

YEAS—Continued

Wyatt
Wryder
Wylie
Wyman
Yates

Yatron
Young, Alaska
Young, Fla.
Young, Ga.
Young, Ill.

Young, S.C.
Zablocki
Zwach

NAYS—12

Abdnor
Collier
Crane
Gross

Landgrebe
Nelzen
Price, Tex.
Rarick

Runnels
Satterfield
Steiger, Ariz.
Symms

NOT VOTING—32

Anderson, Ill.
Archer
Buchanan
Burke, Fla.
Burlison, Tex.
Chappell
Culver
Davis, Ga.
Gettys
Hanna
Hansen, Idaho
Hogan

Jones, Tenn.
Leggett
Lujan
McCloskey
McEwen
Mills, Ark.
Mizell
Nix
O'Neill
Palman
Rostenkowski
Sandman

Shriver
Stanton,
James V.
Steelman
Syrington
Teague, Tex.
Wilson,
Charles, Tex.
Young, Tex.
Zion

So (two-thirds having voted in favor thereof), the rules were suspended and the bill as amended was passed.

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Anderson of Illinois.
Mr. Burlison of Texas with Mr. James V. Stanton.
Mr. Rostenkowski with Mr. League of Texas.
Mr. Hanna with Mr. Archer.
Mr. Chappell with Mr. Buchanan.
Mr. Jones of Tennessee with Mr. Lujan.
Mr. Young of Texas with Mr. Sandman.
Mr. Palman with Mr. Burke of Florida.
Mr. Culver with Mr. Hogan.
Mr. Synington with Mr. Nix.
Mr. Davis of Georgia with Mr. Mizell.
Mr. Gettys with Mr. Zion.
Mr. Steelman with Mr. McCloskey.

[From the Congressional Record, Sept. 18, 1973]

HOUSE CONSIDERATION AND PASSAGE OF S. 1983, AS AMENDED

Mr. DINGELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table a similar Senate bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, and ask for immediate consideration of the Senate bill.

The Clerk read the title of the Senate bill.

The Speaker. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1983

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

Sec. 2. (a) FINDINGS.—The Congress finds and declares that—

- (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;
- (2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;
- (3) these species of fish, wildlife and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;
- (4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

- (A) migratory bird treaties with Canada and Mexico;
- (B) the Migratory and Endangered Bird Treaty with Japan;
- (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;
- (D) the International Convention for the Northwest Atlantic Fisheries;
- (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;
- (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
- (G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—

- (1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;
- (2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;
- (3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and
- (4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

Sec. 3. As used in this Act—

(1) "Conservation" and "management" mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation and restoration of such species, including regulation and taking necessary to these ends.

(2) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(3) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range, other

than a species of the order Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(4) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(5) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(6) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(7) "Optimum carrying capacity" means the ability of a given habitat to support the optimum sustainable population of an endangered or threatened species in a healthy state without diminishing the ability of the habitat to continue that function.

(8) "Optimum sustainable population" means, with respect to any of endangered or threatened species, the number of such species will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent part.

(9) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(10) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(11) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of plants, the term means the Secretary of Agriculture.

(12) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(13) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(14) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(15) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(16) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(17) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

Sec. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553 (e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretaries shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the list maintained pursuant to subsection (a) of this section, and may, with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than \$150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) **PROTECTIVE REGULATIONS.**—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation and management of such species. With respect to any threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

Sec. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1950, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him; and

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

Sec. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) **MANAGEMENT AGREEMENTS.**—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation and management of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) **FINANCIAL ASSISTANCE.**—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State establishes and maintains an adequate and active program for the conservation and management of endangered and active species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has statutory and regulatory authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs.

which are adequate, in the Secretary's judgment, for the conservation and management of species of endangered and threatened fish or wildlife;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation and management of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) **ALLOCATION OF FUNDS.**—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, conservation and management. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

(C) the number of endangered and threatened species within a State;

(D) the potential for restoring endangered and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year shall remain available for expenditure by such State until the close of the succeeding fiscal year. Any funds remaining obligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66 $\frac{2}{3}$ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed \$10,000,000.

(e) **PERIODIC REVIEW.**—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) **STATE ACTION PERMITTED.**—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation regarding the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation

by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in paragraph (1) of this subsection of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

Sec. 10. (a) PROHIBITED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce any endangered species of fish or wildlife;

(6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimen traded in contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulations which is promulgated by the Secretary pursuant to section 4(e) of this Act; or

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption, or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas. To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice, and opportunity for public hearing, may, by regulation, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 668cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(c) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act.

EXCEPTIONS

Sec. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—

(1) for scientific purposes in furtherance of the purposes of this Act; or

(2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat.

(b) (1) HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception shall be granted any undue economic hardship: *Provided*, That such exception shall be granted by non-Native resident of an Alaska Native village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles or handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified in the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of proposed listing of such species as an endangered or threatened species.

(B) Substantial economic loss to persons who, for the year prior to the listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or

(C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and

(ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) PROCEDURE.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) **Registration.**—(1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nondangerous and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) **Enforcement.** Regulations.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) **GRIEVE SUITS.**—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) **COORDINATION.**—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). 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 or possession of animals and other articles. No 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. Nothing in 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, including, but not limited to, section 527 of such 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.

ENDANGERED PLANTS

Sec. 13. The Secretary of Agriculture, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed \$250,000.

CONFORMING AMENDMENTS

Sec. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668d(c)), is further amended by revising the section sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 7151(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species,"

(c) Section 6(a) (1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a) (1)) is amended by striking out:

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

and inserting in lieu thereof the following:

"ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 9 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k-1), is amended to read as follows:

"Sec. 2. 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 conservation of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species 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."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1) (B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a) (3) (B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b) (3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a) (6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c) (1) of the Endangered Species Act of 1973."

(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91-135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973."

REPEALER

Sec. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa-688cc-6) is repealed.

APPLICABILITY WITHIN STATES

Sec. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in this plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any

State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: *Provided*, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a State which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may by regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the conservation and management of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provision of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

Sec. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

Sec. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed \$3,960,000 for the fiscal year ending June 30, 1974; not to exceed \$6,660,000 for the fiscal year ending June 30, 1975; and not to exceed \$8,870,000 for the fiscal year ending June 30, 1976.

Sec. 19. (a) That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(b)), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

(b) As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, However*, That correction of clerical and typographical errors in such legal description and map may be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture.

(c) The wilderness area designated by this Act shall be known as the Cave Run Wilderness and shall be administered by the Secretary of Agriculture in

accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(d) Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zippo recreation site access road generally on a route extending northward from Forest Development Road Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

NOTION OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Dingell moves to strike out all after the enacting clause of S. 1983 and insert in lieu thereof the provisions of H.R. 37, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to provide for the conservation, protection, restoration, or propagation of endangered and threatened species of fish, wildlife, and plants, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 37) was laid on the table.

APPOINTMENT OF CONFERRERS ON S. 1983, ENDANGERED AND THREATENED SPECIES CONSERVATION ACT OF 1973

Mr. DINGELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, with House amendments thereto, insist on the House amendments, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Michigan? The Chair hears none and appoints the following conferees: Mrs. Sullivan and Messrs. Dingell and Goodling.

98th CONGRESS
1st Session

S. 1983

[Report No. 93-307]

IN THE SENATE OF THE UNITED STATES

JUNE 12, 1973

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Commerce

JULY 1, 1973

Reported, under the authority of the order of the Senate of June 30, 1973, by Mr. MAINTON, with amendments

[Strike out all after the enacting clause and insert the part printed in *italics*]

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.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Endangered Species Con-*
- 4 *servation Act of 1973."*

5 FINDINGS AND POLICY

- 6 *Sec. 2. (a) The Congress finds and declares that one*
- 7 *of the unfortunate consequences of growth and development*
- 8 *in the United States and elsewhere has been the extermi-*