinction under this section, under any contract entered into prior to the date of publication of such determination in the Federal Register of such species or subspecies, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, shall permit such person to import such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.

(c) The Secretary may permit, under such terms and conditions as he may prescribe, the importation of any species or subspecies of fish or wildlife listed in the Federal Register under this section for zoological, educational, and scientific purposes, and for the propagation of such fish or wildlife in captivity for preservation purposes, unless such importation is prohibited by any other Federal law or regulation.

(d) The provisions of section 553 of title 5 of the United States Code shall apply to any regulation issued under this section.

Sec. 4. (a) (1) Any person who violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder, or any regulation issued under subsection (d) of this section, other than a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty *de novo*.

(2) Any employee authorized pursuant to subsection (c) of this section to enforce the provisions of sections 2 and 3 of this Act, and any regulations or permits issued pursuant thereto or pursuant to

subsection (d) of this section, shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any fish or wildlife or property or items taken, used, or possessed in connection with any violation of any such section, regulation, or permit with respect to which a civil penalty may be assessed pursuant to paragraph (1) of this subsection. Such fish, wildlife, property, or item so seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury pending disposition of proceedings by the Secretary involving the assessment of a civil penalty pursuant to paragraph (1) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit such person to post a bond or other surety satisfactory to the Secretary. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection for any nonwillful violation of any such section, regulation, or permit, such fish, wildlife, property, or item so seized may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate. The owner or consignee of any such fish, wildlife, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. Whenever any fish or wildlife or property or item is seized pursuant to this subsection, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. If, with respect to any such fish, wildlife, property, or item so seized no action is commenced in any court of competent jurisdiction to obtain the forfeiture of such fish, wildlife, property, or item within thirty days following the disposition of proceedings involving the assessment of a civil penalty, such fish, wildlife, property, or item shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

(b) Any person who willfully violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder or any regulation issued under subsection (d) of this section shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

(c) The provisions of sections 2 and 3 of this Act and any regulations or permits issued pursuant thereto or pursuant to subsection (d) of this section shall be enforced by either the Secretary or the Secretary of the Treasury, or both such Secretaries. Either Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency or any State agency. Any employee of the Department of the Interior or the Department of the Treasury authorized by the Secretary or the Secretary of the Treasury may, without a warrant, arrest any person who such employee has probable cause to believe is willfully violating, in his presence or view, any such section, or any regulation or permit issued thereunder, the penalty for which is provided under subsection (b) of this section, and may execute a warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of such sections, regulations or permits. An employee who has made an arrest of a person in connection with any such willful violation may search such

person at the time of his arrest and seize any fish or wildlife or property or items taken, used, or possessed in connection with any such violation, or any such employee shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any such fish, wildlife, property, or item so taken, used, or possessed. Any fish or wildlife or property or item seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury or by a United States marshal pending disposition of the case by the court, commissioner, or magistrate, except that the Secretary may, in lieu thereof, permit such person to post a bond or other surety satisfactory to him. Upon conviction, any (1) fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property or items seized may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. The owner or consignee of any such fish, wildlife, property, or item so seized, shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. If no conviction results from any such alleged violation, such fish, wildlife, property or item so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section.

[(d) For the purposes of facilitating enforcement of sections 2 and 3 of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the importation of fish and wildlife, other than shellfish and fishery products imported for commercial purposes, into the United States. The importation of such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at nondesignated ports for movement to designated ports of entry. Such regulations may provide other exceptions to such prohibition if the Secretary deems it appropriate and consistent with the purposes of this subsection.

[(e) In carrying out the provisions of sections 2 through 5 of this Act, the Secretary may issue such regulations as may be appropriate.

Sec. 5. (a) In carrying out the provisions of sections 2 and 3 of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to species and subspecies of fish or wildlife threatened with worldwide extinction, to take measures to prevent any fish or wildlife from becoming threatened with extinction, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, and propagation of fish or wildlife.

The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife and their habitat. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with worldwide extinction.

[(b) To assure the worldwide conservation of endangered species, and to prevent competitive harm to affected United States industries, the Secretary, through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to June 30, 1971, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.

[(c) There are authorized to be appropriated such sums, not to exceed \$200,000, as may be necessary to carry out the provisions of subsection (b) of this section, such sums to remain available until expended.

Sec. 6. (a) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (21 U.S.C. 101 et seq., 21 U.S.C. 111, 21 U.S.C. 134 et seq.) and the Tariff Act of 1930, as amended (19 U.S.C. 1306).

[(b) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered, by the Secretary of Agriculture.

[(c) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 527 of said Act (19 U.S.C. 1527) relating to the importation of wildlife taken, killed, possessed or exported to the United States in violation of the laws or regulations of a foreign country.]