

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 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.

MOTION 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. MAGNUSON, 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 Representatives*
- 2 *in and for 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."*

FINDINGS AND POLICY

- 5
- 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 extirmina-*

1 tion of some species or subspecies of fish and wildlife and  
 2 flora; that serious losses in other species of wild animals  
 3 with educational, historical, recreational, and scientific  
 4 value have occurred and are occurring; that the United  
 5 States has pledged itself, pursuant to migratory bird treaties  
 6 with Canada and Mexico, the migratory and endangered  
 7 bird treaty with Japan, the Convention on Nature Protec-  
 8 tion and Wildlife Preservation in the Western Hemisphere,  
 9 the International Convention for the Northwest Atlantic  
 10 Fisheries, the International Convention for the High Seas  
 11 Fisheries of the North Pacific Ocean, and other international  
 12 agreements, to conserve and protect, where practicable, the  
 13 various species of fish and wildlife and flora that are threat-  
 14 ened with extinction; and that the conservation, protection,  
 15 restoration, or propagation of such species will insure to  
 16 the benefit of all citizens. The purposes of this Act are to  
 17 provide a program for the conservation, protection, restora-  
 18 tion or propagation of species and subspecies of fish and  
 19 wildlife and flora that are threatened with extinction, or  
 20 are likely within the foreseeable future to become threat-  
 21 ened with extinction.

22 (1) It is further declared to be the policy of Congress  
 23 that all Federal departments and agencies shall seek to pre-  
 24 vent species or subspecies of fish and wildlife, and flora that  
 25 are threatened with extinction or are likely within the foresee-

1 able future to become threatened with extinction, and where  
 2 ever practicable, shall utilize their authorities in furtherance  
 3 of the purpose of this Act.

4 **DEFINITIONS.**

5 **Sec. 3. For the purposes of this Act:**

6 (1) The term "Federal lands" means all lands or  
 7 interests therein over which Congress has legislative au-  
 8 thority under article IV, section 3, clause 2 of the  
 9 United States Constitution, including, without limitation,  
 10 lands enumerated in section 1400 of title 42, United  
 11 States Code.

12 (2) The term "fish" means any fish or any part,  
 13 products, eggs, or offspring thereof, or the dead body or  
 14 parts thereof.

15 (3) The term "import" means to bring into the  
 16 territorial limits of the United States and includes with-  
 17 out limitation, entry into a foreign trade zone, and trans-  
 18 shipment through any portion of the United States  
 19 without customs entry.

20 (4) The term "person" means (A) any private  
 21 person or entity, and (B) any officer, employee, agent,  
 22 department, or instrumentality of the Federal Govern-  
 23 ment, of any State or political subdivision thereof, or of  
 24 any foreign government.

25 (5) The term "Secretary" means the Secretary of

1 the Interior with respect to functions and responsibilities  
 2 under this Act relating to fish and wildlife, and the Sec-  
 3 retary of Agriculture with respect to functions and re-  
 4 sponsibilities under this Act relating to flora.

5 (6) The term "take" means (A) with respect to  
 6 fish or wildlife, to threaten, harass, hunt, capture, or kill,  
 7 or attempt to threaten, harass, hunt, capture, or kill;  
 8 or the destruction, modification, or curtailment of its  
 9 habitat or range; and (B) with respect to flora, to col-  
 10 lect, sever, remove, or otherwise damage in any manner,  
 11 or to attempt to collect, sever, remove, or otherwise dam-  
 12 age in any manner.

13 (7) The term "United States" includes the several  
 14 States, the District of Columbia, and the Commonwealth  
 15 of Puerto Rico, the Canal Zone, the possessions of the  
 16 United States, and the Trust Territory of the Pacific  
 17 Islands.

18 (8) The term "wildlife" means any wild mammal,  
 19 game or nongame migratory bird, wild bird, amphib-  
 20 ian, reptile, mollusk or crustacean, or other animal, or  
 21 any part, products, eggs, or offspring thereof, or the dead  
 22 body or parts thereof, including migratory, nonmigra-  
 23 tory, and endangered birds for which protection is also  
 24 afforded by treaty or other international agreement.

1 **DETERMINATION OF ENDANGERED SPECIES**

2 ~~Sec. 4. (a) A species or subspecies of fish or wildlife~~  
 3 ~~or flora shall be regarded as an endangered species, when-~~  
 4 ~~ever—~~

5 (1) the appropriate Secretary by regulation deter-  
 6 mines, based on the best scientific and commercial data  
 7 available to him and after consultation, as appropriate,  
 8 with the affected States, and, in cooperation with the  
 9 Secretary of State, the country or countries in which  
 10 such fish and wildlife are normally found or whose citi-  
 11 zens harvest the same on the high seas, and with inter-  
 12 ested persons and organizations, and other interested  
 13 Federal agencies, that the continued existence of such  
 14 species or subspecies of fish or wildlife or flora, through-  
 15 out all or a significant portion of its habitat or range, is  
 16 either presently threatened with extinction or will likely  
 17 within the foreseeable future become threatened with  
 18 extinction, due to any of the following factors:

- 19 (A) the present or threatened destruction, mod-  
 20 ification, or curtailment of its habitat or range;
- 21 (B) overutilization for commercial, sporting,  
 22 scientific, or educational purposes;
- 23 (C) disease or predation;

1 ~~(1) the inadequacy of existing regulatory~~  
2 ~~mechanisms or~~

3 ~~(2) other natural or manmade factors affecting~~  
4 ~~its continued existence;~~ or

5 ~~(3) the status of such species or subspecies in the~~  
6 ~~known~~

7 ~~(b) The appropriate Secretary shall publish in the~~  
8 ~~Federal Register, not less than annually, a list, by scientific~~

9 ~~and common name or names, of species or subspecies deter-~~  
10 ~~mined, pursuant to this section, to be endangered, indicating~~

11 ~~as to each species or subspecies so listed whether such species~~  
12 ~~or subspecies is threatened with extinction or is likely within~~

13 ~~the foreseeable future to become threatened with extinction~~  
14 ~~or whether its status is unknown and, in either case, over~~

15 ~~what portion of the range of such species or subspecies this~~  
16 ~~condition exists. The appropriate Secretary may, from time~~

17 ~~to time, by regulation revise any such list. The endangered~~  
18 ~~species lists which are effective as of the date of enactment~~

19 ~~of this Act shall be republished to conform to the provisions of~~  
20 ~~this Act: *Provided, however,* that until such republi-~~

21 ~~cation herein shall be deemed to invalidate such en-~~  
22 ~~dangered species lists. The provisions of section 553 of title 5,~~

23 ~~United States Code, shall apply to any regulation issued un-~~  
24 ~~der this subsection. The Secretary shall, upon the petition of~~

25 ~~an interested person under subsection 553 (e) of title 5,~~

1 ~~United States Code, also conduct a review, on the record,~~  
2 ~~after opportunity for agency hearing of any listed or unlisted~~

3 ~~species of fish or wildlife proposed to be removed from or~~  
4 ~~added to the list, but only if he finds and publishes his findings~~

5 ~~that such person has presented substantial evidence to war-~~  
6 ~~rant such review.~~

7 ~~LAND ACQUISITION AND AGENCY COMPLIANCE~~  
8 ~~Sec. 6. (a) The Secretary shall utilize the land ac-~~

9 ~~quisition and other authorities of the Migratory Bird Conser-~~  
10 ~~vation Act, as amended, the Fish and Wildlife Act of 1956,~~

11 ~~as amended, and the Fish and Wildlife Coordination Act, as~~  
12 ~~appropriate, to carry out a program in the United States of~~

13 ~~conserving, protecting, restoring, or propagating those~~  
14 ~~species and subspecies of fish and wildlife that he lists as~~

15 ~~endangered species pursuant to section 2 of this Act.~~  
16 ~~(b) In addition to the land acquisition authorities other-~~

17 ~~wise available to him, the appropriate Secretary is hereby~~  
18 ~~authorized to acquire by purchase, donation, or otherwise,~~

19 ~~lands or interests therein needed to carry out the purpose of~~  
20 ~~this Act relating to the conservation, protection, restoration,~~

21 ~~and propagation of those species or subspecies of fish and~~  
22 ~~wildlife and flora that he lists as endangered species pursu-~~

23 ~~ant to section 4 of this Act.~~  
24 ~~(c) Funds made available pursuant to the Land and~~

25 ~~Water Conservation Fund Act of 1965, as amended, may~~

1 be used for the purpose of acquiring lands, waters, or inter-  
 2 ests therein pursuant to this section that are needed for the  
 3 purpose of conserving, protecting, restoring, or propagating  
 4 those species or subspecies of fish and wildlife and flora that  
 5 are listed as endangered species pursuant to section 4 of this  
 6 Act.

7 (d) The appropriate Secretary shall review other pro-  
 8 grams administered by him and to the extent practicable  
 9 utilize such programs in furtherance of the purpose of this  
 10 Act. All other Federal departments and agencies shall, in  
 11 consultation with and with the assistance of the Secretary,  
 12 utilize, wherever practicable, their authorities in furtherance  
 13 of the purpose of this Act by carrying out programs for the  
 14 protection of endangered species of fish or wildlife or flora  
 15 and by taking such actions as may be necessary to insure  
 16 that actions authorized, funded, regulated, or administered by  
 17 them do not jeopardize the continued existence of endan-  
 18 gered species or result in destruction or modification of critical  
 19 habitat of such species.

20 (f) In carrying out the provisions of this Act, the Sec-  
 21 retary, through the Secretary of State, shall encourage  
 22 foreign countries to provide protection to species or sub-  
 23 species of fish or wildlife threatened with extinction, to  
 24 take measures to prevent any fish or wildlife from becoming  
 25 threatened with extinction, and he shall, through the Secre-

1 tary of State, encourage bilateral and multilateral agree-  
 2 ments with such countries for the conservation and propaga-  
 3 tion of fish and wildlife. The Secretary is authorized to  
 4 assign or otherwise make available any officer or employee  
 5 of his department for the purpose of cooperating with  
 6 foreign countries and international organizations in develop-  
 7 ing personnel resources and programs which promote con-  
 8 servation of fish or wildlife, including (1) educational train-  
 9 ing of United States and foreign personnel, here or abroad,  
 10 in the subjects of fish and wildlife management, research,  
 11 and law enforcement; and (2) rendering professional assist-  
 12 ance abroad in such matters. The Secretary is also author-  
 13 ized to conduct or cause to be conducted such law enforce-  
 14 ment investigations and research abroad as he deems neces-  
 15 sary to carry out the obligations imposed upon him by this  
 16 Act.

17 ~~COORDINATION WITH THE STATES~~

18 Sec. 6 (e) In carrying out the program authorized  
 19 by this Act, the appropriate Secretary shall cooperate to the  
 20 maximum extent practicable with the several States. Such  
 21 cooperation shall include consultation before the acquisition  
 22 of any land for the purpose of conserving, protecting, restor-  
 23 ing or propagating any endangered species.

24 (b) The Secretary may enter into agreements with the  
 25 States for the administration and management of any area

1 established for the conservation, protection, restoration,  
 2 or propagation of endangered species. Any revenues derived  
 3 from the administration of such areas under these agree-  
 4 ments shall be subject to the provisions of section 401 of  
 5 the Act of June 15, 1935 (49 Stat. 383), as amended (16  
 6 U.S.C. 715b).

7 (e) The Secretary may delegate to a State the authority  
 8 to regulate the taking by any person of endangered species or  
 9 subspecies of resident fish and wildlife when he determines  
 10 that such State maintains an adequate and active program  
 11 consistent with the policies and purposes of this Act to man-  
 12 age and protect such endangered species in accordance with  
 13 criteria issued by the Secretary.

14 (d) Any action taken by the Secretary under this sec-  
 15 tion shall be subject to his periodic and continual review at no  
 16 greater than annual intervals. Such review shall include the  
 17 consideration of comment received from interested persons:  
 18 (c) Nothing in this Act, or any amendment made by  
 19 this Act, shall be construed as suppressing or limiting the  
 20 power of any State to enact legislation more restrictive than  
 21 the provisions of this Act for the protection and conservation  
 22 of wildlife, including the regulation or prohibition of the  
 23 retail sale of specimens or of products processed or manu-  
 24 factured from the specimens of wildlife, whether such speci-  
 25 mens are alive or dead.

1 (f) The Secretary of the Interior shall promptly under-  
 2 take an investigation and study regarding the functions and  
 3 responsibilities which the States should have with respect  
 4 to the management and protection of endangered species of  
 5 fish and wildlife. The Secretary shall report the results of  
 6 the investigation and study to Congress within one year after  
 7 the date of the enactment of this Act, and such report may in-  
 8 clude such recommendations as the Secretary may have  
 9 regarding the extent to, and manner in, which the Federal  
 10 Government should assist the States in establishing and im-  
 11 plementing management and protection programs for en-  
 12 dangered species.

13 PROMINENT ADAMS

14 ~~Sec. 7. (a) Notwithstanding any other Act of~~  
 15 ~~Congress or regulation issued pursuant thereto, and except~~  
 16 ~~as hereinafter provided, any person who—~~

17 (A) imports into or exports from the United  
 18 States, receives, or causes to be so imported, received,  
 19 or exported; or

20 (B) takes or causes to be taken within the United  
 21 States, the territorial sea of the United States, Fed-  
 22 eral lands, or upon the high seas; or

23 (C) ships, carries, or receives by any means in  
 24 interstate commerce

25 any species or subspecies of fish or wildlife or fowl which

1 the Secretary has listed as an endangered species threatened  
 2 with extinction pursuant to section 4 of this Act, shall be  
 3 punished in accordance with the provisions of section 9 of  
 4 this Act.

5 (1) Whenever the Secretary pursuant to section 4 of  
 6 this Act, lists a species or subspecies as an endangered spe-  
 7 cies which is likely within the foreseeable future to become  
 8 threatened with extinction, he shall issue such regulations  
 9 as he deems necessary or advisable to provide for the con-  
 10 servation, protection, restoration, or propagation of such  
 11 species or subspecies, including regulations subjecting to  
 12 punishment in accordance with section 9 of this Act any  
 13 person who—

14 (1) imports into or exports from the United States,  
 15 receives, or causes to be so imported, received, or ex-  
 16 ported; or

17 (2) takes or causes to be taken within the United  
 18 States, the territorial sea of the United States, Federal  
 19 lands or upon the high seas; or

20 (3) ships, carries, or receives by any means in  
 21 interstate commerce—

22 any such species or subspecies of fish or wildlife or flora likely  
 23 within the foreseeable future to become threatened with  
 24 extinction.

25 (e) The Secretary shall allow taking of an endangered

1 species which is likely within the foreseeable future to be  
 2 come threatened only (1) when it can clearly be shown  
 3 that such taking will not damage the population, or (2)  
 4 in emergency cases involving human health and safety.

5 (1) For the purpose of facilitating enforcement of this  
 6 Act the Secretary may from time to time, by regulation, ex-  
 7 tend the protection of this section, to the extent he deems it  
 8 advisable, to any species or subspecies of fish or wildlife or  
 9 flora which is not listed as an endangered species, but which  
 10 so closely resembles in appearance, at that point in question,  
 11 a species or subspecies of fish or wildlife or flora which has  
 12 been listed as endangered, that substantial difficulty is posed  
 13 to enforcement personnel in attempting to differentiate be-  
 14 tween the endangered and nonendangered species of sub-  
 15 species of fish or wildlife or flora, and this difficulty poses  
 16 an additional threat to the endangered species or subspecies.  
 17

#### EXEMPTIONS

18 ~~SEC. 8. (e) The Secretary may permit, under such~~  
 19 ~~terms and conditions as he may prescribe, the importation,~~  
 20 ~~taking, or the transportation in interstate commerce of any~~  
 21 ~~species or subspecies of fish or wildlife or flora listed as an~~  
 22 ~~endangered species threatened with extinction for scientific~~  
 23 ~~purposes, and for the propagation of such fish and wildlife~~  
 24 ~~in captivity for preservation purposes, but only if he finds~~  
 25 ~~that such importation, taking, or transportation in interstate~~

1 commerce or projected use will not adversely affect the re-  
 2 generative capacity of such specimen or of such species or  
 3 subspecies in a significant portion of its range or habitat or  
 4 otherwise affect the survival of the wild population of such  
 5 species.

6 (1) In order to minimize undue economic hardship to  
 7 any person importing, exporting, taking, or transporting in  
 8 interstate commerce any species or subspecies of fish or  
 9 wildlife or flora which is listed as an endangered species  
 10 pursuant to section 4 of this Act under any contract entered  
 11 into prior to the date of original publication of such listing  
 12 in the Federal Register, the Secretary, upon such person  
 13 filing an application with him and upon filing such informa-  
 14 tion as the Secretary may require showing to his satisfaction  
 15 such hardship may permit such person to import, export  
 16 take, or transport such species or subspecies in such quantities  
 17 and for a period not to exceed one year, as he determines  
 18 to be appropriate.

19 ~~PENALTIES AND ENFORCEMENT~~

20 ~~Sec. 9. (a) (1) Any person who violates any provi-~~  
 21 ~~sion of this Act or any regulation or permit issued there-~~  
 22 ~~under, other than a person who commits a violation the~~  
 23 ~~penalty for which is prescribed by subsection (1) of this~~  
 24 ~~section, shall be assessed a civil penalty by the appropriate~~  
 25 ~~Secretary of not more than \$10,000 for each such violation.~~

1 No penalty shall be assessed unless such person is given notice  
 2 and opportunity for a hearing with respect to such violation.  
 3 Each violation shall be a separate offense. Any such civil  
 4 penalty may be compromised by the appropriate Secretary.  
 5 Upon any failure to pay the penalty assessed under this para-  
 6 graph the appropriate Secretary may request the Attorney  
 7 General to institute a civil action in a district court of the  
 8 United States for any district in which such person is found  
 9 or resides or transacts business to collect the penalty, and  
 10 such court shall have jurisdiction to hear and decide any such  
 11 action. In the case of Guam such actions may be brought in  
 12 the District Court of Guam; in the case of the Virgin Islands  
 13 such actions may be brought in the District Court of the  
 14 Virgin Islands; and in the case of American Samoa such  
 15 actions may be brought in the District Court of the United  
 16 States for the district of Hawaii and such courts shall have  
 17 jurisdiction of such actions. In hearing such action, the court  
 18 shall sustain the Secretary's action if such action is supported  
 19 by substantial evidence.

20 (2) Whenever any property is seized pursuant to sub-  
 21 section (e) of this section, the appropriate Secretary shall  
 22 move to dispose of the civil penalty proceedings pursuant to  
 23 paragraph (1) of this subsection as expeditiously as possible.  
 24 Upon the assessment and collection of a civil penalty pur-  
 25 suant to paragraph (1) of this subsection, any property so-

1 seized may be proceeded against in any court of competent  
 2 jurisdiction and forfeited fish or wildlife or flora so forfeited  
 3 shall be conveyed to the appropriate Secretary for disposi-  
 4 tion by him in such a manner as he deems appropriate. If  
 5 with respect to any such property so seized, no compromise  
 6 forfeiture has been achieved or no action is commenced to  
 7 obtain the forfeiture of such fish, wildlife, flora, property,  
 8 or item within thirty days following the completion of a civil  
 9 proceedings involving an assessment and collection of a civil  
 10 penalty, such property shall be immediately returned to the  
 11 owner or the consignee in accordance with regulations pre-  
 12 scribed by the Secretary.  
 13 (2) Proceedings for the assessment of civil penalties  
 14 pursuant to paragraph (1) of this subsection shall be con-  
 15 ducted in accordance with section 554 of title 5. The appro-  
 16 priate Secretary may issue subpoenas for the attendance and  
 17 testimony of witnesses and the production of relevant papers,  
 18 books, and documents, and administer oaths. Witnesses who  
 19 named shall be paid the same fees and mileage that are paid  
 20 witnesses in the courts of the United States. In case of com-  
 21 placency or refusal to obey a subpoena served upon any person  
 22 pursuant to this paragraph, the district court of the United  
 23 States for any district in which such person is found or resides  
 24 or transacts business, upon application by the United States  
 25 and after notice to such person, shall have jurisdiction to

1 issue an order requiring such person to appear and give testi-  
 2 mony before the appropriate Secretary or to appear and  
 3 produce documents before the Secretary, or both, and any  
 4 failure to obey such order of the court may be punished by  
 5 such court as a contempt thereof.  
 6 (b) Any person who knowingly violates any provision  
 7 of this Act, or any regulation or permit issued thereunder,  
 8 shall, upon conviction, be fined not more than \$20,000 or  
 9 imprisoned for not more than one year, or both, and any  
 10 Federal hunting or fishing licenses, permits, or stamps may  
 11 be revoked or withheld for a period of up to five years. Upon  
 12 conviction, (1) any fish or wildlife or flora seized shall be  
 13 forfeited to the Secretary for disposal by him in such man-  
 14 ner as he deems appropriate, and (2) any other property  
 15 seized pursuant to subsection (a) of this section may, in the  
 16 discretion of the court, commissioner, or magistrate, be for-  
 17 feited to the United States or otherwise disposed of. If no  
 18 conviction results from any such alleged violation, such prop-  
 19 erty so seized in connection therewith shall be immediately  
 20 returned to the owner or consignee in accordance with regu-  
 21 lations promulgated by the appropriate Secretary, unless the  
 22 Secretary, within thirty days following the final disposition  
 23 of the case involving such violations, commences proceedings  
 24 under subsection (a) of this section.  
 25 (c) (1) The provisions of sections 7 and 8 of this Act

1 and any regulations or permits issued pursuant thereto, or  
 2 pursuant to subsection (d) or (e) of this section, shall be  
 3 enforced by the appropriate Secretary, the Secretary of the  
 4 Treasury or the Secretary of the Department in which the  
 5 Coast Guard is operating or all such Secretaries. Each such  
 6 Secretary may utilize, by agreement, with or without reim-  
 7 bursement the personnel, services, and facilities of any other  
 8 Federal agency or any State agency.

9 (2) Any authorized agent of the Department of the  
 10 Interior, of Commerce, of Agriculture, or of the Treasury  
 11 may, with or without a warrant, arrest any person who  
 12 such agent has probable cause to believe is knowingly violat-  
 13 ing this Act, in his presence or view, or any regulation or  
 14 permit issued thereunder, the penalty for which is provided  
 15 under subsection (b) of this section. An agent who has  
 16 made an arrest of a person in connection with any such will-  
 17 ful violation may search such person at the time of his arrest  
 18 and seize any property taken, used, or possessed in connec-  
 19 tion with any such violation.

20 (3) Any authorized agent of the Departments of the  
 21 Interior, of Commerce, of Agriculture, or of the Treasury  
 22 shall have authority to search and seize with or without a  
 23 warrant as provided by the customs laws and by the law  
 24 relating to search and seizure. Any such officer or agent is  
 25 authorized to execute warrants to search for and seize any

1 property, including for the purpose of this section, any fish,  
 2 wildlife, furs, aircraft, boat, or other conveyance, weapon,  
 3 business records, shipping documents, or other items which  
 4 have been taken, used, or possessed in connection with the  
 5 violation of any section, regulation, or permit with respect  
 6 to which a civil or criminal penalty may be assessed, pur-  
 7 suant to subsection (a) or (b) of this section. Any property  
 8 seized pursuant to this section shall be held by any agent  
 9 authorized by the Secretary or the Secretary of the Treas-  
 10 ury, or by a United States marshal, pending disposition of  
 11 proceedings under subsection (a) or (b) of this section;  
 12 except that either Secretary may, in lieu of holding such  
 13 property, either (1) permit a bond or other satisfactory  
 14 surety to be posted, or (2) place the fish or wildlife or furs  
 15 in the custody of such person as he shall designate. Upon the  
 16 imposition of a civil or criminal penalty, or a forfeiture, the  
 17 costs to the Government of transfer, bond, and handling,  
 18 including the cost of investigations at a nondesignated port  
 19 of entry, shall be payable to the account of the Secretary.  
 20 The owner or consignee of any property so seized shall, as  
 21 soon as practicable following such seizure, be notified of the  
 22 fact in accordance with regulations established by the  
 23 Secretary.

24 (4) The Secretary may request the Attorney General  
 25 to bring appropriate action to prevent threatened violations

1 of this Act, or of any regulations or orders promulgated  
2 pursuant thereto.

3 (e) For the purpose of facilitating enforcement of  
4 this Act and reducing the costs thereof, the Secretary, with  
5 the approval of the Secretary of the Treasury, shall, after  
6 notice and an opportunity for a public hearing, from time  
7 to time designate, by regulation, any port or ports in the  
8 United States for the importation of fish and wildlife (other  
9 than shellfish and fishery products) or flora into the United  
10 States. The importation of such fish or wildlife or flora  
11 into any port in the United States, except those so design-  
12 ated, shall be prohibited after the effective date of such  
13 designations, except that the Secretary, under such terms  
14 and conditions as he may prescribe, may permit importation  
15 at nondesignated ports in the interest of the health or safety  
16 of the fish or wildlife. Such regulations may provide other  
17 exceptions to such prohibition if the Secretary, in his discre-  
18 tion, deems it appropriate and consistent with the purposes  
19 of this subsection.

20 (f) The Secretary is authorized to promulgate such regu-  
21 lations as may be appropriate to carry out the purposes of  
22 this Act, and the Secretaries of the Treasury and the De-  
23 partment in which the Coast Guard is operating are  
24 authorized to promulgate such regulations as may be appro-  
25 priate to the exercise of responsibilities under subsection  
26 (e) (1) of this section.

1 (g) (1) Any person who engages to any extent in busi-  
2 ness as an importer of fish and wildlife must register with  
3 the Secretary of the Treasury his name and the address of  
4 each place of business at which, and all trade names under  
5 which, he conducts such business.

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

9 (A) keep such records as will fully and correctly  
10 disclose each importation of fish and wildlife made by  
11 him and the subsequent disposition made by him with  
12 respect to such fish and wildlife; and

13 (B) at all reasonable times upon notice by a duly  
14 authorized representative of the Secretary, afford such  
15 representative access to his places of business and oppor-  
16 tunity to examine his inventory of imported fish and  
17 wildlife and the records required to be kept under sub-  
18 paragraph (A) of this paragraph, and to copy such  
19 records.

20 (3) The Secretary of the Treasury shall prescribe such  
21 regulations as are necessary and appropriate to carry out  
22 the purposes of this subsection.

23 INTERNATIONAL AND INTERGOVERNMENTAL COOPERATION

24 Sec. 10. (a) (1) In carrying out the provisions of  
25 this Act, the Secretary, through the Secretary of State,  
26 shall encourage foreign countries to provide protection to

1 species or subspecies of fish and wildlife or flora threatened  
 2 with extinction, to take measures to prevent any fish or  
 3 wildlife from becoming threatened with extinction, and shall  
 4 cooperate with such countries in providing technical assist-  
 5 ance in developing and carrying out programs to provide such  
 6 protection, and shall, through the Secretary of State, encour-  
 7 age bilateral and multilateral agreements with such countries  
 8 for the protection, conservation, or propagation of fish and  
 9 wildlife or flora. The Secretary shall also encourage persons,  
 10 taking directly or indirectly fish or wildlife or flora in for-  
 11 eign countries or on the high seas for importation into the  
 12 United States for commercial or other purposes, to develop  
 13 and carry out with such assistance as he may provide under  
 14 any authority available to him, conservation practices do-  
 15 signed to enhance such fish or wildlife or flora and their  
 16 habitat or range. The Secretary of State, in consultation with  
 17 the Secretary, shall take appropriate measures to encourage  
 18 the development of adequate measures, including, if appro-  
 19 priate, international agreements, to prevent such fish or wild-  
 20 life or flora from becoming threatened with extinction.  
 21 (2) To assure the worldwide conservation of endan-  
 22 gered species and to avoid unnecessary harm to affected  
 23 United States industries, the Secretary, through the Secre-  
 24 tary of State, shall seek the convening of an international  
 25 ministerial meeting on fish and wildlife prior to November 1,

1 1973, and included in the business of that meeting shall be  
 2 the signing of a binding international convention on the  
 3 conservation of endangered species.  
 4 (1) The Secretary of Agriculture and the Secretary  
 5 shall provide for appropriate coordination of the adminis-  
 6 tration of this Act and amendments made by this Act, with  
 7 the administration of the animal quarantine laws (19 U.S.C.  
 8 1306; 21 U.S.C. 101-105, 111-135b, and 612-614).  
 9 Nothing in this Act, or any amendment made by this Act,  
 10 shall be construed as superseding or limiting in any manner  
 11 the functions of the Secretary of Agriculture under any other  
 12 law relating to prohibited or restricted importations of  
 13 animals and other articles and no proceeding or determina-  
 14 tion under this Act shall preclude any proceeding or be con-  
 15 sidered determinative of any issue of fact or law in any pro-  
 16 ceeding under any Act administered by the Secretary of  
 17 Agriculture.  
 18 (c) Whenever the Secretary determines pursuant to  
 19 this Act or any other authority vested in him, that a species  
 20 of fish or wildlife is an endangered species, and publishes  
 21 regulations pertaining to the protection, control, manage-  
 22 ment or enhancement of such endangered species, the Secre-  
 23 tary of Agriculture may use all authorities available to him  
 24 with respect to research, investigations, conservation, devel-  
 25 opment, protection, management, and enhancement of fish

1 and wildlife, including but not limited to, the conservation  
 2 operations program, watershed protection and flood preven-  
 3 tion programs, rural environmental assistance program, Great  
 4 Plains conservation program, resource conservation and  
 5 development program, forestry programs, and water bank-  
 6 program, in the protection, control, management, or en-  
 7 hancement of such endangered species. Recognizing the na-  
 8 tional and international interest in the protection and en-  
 9 hancement of such endangered species, the Secretary of  
 10 Agriculture is authorized, notwithstanding the provisions of  
 11 any other law, to bear the full cost, or any lesser amount that  
 12 he, in consultation with the Secretary, may determine desir-  
 13 able to accomplish the objectives of the Act, of the cost of  
 14 installing any practice, measure, work of improvement,  
 15 facility, or other developmental, protective, or management  
 16 systems on private land, the primary purpose of which is  
 17 for the purpose of enabling the landowner to comply with the  
 18 regulations, or other recommendations, of the Secretary  
 19 pertaining to the protection, control, management, or en-  
 20 hancement of such endangered species. The Secretary of  
 21 Agriculture, in carrying out the purposes of this section, shall  
 22 utilize his authorities to conduct research and investigations  
 23 into vegetative and structural methods and other methods  
 24 and practices, measures, works of improvement, and facilities  
 25 most appropriate or effective in the protection, control, man-

1 agement, or enhancement of such endangered species. If  
 2 determined desirable, the Secretary and the Secretary of  
 3 Agriculture shall be authorized to jointly carry out research,  
 4 surveys, and investigations. The Secretary is authorized to  
 5 transfer to the Secretary of Agriculture such funds as may  
 6 be necessary to carry out the purposes of this subsection.  
 7 (d) Nothing in this Act, or any amendment made by  
 8 this Act, shall be construed as supplanting or limiting in  
 9 any manner the functions and responsibilities of the Secre-  
 10 tary of the Treasury under the Tariff Act of 1930, as  
 11 amended, including, without limitation, section 527 of such  
 12 Act relating to the importation of wildlife taken, killed,  
 13 possessed, or exported to the United States in violation of  
 14 the laws or regulations of a foreign country.  
 15 ~~CONFORMING AMENDMENTS~~  
 16 Sec. 11. (a) Subsection 4 (e) of the Act of October  
 17 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd-  
 18 (e)), is further amended by revising the second sentence  
 19 thereof to read as follows: "With the exception of endan-  
 20 gered species listed by the secretary pursuant to section 4  
 21 of the Endangered Species Conservation Act of 1973,  
 22 nothing in this Act shall be construed to authorize the Secre-  
 23 tary to control or regulate hunting or fishing of resident fish  
 24 and wildlife on lands not within the system."  
 25 (4) Subsection 10 (a) of the Migratory Bird Conser-

1 ration Act (45 Stat. 1924), as amended (16 U.S.C. 715  
 2 (e)); is further amended by inserting "or likely within  
 3 the foreseeable future to become threatened with" between  
 4 the words "with" and "extinction".  
 5 (e) Subsection 401(e) of the Act of June 15, 1935  
 6 (49 Stat. 389), as amended (16 U.S.C. 715(e)), is  
 7 further amended by inserting "or likely within the foresee-  
 8 able future to become threatened with" between the words  
 9 "with" and "extinction" in the last sentence thereof.  
 10 (d) Subsection 6(e)(1) of the Land and Water Con-  
 11 servation Fund Act of 1965 (78 Stat. 902), as amended  
 12 (16 U.S.C. 4601-0(e)(1)), is further amended by insert-  
 13 ing "or likely within the foreseeable future to become  
 14 threatened with" between the words "with" and "extinc-  
 15 tion".

REPEALS

16  
 17 Sec. 12. (a) Sections 1 through 3 of the Act of  
 18 October 15, 1966 (80 Stat. 926, 927), as amended (16  
 19 U.S.C. 668aa-668ee), are hereby repealed in their entirety.  
 20 (b) Sections 1 through 6 of the Act of December 5,  
 21 1969 (83 Stat. 275-279; 16 U.S.C. 668ee-1 through  
 22 668ee-6) are hereby repealed in their entirety.  
 23 That this Act may be cited as the "Endangered Species Act  
 24 of 1973".

## DECLARATION OF POLICY

1  
 2 SEC. 2. (a) FINDINGS.—The Congress finds and de-  
 3 clares that—  
 4 (1) various species of fish, wildlife, and plants  
 5 in the United States have been rendered extinct  
 6 as a consequence of economic growth and develop-  
 7 ment untempered by adequate concern and conservation;  
 8 (2) other species of fish, wildlife and plants have  
 9 been so depleted in numbers that they are in danger of or  
 10 threatened with extinction;  
 11 (3) these species of fish, wildlife and plants are of  
 12 educational, historical, recreational, and scientific value  
 13 to the Nation and its people;  
 14 (4) the United States has pledged itself as a sov-  
 15 ereign state in the international community to conserve  
 16 and protect to the extent practicable the various species  
 17 of fish or wildlife and plants facing extinction, pursuant  
 18 to—  
 19 (A) migratory bird treaties with Canada and  
 20 Mexico;  
 21 (B) the Migratory and Endangered Bird  
 22 Treaty with Japan;  
 23 (C) the Convention on Nature Protection and  
 24 Wildlife Preservation in the Western Hemisphere;

1 (D) the International Convention for the  
2 Northwest Atlantic Fisheries;

3 (E) the International Convention for the High  
4 Seas Fisheries of the North Pacific Ocean;

5 (F) the Convention on International Trade in  
6 Endangered Species of Wild Fauna and Flora; and

7 (G) other international agreements.

8 (5) encouraging the States, through Federal finan-  
9 cial assistance and a system of incentives, to develop  
10 and maintain conservation, protection, restoration, and  
11 propagation programs which meet national and inter-  
12 national standards is a key to meeting the Nation's inter-  
13 national commitments and to better safeguarding, for  
14 the benefit of all citizens, the Nation's heritage in fish  
15 and wildlife.

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

18 (1) provide an effective means to conserve,  
19 protect, and restore the ecosystems upon which en-  
20 dangered and threatened species of fish or wildlife  
21 depend;

22 (2) provide a viable program for the conserva-  
23 tion, protection, restoration, and propagation of en-  
24 dangered and threatened species;

25 (3) take all appropriate steps to implement the

1 Nation's international commitments with respect to en-  
2 dangered and threatened fish or wildlife; and

3 (4) insure that all departments, agencies, and in-  
4 strumentalities of the United States seek, within the scope  
5 of their authority and administrative jurisdiction, to pro-  
6 tect endangered and threatened species.

#### 7 DEFINITIONS

8 SEC. 3. As used in this Act—

9 (1) "Convention" means the Convention on Inter-  
10 national Trade in Endangered Species of Wild Fauna  
11 and Flora, signed on March 3, 1973, and the appendices  
12 thereto.

13 (2) "Endangered species" means any species of  
14 fish or wildlife which is in danger of extinction through-  
15 out all or a significant portion of its range.

16 (3) "Fish or wildlife" means any living member of  
17 the animal kingdom and the remains of any dead member  
18 of the animal kingdom, including, but not limited to, any  
19 mammal, fish, bird, amphibian, reptile, mollusk, crusta-  
20 cean, arthropod or other invertebrate, or any part, egg,  
21 or offspring of any such member, or any product pro-  
22 duced from any part or parts of the remains of any such  
23 member.

24 (4) "Foreign commerce" includes any transaction—

1 (A) between persons within one foreign  
 2 country;  
 3 (B) between persons in two or more foreign  
 4 countries;  
 5 (C) between a person within the United States  
 6 and a person in a foreign country; or  
 7 (D) between persons within the United States,  
 8 where the fish or wildlife involved are moving in any  
 9 country or countries outside the United States.  
 10 (5) "Import" means to land on, bring into, or in-  
 11 troduce into, or attempt to land on, bring into, or in-  
 12 troduce into, any place subject to the jurisdiction of the  
 13 United States, whether or not such landing, bringing,  
 14 or introduction constitutes an importation within the  
 15 meaning of the customs laws of the United States.  
 16 (6) "Person" means an individual, corporation,  
 17 partnership, trust, association, or any other private en-  
 18 tity, or any officer, employee, agent, department, or  
 19 instrumentality of the Federal Government, of any State  
 20 or political subdivision thereof, or of any foreign govern-  
 21 ment.  
 22 (7) "Plant" means any member of the plant king-  
 23 dom, including seeds, roots, or other parts of any such  
 24 member.  
 25 (8) "Secretary" means, except as otherwise pro-

1 vided, the Secretary of the Interior or the Secretary of  
 2 Commerce in the same manner in which program re-  
 3 sponsibilities are vested under Reorganization Plan  
 4 Numbered 4 of 1970. With respect to enforcement of the  
 5 provisions of this Act and of the Convention, which  
 6 pertain to the importation of terrestrial plants, the term  
 7 means the Secretary of Agriculture.  
 8 (9) "Species" includes any subspecies or other  
 9 group of fish or wildlife of the same species or lesser  
 10 taxa in common spatial arrangement that interbreed  
 11 when mature.  
 12 (10) "State" means any State, the District of  
 13 Columbia, the Commonwealth of Puerto Rico, American  
 14 Samoa, the Virgin Islands, Guam, and the Trust Terri-  
 15 tory of the Pacific Islands.  
 16 (11) "State agency" means the State agency, de-  
 17 partment, board, commission, or other governmental en-  
 18 tity which is responsible for the management and con-  
 19 servation of fish and wildlife resources within a State.  
 20 (12) "Take" means to harass, pursue, hunt, shoot,  
 21 wound, kill, trap, capture, or collect, or to attempt to  
 22 engage in any such conduct.  
 23 (13) "Threatened species" means any species of  
 24 fish or wildlife which is likely to become an endangered

1 species within the foreseeable future throughout all or  
2 a significant portion of its range.

3 (14) "United States", when used in a geographical  
4 sense, includes all States.

5 DETERMINATION OF ENDANGERED OR THREATENED  
6 SPECIES

7 SEC. 4. (a) GENERAL.—The Secretary shall by regu-  
8 lation determine whether any fish or wildlife is an endan-  
9 gered or threatened species as a result of any of the follow-  
10 ing factors:

11 (1) the present or threatened destruction, modi-  
12 fication, or curtailment of its habitat or range;

13 (2) overutilization for commercial, sporting, sci-  
14 entific, or educational purposes;

15 (3) disease or predation;

16 (4) the inadequacy of existing regulatory mecha-  
17 nisms; or

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

20 (b) BASIS FOR DETERMINATIONS.—(1) The determi-  
21 nations required by this section shall be made on the basis  
22 of the best scientific and commercial data available to the  
23 Secretary, including any recommendations that have been  
24 made by the Advisory Committee established under subsection  
25 (d) of this section and after consultation, as appropriate,

1 with all interested persons and organizations, including  
2 affected or knowledgeable Federal, State, and foreign gov-  
3 ernment agencies. In any case in which such determinations  
4 involve an indigenous species, the Secretary shall consult with  
5 and consider the recommendations of each State involved. In  
6 any case in which determinations involve a species which is  
7 normally found on the high seas, in lakes, or other waters  
8 off the coast of a State of which are customarily harvested by  
9 citizens of such a State, the Secretary shall consult with and  
10 consider the recommendations of each State involved. In any  
11 case in which such determinations involve a species which is  
12 normally found in a foreign country or countries or which is  
13 harvested from the ocean by citizens of such country or  
14 countries, the Secretary shall (where practicable) with the  
15 assistance of the Secretary of State, consult with and consider  
16 the recommendations of such country or countries.

17 (2) In determining whether or not any fish or wildlife  
18 is an endangered or a threatened species, the Secretary shall  
19 take into consideration those efforts, if any, being made by  
20 any nation or any political subdivision of any nation to pro-  
21 tect within any area under its jurisdiction such fish or wildlife,  
22 whether by predator control, protection of habitat and food  
23 supply, or other conservation or management practices.

24 (3) Fish or wildlife which have been designated as re-  
25 quiring protection from unrestricted commerce by any for-

1 eign country, or pursuant to any international agreement,  
 2 shall receive special and full consideration by the Secretary  
 3 to determine whether each is an endangered or a threatened  
 4 species.

5 (c) LISTS.—(1) The Secretary shall publish in the Fed-  
 6 eral Register a list of all fish or wildlife determined by him  
 7 by regulation to be endangered species and a list of all fish or  
 8 wildlife determined by him by regulation to be threatened  
 9 species. Such lists may be amended, modified, or revised  
 10 periodically by regulation. Each list shall refer to each species  
 11 of fish or wildlife named therein by scientific name and com-  
 12 mon name or names and shall specify the portion of its range  
 13 over which it is endangered or threatened.

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

22 (3) Any list of species of fish or wildlife determined to  
 23 be threatened with extinction, by the Secretary of the In-  
 24 terior pursuant to the Endangered Species Conservation Act  
 25 of 1969, which is in effect the day before the date of

1 enactment of this Act shall be republished to conform to  
 2 the appropriate classifications under this Act. Pending  
 3 reclassification as endangered species or threatened species  
 4 and republication, any species listed pursuant to the Act of  
 5 1969 shall be deemed an endangered species within the mean-  
 6 ing of this Act. Such reclassification and republication shall  
 7 not require a public hearing or comment under section 553  
 8 of title 5, United States Code.

9 (d) ADVISORY COMMITTEE.—(1) The Secretary shall  
 10 establish an Advisory Committee on Endangered and Threat-  
 11 ened Species to consult with, advise, and make recommenda-  
 12 tions to him and to the States. The Advisory Committee  
 13 shall consist of not more than eleven members including a  
 14 Chairman who shall be appointed by the Secretary from lists  
 15 of qualified individuals submitted by State fish and wildlife  
 16 agency administrators, universities, nongovernmental organi-  
 17 zations concerned with conservation, and scientific societies.  
 18 Five of the members shall be regularly employed by State gov-  
 19 ernments or political subdivisions thereof. The terms of  
 20 office shall be so arranged by the Secretary that each year at  
 21 least three new members shall be appointed to fill vacancies  
 22 caused by the expiration of terms of office.  
 23 (2) The Advisory Committee shall periodically, but not  
 24 less than once each year, make recommendations to the Sec-  
 25 retary with respect to removal from, addition to, or reclassi-

1 fection within the lists maintained pursuant to subsection (a)  
 2 of this section, and may, with the approval of the Secretary,  
 3 perform other functions in furtherance of the purposes of this  
 4 Act. A member of the Advisory Committee who is not other-  
 5 wise a Government employee may, in the discretion of the  
 6 Secretary, receive not more than \$150 per diem when en-  
 7 gaged in the actual performance of his duties. Each member  
 8 may receive reimbursement for travel, subsistence, and other  
 9 necessary expenses incurred in the performance of his duties.  
 10 (e) PROTECTIVE REGULATIONS.—Whenever the Sec-  
 11 retary lists a species of fish or wildlife as a threatened  
 12 species, pursuant to subsection (a) of this section, he  
 13 shall issue such regulations as he deems necessary and advis-  
 14 able to provide for the conservation, protection, restoration, or  
 15 propagation of such species. With respect to any en-  
 16 dangered or threatened species, the Secretary may by  
 17 regulation prohibit any act prohibited with respect to an  
 18 endangered species under section 10(a) of this Act.  
 19 LAND ACQUISITION  
 20 SEC. 5. The Secretary shall establish and implement a  
 21 program to conserve, protect, restore, and propagate fish or  
 22 wildlife which are listed as endangered or threatened species  
 23 pursuant to section 4 of this Act. To carry out such pro-  
 24 grams, the Secretary—  
 25 (a) shall utilize as appropriate the land acquisition

1 and other authorities conferred upon him under the  
 2 Migratory Bird Conservation Act, the Fish and Wildlife  
 3 Act of 1956, and the Fish and Wildlife Coordination  
 4 Act;  
 5 (b) may acquire by purchase, donation, or other-  
 6 wise any lands, waters, or interests therein necessary for  
 7 the purpose of conserving, protecting, restoring, or prop-  
 8 agating any endangered or threatened species. Such au-  
 9 thority shall be in addition to any other land acquisition  
 10 authority vested in him; and  
 11 (c) may use funds made available under the Land  
 12 and Water Conservation Fund Act of 1965 or under  
 13 this Act to acquire such lands, waters, or interests  
 14 therein.  
 15 COOPERATION WITH THE STATES  
 16 SEC. 6. (a) GENERAL.—In carrying out the pro-  
 17 gram authorized by this Act, the Secretary shall cooperate  
 18 to the maximum extent practicable with the States. In addi-  
 19 tion to all other obligations, the Secretary shall consult with  
 20 the affected State before the acquisition of any lands, waters,  
 21 or interests therein for the purpose of conserving, protecting,  
 22 restoring, or propagating any endangered or threatened  
 23 species.  
 24 (b) MANAGEMENT AGREEMENTS.—The Secretary  
 25 may enter into an agreement or agreements with any State

1 for the administration and management of any area estab-  
 2 lished for the conservation, protection, restoration, or propo-  
 3 gation of an endangered or a threatened species. Any  
 4 revenues derived from the administration of such areas under  
 5 such agreements shall be subject to section 401 of the Act  
 6 of June 15, 1935 (16 U.S.C. 715s).

7 (c) FINANCIAL ASSISTANCE.—The Secretary is au-  
 8 thorized to enter into a cooperative agreement in accordance  
 9 with this subsection to provide financial assistance to any  
 10 State which establishes and maintains an adequate and  
 11 active program for the management, conservation, protection,  
 12 and restoration of endangered and threatened species. Before  
 13 the Secretary may enter into or renew such a cooperative  
 14 agreement to provide financial assistance to a State, he shall  
 15 make, justify, and publish in the Federal Register a finding  
 16 that such agreement would further the policy of this Act and  
 17 that such State has a program under which—  
 18 (1) the State agency has authority and administra-  
 19 tive jurisdiction to manage and protect any species of  
 20 fish or wildlife which is determined by such agency or  
 21 the Secretary to be endangered or threatened;  
 22 (2) the State has established a State plan, including  
 23 a management program under the State agency, for all  
 24 species of resident fish or wildlife which are deemed by  
 25 the Secretary to be endangered or threatened, and has

1 furnished a copy of such plan and program together with  
 2 all pertinent details, information, and data requested to  
 3 the Secretary;

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

6 (A) will issue protective regulations;

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

9 (C) will maintain investigation, enforcement,  
 10 and public education programs,  
 11 which are adequate, in the Secretary's judgment, for the  
 12 conservation, protection, restoration, and propagation of  
 13 species of fish or wildlife facing extinction;

14 (4) the State agency is authorized and plans to  
 15 conduct studies to determine the status and require-  
 16 ments for survival of species of resident fish or wildlife  
 17 and agrees to transmit a copy of the findings of such  
 18 studies to the Secretary;

19 (5) the State agency is authorized and plans to  
 20 establish programs, including the acquisition of lands,  
 21 waters, or interests therein, for the conservation, protec-  
 22 tion, restoration, and propagation of endangered and  
 23 threatened species; and

24 (6) provision is made for public participation in

1 *designating species of resident fish or wildlife as en-*  
 2 *dangered or threatened.*

3 (d) ALLOCATION OF FUNDS.—(1) Funds appropriated  
 4 for financial assistance pursuant to subsection (c) of this sec-  
 5 tion shall be available to the Secretary for allocation to the  
 6 States under cooperative agreements. The purposes for which  
 7 such funds may be used include, but are not limited to, re-  
 8 search, censusing, law enforcement, and habitat acquisition  
 9 or improvement. The Secretary shall allocate appropriated  
 10 funds to such States upon the basis of—

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

13 (B) the national significance of a species found to be  
 14 endangered or threatened within a State; and

15 (C) the potential for preventing extinction of a  
 16 species or for restoring a species to nondenigrated or  
 17 nonthreatened status.

18 Funds allocated to a State but unexpended or unobligated at  
 19 the close of the fiscal year remain available for expenditure  
 20 by such State until the close of the succeeding fiscal year.

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

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

25 (B) the benefits that are expected to be derived

1 in connection with preservation and restoration of en-  
 2 dangered or threatened species;

3 (C) the estimated cost of these actions; and

4 (D) the share of such costs to be borne by the  
 5 Federal Government and by the States, except that—  
 6 (i) the Federal share of such program costs  
 7 shall not exceed 50 per centum of the estimated  
 8 program costs stated in the agreement; and

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

15 The Secretary may, in his discretion, and under such  
 16 rules and regulations as he may prescribe, advance funds  
 17 to the State for financing the United States pro rata  
 18 share agreed upon in the cooperative agreement.

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

22 (4) For the purposes of this section, there is authorized  
 23 to be appropriated not to exceed \$10,000,000.

24 (e) PERIODIC REVIEW.—The finding made under sub-  
 25 section (c) of this section and any action taken by the

1 Secretary under this section shall be subject to his periodic  
 2 review, including the consideration of comment from inter-  
 3 ested persons, at no greater than annual intervals. Upon  
 4 ninety days' notice in writing to the affected State, the Sec-  
 5 retary may terminate in his discretion any cooperative agree-  
 6 ment entered into under this section.

7 (f) STATE ACTION PERMITTED.—Nothing in this Act  
 8 shall be construed as superseding or limiting the power of any  
 9 State or political subdivision thereof to enact legislation or  
 10 regulations more restrictive than or consistent with the pro-  
 11 visions of this Act with respect to an endangered or a threat-  
 12 ened species: Provided, That any State law or regulation of  
 13 the import or export of or the interstate or foreign commerce  
 14 in an endangered species listed pursuant to section 4 of this  
 15 Act is void to the extent that it may effectively permit what is  
 16 prohibited by this Act or its implementing regulations, or  
 17 prohibit what is authorized pursuant to an exemption or  
 18 permit provided for in this Act or its implementing regula-  
 19 tions. This Act shall not otherwise be construed to void any  
 20 State law or regulation which is intended to conserve and  
 21 manage migratory, resident, or introduced fish or wildlife,  
 22 or to permit or prohibit sale of such fish or wildlife.

#### 23 INTERAGENCY COOPERATION

24 SEC. 7. The Secretary shall review all programs ad-  
 25 ministered by him and utilize such programs in furtherance of

1 the policy of this Act. All other departments, agencies, and  
 2 instrumentalities of the Federal Government shall, in con-  
 3 sultation with and with the assistance of the Secretary—

4 (a) carry out such programs as are practicable for  
 5 the protection of species listed, pursuant to section 4 of  
 6 this Act, as endangered or threatened;

7 (b) take such action as is necessary to insure that  
 8 actions authorized, funded, or carried out by them do not  
 9 jeopardize the continued existence of any endangered  
 10 or threatened species, or result in the destruction or  
 11 modification of any habitat of such species which is  
 12 determined by the Secretary, after consultation to the  
 13 extent appropriate and necessary with affected States,  
 14 to be a critical habitat of such species.

#### 15 INTERNATIONAL COOPERATION

16 SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstra-  
 17 tion of the commitment of the United States to the world-  
 18 wide protection of endangered and threatened species, the  
 19 President may, subject to the provisions of section 1415 of  
 20 the Supplemental Appropriation Act, 1953 (31 U.S.C.  
 21 724), use foreign currencies accruing to the United States  
 22 Government under the Agricultural Trade Development and  
 23 Assistance Act of 1954 or any other law to provide to any  
 24 foreign country (with its consent) assistance in the develop-  
 25 ment and management of programs in that country which the

1 Secretary determines to be necessary or useful for the conser-  
 2 vation, protection, restoration, or propagation of any endan-  
 3 gered or threatened species listed by the Secretary pursuant  
 4 to section 4 of this Act: Provided, That no funds other than  
 5 foreign currencies available for expenditure only within such  
 6 foreign country shall be used pursuant to this section. The  
 7 President shall provide assistance (which includes, but is  
 8 not limited to, the acquisition, by lease or otherwise, of lands,  
 9 waters, or interests therein) to foreign countries under this  
 10 section upon such terms and conditions as he deems  
 11 appropriate.

12 (b) ENCOURAGEMENT.—In order to carry out further  
 13 the provisions of this Act, the Secretary, with the assistance  
 14 of the Secretary of State, shall encourage—

15 (1) foreign countries to provide for the protection,  
 16 conservation, restoration, or propagation of fish or wild-  
 17 life, including endangered and threatened species listed  
 18 pursuant to section 4 of this Act;

19 (2) the entering into of bilateral or multilateral  
 20 agreements for foreign countries to provide for such  
 21 protection, conservation, restoration, or propagation;  
 22 and

23 (3) foreign persons, who directly or indirectly take  
 24 fish or wildlife in foreign countries or on the high sea  
 25 for importation into the United States for commercial

1 or other purposes, to develop and carry out, with such  
 2 assistance as he may provide, conservation practices  
 3 designed to enhance such fish, wildlife and plants and their  
 4 habitat.

5 (c) PERSONNEL.—After consultation with the Secretary  
 6 of State, the Secretary may—

7 (1) assign or otherwise make available any officer  
 8 or employee of his department for the purpose of co-  
 9 operating with foreign countries and international orga-  
 10 nizations in developing personnel resources and programs  
 11 which promote the protection, conservation, restoration,  
 12 or propagation of fish or wildlife; and

13 (2) conduct or provide financial assistance for the  
 14 educational training of foreign personnel, in this country  
 15 or abroad, in fish, wildlife or plant management, re-  
 16 search, and law enforcement, and to render professional  
 17 assistance abroad in such matters.

18 (d) INVESTIGATIONS.—After consultation with the Sec-  
 19 retary of State and the Secretary of the Treasury, as appro-  
 20 priate, the Secretary may conduct or cause to be conducted  
 21 such law enforcement investigations and research abroad as  
 22 he deems necessary to carry out the purposes of this Act.

23 (e) CONVENTION IMPLEMENTATION.—The President  
 24 is authorized and directed to designate appropriate agencies  
 25 to act as the Management Authority or Authorities and the  
 26 Scientific Authority or Authorities pursuant to the Conven-

1 tion. The agencies so designated shall thereafter be author-  
 2 ized to do all things assigned to them under the Convention,  
 3 including the issuance of permits and certificates. The agency  
 4 designated by the President to communicate with other parties  
 5 to the Convention and with the Secretariat shall also be em-  
 6 powered, in consultation with the State Department, to act  
 7 on behalf of and represent the United States in all regards as  
 8 required by the Convention.

9 REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

10 SEC. 9. (a) REGULATIONS.—The Secretary shall pub-  
 11 lish any regulations proposed under this Act in the Federal  
 12 Register at least sixty days prior to the time when such  
 13 regulations shall become final, except that in case of an  
 14 emergency the Secretary may publish such regulations not  
 15 less than thirty days prior to the time when such regulations  
 16 shall become final if at the same time he publishes in the Fed-  
 17 eral Register detailed reasons why emergency action is nec-  
 18 essary. The Secretary shall also publish in the Federal Reg-  
 19 ister a notice of all petitions received pursuant to this Act  
 20 and, if such petition is denied, his reasons therefor. Such  
 21 notice shall identify the purpose of the petition and include  
 22 a statement of the availability of any data submitted in sup-  
 23 port of such petition. If any person adversely affected by a  
 24 proposed regulation files objections and requests a public  
 25 hearing within forty-five days of the date of publication

1 of the proposed regulation, the Secretary shall grant such  
 2 request. If such public hearing is held, final regulations shall  
 3 not be promulgated by the Secretary until after the conclu-  
 4 sion of such hearing. All public hearings authorized by this  
 5 subsection shall consist of the oral and written presentation  
 6 of data or arguments in accordance with such conditions or  
 7 limitations as the Secretary may make applicable thereto.  
 8 Proposed and final regulations issued under this Act shall  
 9 set forth findings of fact on which the regulations are based  
 10 and shall state the relationship of such findings to the regu-  
 11 lations issued.

12 (b) PROCEDURE.—Except as expressly modified by this  
 13 section, the provisions of the Administrative Procedure Act  
 14 (5 U.S.C. 551 et seq.) shall apply to proceedings conducted  
 15 by the Secretary under this Act: Provided, That the provi-  
 16 sions of this section shall not apply to the extent necessary to  
 17 permit emergency action by the Secretary. Notice of and  
 18 reasons for such action shall be published prior to such  
 19 action in the Federal Register.

20 (c) JUDICIAL REVIEW.—(1) Any judicial review of  
 21 final regulations promulgated under this Act and final ac-  
 22 tions under section 5(c) of this Act shall be in accordance  
 23 with sections 701-706 of title 5, United States Code, except  
 24 that—  
 25 (A) with respect to regulations promulgated under

1 section 4 or 6 of this Act, the findings of the Secre-  
 2 tary as to the facts shall be sustained if based upon  
 3 substantial evidence on the record considered as a whole;  
 4 and  
 5 (B) with respect to relief pending review, no stay  
 6 of an action may be granted unless the reviewing court  
 7 determines that the party seeking such stay—  
 8 (i) is likely to prevail on the merits in the re-  
 9 view proceeding, and  
 10 (ii) will suffer irreparable harm pending such  
 11 proceeding.

12 (2) If the party seeking judicial review applies to the  
 13 court for leave to adduce additional evidence, and shows to  
 14 the satisfaction of the court either that—  
 15 (A) the information is material and was not avail-  
 16 able at the time of the proceeding before the Secretary;  
 17 or  
 18 (B) failure to include such evidence in the proceed-  
 19 ing was an arbitrary or capricious act of the Secretary,  
 20 the court may order such additional evidence (and evidence  
 21 in rebuttal thereof) to be taken before the Secretary, and  
 22 to be adduced upon the hearing, in such manner and upon  
 23 such terms and conditions as the court may deem proper.

24 The Secretary may modify his findings as to the facts,  
 25 or make new findings, by reason of the additional evidence

1 so taken, and he shall file with the court such modified or  
 2 new findings and his recommendation, if any, for the modifi-  
 3 cation or setting aside of his original order.

4 (d) AUDIT.—(1) Each recipient of Federal assistance  
 5 under this Act, pursuant to grants, subgrants, contracts, sub-  
 6 contracts, loans, or other arrangements, entered into other  
 7 than by formal advertising, and which are otherwise au-  
 8 thorized by this Act, shall keep such records as the Secretary  
 9 shall prescribe, including records which fully disclose the  
 10 amount and disposition by such recipient of the proceeds of  
 11 such assistance, the total cost of the project or undertaking  
 12 in connection with which such assistance is given or used, the  
 13 amount of that portion of the cost of the project or under-  
 14 taking supplied by other sources, and such other records as  
 15 will facilitate an effective audit.

16 (2) The Secretary and the Comptroller General of the  
 17 United States, or any of their duly authorized representa-  
 18 tives, shall, until the expiration of three years after comple-  
 19 tion of the project or undertaking referred to in subsection  
 20 (a) of this section, have access for the purpose of audit and  
 21 examination to any books, documents, papers, and records  
 22 of such recipients which in the opinion of the Secretary or  
 23 the Comptroller General may be related or pertinent to the  
 24 grants, subgrants, contracts, subcontracts, loans or other ar-  
 25 rangements referred to in subsection (a).

UNLAWFUL CONDUCT

1  
2     *SEC. 10. (a) PROHIBITED ACTS.—*Except as provided  
3 *in section 11 of this Act, it is unlawful for any person subject*  
4 *to the jurisdiction of the United States to—*  
5     (1) *import into, or export from, the United States*  
6 *any endangered species which has been listed pursuant*  
7 *to section 4 of this Act;*  
8     (2) *take any such species within the United States*  
9 *or in the territorial sea of the United States or upon the*  
10 *high seas;*  
11     (3) *possess, sell, deliver, carry, transport, ship, or*  
12 *receive, by any means whatever, any such species which*  
13 *are taken in violation of paragraph (2) of this sub-*  
14 *section;*  
15     (4) *deliver, receive, carry, transport, or ship in*  
16 *interstate or foreign commerce, by any means whatso-*  
17 *ever and for commercial purposes, any such species;*  
18     (5) *sell, distribute, or offer for sale in foreign com-*  
19 *merce, interstate commerce, or activity affecting inter-*  
20 *state commerce specimens or products processed or manu-*  
21 *factured in whole or in part from specimens of any such*  
22 *species;*  
23     (6) *attempt to commit, solicit another to commit,*  
24 *or cause to be committed, any act prohibited by para-*  
25 *graphs (1) through (5) of this subsection;*

1     (7) *engage in any trade in any specimens of fish,*  
2 *wildlife, or plants, contrary to the provisions of the Con-*  
3 *vention, or possess any specimens traded contrary to the*  
4 *provisions of the Convention, including the definitions in*  
5 *article I therein;*  
6     (8) *violate any regulation which is promulgated*  
7 *by the Secretary pursuant to section 4(e) of this Act; or*  
8     (9) *import into or export from the United States*  
9 *except at a port or ports designated by the Secretary,*  
10 *any fish or wildlife, except nonendangered and non-*  
11 *threatened shellfish and fishery products which are im-*  
12 *ported or exported for human or animal consumption or*  
13 *taken for recreational purposes in waters under United*  
14 *States jurisdiction or on the high seas. To facilitate*  
15 *enforcement of this paragraph and to reduce the costs*  
16 *of enforcement, the Secretary, with the approval of*  
17 *the Secretary of the Treasury and after notice and*  
18 *opportunity for public hearing, may, by regulation,*  
19 *designate ports and change such designations. Upon*  
20 *such terms and conditions as he may prescribe, the Sec-*  
21 *retary may permit such importation at nondesignated*  
22 *ports in the interest of the health or safety of the fish*  
23 *or wildlife or for any other reasons he deems*  
24 *appropriate. Any port designated by the Secretary of*  
25 *the Interior under the authority of section 4(d) of*

1 the Act of December 5, 1969 (16 U.S.C. 666cc-4  
 2 (d)), shall, if such designation is in effect on the day  
 3 before the date of the enactment of this Act, be deemed  
 4 to be a port designated by the Secretary under this  
 5 paragraph until such time as the Secretary otherwise  
 6 provides.

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

12 (A) such species so closely resembles in appear-  
 13 ance, at the point in question, a species which has been  
 14 listed pursuant to such section that enforcement person-  
 15 nel would have substantial difficulty in attempting to  
 16 differentiate between the listed and unlisted species;

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

20 (C) such treatment of an unlisted species will sub-  
 21 stantially facilitate the enforcement and further the policy  
 22 of this Act.

#### 23 EXCEPTIONS

24 SEC. 11. (a) GENERAL.—Upon a finding that the es-  
 25 cepted conduct will not adversely affect the regenerative

1 capacity of the involved species in a significant portion of  
 2 its range or habitat or otherwise affect the survival of the  
 3 wild population of such species, and upon such terms and  
 4 conditions as he may prescribe, the Secretary may issue  
 5 permits authorizing the importation, exportation, taking, or  
 6 transportation, by persons found to be qualified, of any fish  
 7 or wildlife which is listed as an endangered or threatened  
 8 species pursuant to section 4 of this Act for—

9 (1) scientific purposes in furtherance of the pur-  
 10 poses of this Act; or

11 (2) the propagation of such species in captivity or  
 12 in a controlled habitat.

13 (b) HARDSHIP.—The Secretary may except from the  
 14 application of section 10(a) of this Act any person who  
 15 enters into a contract with respect to a species of fish or  
 16 wildlife before the date of publication in the Federal Register  
 17 of notice of a proposed listing of that species as an endangered  
 18 or threatened species if the failure to grant such exception will  
 19 cause undue economic hardship to such person under the  
 20 contract. The extent and duration of such exception shall be  
 21 such as the Secretary deems appropriate. No such exception  
 22 shall be granted unless such person applies to the Secretary in  
 23 writing and furnishes with such application such information  
 24 as the Secretary may require to prove such hardship. No such  
 25 exception shall be for a duration of more than one year from

1 the date of publication in the Federal Register of notice of  
 2 a proposed listing of the involved species, nor shall such ex-  
 3 ception apply to a quantity of fish or wildlife in excess  
 4 of that specified by the Secretary. The one-year period for  
 5 those species of fish or wildlife which were listed by the Sec-  
 6 retary as endangered prior to the effective date of this Act  
 7 shall expire in accordance with the terms of section 3 of the  
 8 Act of December 5, 1969 (83 Stat. 275). No such exemption  
 9 may be granted for the importation or exportation of a speci-  
 10 men listed in appendix I of the Convention which is to be  
 11 used for primarily commercial purposes.

12 (c) PROCEDURE.—(1) The Secretary shall publish a  
 13 notice in the Federal Register of each application for an ex-  
 14 ception. Each notice shall invite the submission from inter-  
 15 ested parties, within thirty days after the date of the notice,  
 16 of written data, views, or arguments with respect to the ap-  
 17 plication. Information received by the Secretary as a part  
 18 of any application shall be available to the public as a mat-  
 19 ter of public record at every stage of the proceeding.  
 20 (2) The Secretary may grant exceptions under sub-  
 21 sections (a) and (b) of this section only if he finds, and  
 22 publishes such finding in the Federal Register, that such ex-  
 23 ceptions were applied for in good faith and if granted and  
 24 exercised will not operate to the disadvantage of such en-

1 endangered or threatened species and will be consistent with  
 2 the policy of this Act.  
 3 (d) ALASKA NATIVES.—(1) The provisions of this  
 4 Act shall not apply with respect to the taking of any endan-  
 5 gered or threatened species by any Indian, Aleut, or Eskimo  
 6 who is an Alaskan native who resides in Alaska if such  
 7 taking is for the purpose of consumption or use in a native  
 8 community or for the purpose of selling or creating for sale  
 9 in interstate commerce authentic native articles of handicrafts  
 10 and clothing: Provided, That in each case such taking  
 11 is not accomplished in a wasteful manner. As used in this  
 12 paragraph—

13 (A) "consumption or use in a native community"  
 14 includes selling any edible portion of fish or wildlife  
 15 in native villages and towns in Alaska for native con-  
 16 sumption; and  
 17 (B) "authentic native articles of handicrafts and  
 18 clothing" means items composed wholly or in some sig-  
 19 nificant respect of natural materials, and which are  
 20 produced, decorated, or fashioned in the exercise of  
 21 traditional native handicrafts without the use of panto-  
 22 graphs, multiple carvers, or other mass copying devices.  
 23 Traditional native handicrafts include, but are not lim-

1 tied to, weaving, carving, stitching, sewing, lacing, bead-  
 2 ing, drawing, and painting.  
 3 (2) Notwithstanding the provisions of paragraph (1)  
 4 of this subsection, whenever the Secretary determines that  
 5 any species of fish or wildlife which is subject to taking  
 6 by Indians, Aleuts, or Eskimos is an endangered or threat-  
 7 ened species, and that such taking materially and negatively  
 8 affects the threatened and endangered species, he may pre-  
 9 scribe regulations upon the taking of such species by any such  
 10 Indian, Aleut, or Eskimo. Such regulations may be  
 11 established with reference to species, geographical de-  
 12 scription of the area included, the season for taking,  
 13 or any other factors related to the reason for estab-  
 14 lishing such regulations and consistent with the policy of  
 15 this Act. Such regulations shall be prescribed after a notice  
 16 and hearings in the affected judicial districts of Alaska and  
 17 as otherwise required by section 103 of the Marine Mam-  
 18 mal Protection Act of 1972, and shall be removed as soon as  
 19 the Secretary determines that the need for their imposition  
 20 has disappeared: Provided, That no such regulation shall be  
 21 established which is in contravention of any provision of  
 22 the Marine Mammal Protection Act of 1972.

#### 23 PENALTIES AND ENFORCEMENT

24 SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—  
 25 (A) knowingly violates any provision of this Act

1 or any regulation or permit issued under this Act, which  
 2 prohibits the taking, importing, exporting, shipping, re-  
 3 ceiving, or otherwise moving in interstate or foreign com-  
 4 merce of any endangered or threatened species of fish or  
 5 wildlife, or commits any act made unlawful under sec-  
 6 tion 10(a) of this Act, may be assessed a civil penalty  
 7 by the Secretary of not more than \$10,000 for each  
 8 violation;

9 (B) commits any act made unlawful under section  
 10 10(a) of this Act, or violates any other provision of this  
 11 Act, or any regulation or permit issued under this Act,  
 12 may be assessed a civil penalty by the Secretary of not  
 13 more than \$1,000 for each such violation.

14 No penalty shall be assessed unless such person is given notice  
 15 and opportunity for a hearing with respect to such violation.  
 16 Each prohibited act is a separate violation. Any such civil  
 17 penalty may be compromised by the Secretary. Upon any  
 18 failure to pay a penalty assessed under this subsection, the  
 19 Secretary may by his own attorneys institute a civil action  
 20 in a district court of the United States for any district in  
 21 which such person is found, resides, or transacts business to  
 22 collect the penalty and such court shall have jurisdiction to  
 23 hear and decide any such action. The court shall hear such  
 24 action solely on the record made before the Secretary and

1 shall sustain his action if it is supported by substantial evi-  
2 dence on the record considered as a whole.

3 (2) Hearings held during proceedings for the assess-  
4 ment of civil penalties authorized by paragraph (1) of this  
5 subsection shall be conducted in accordance with section  
6 554 of title 5, United States Code. The Secretary may issue  
7 subpoenas for the attendance and testimony of witnesses and  
8 the production of relevant papers, books, and documents, and  
9 may administer oaths. Witnesses summoned shall be paid the  
10 same fees and mileage that are paid to witnesses in the  
11 courts of the United States. In case of contumacy or refusal  
12 to obey a subpoena served upon any person pursuant to this  
13 paragraph, the district court of the United States for any  
14 district in which such person is found or resides or transacts  
15 business, upon application by the United States and after  
16 notice to such person, shall have jurisdiction to issue an  
17 order requiring such person to appear and give testimony  
18 before the Secretary or to appear and produce documents  
19 before the Secretary, or both, and any failure to obey such  
20 order of the court may be punished by such court as a  
21 contempt thereof.

22 (b) CRIMINAL VIOLATIONS.—(1) Any person who  
23 knowingly and willfully violates any provision of this Act,  
24 or of any regulation or permit issued thereunder, shall, upon

1 conviction, be fined not more than \$20,000 or imprisoned  
2 for not more than one year, or both.

3 (2) The head of any Federal agency which has issued  
4 a lease, license, permit, or other agreement authorizing the  
5 use of Federal lands, including grazing of domestic livestock,  
6 to any person who is convicted under paragraph (1) of this  
7 subsection may immediately modify, suspend, or revoke such  
8 lease, license, permit, or other agreement. The Secretary may  
9 suspend, cancel, or refuse to issue for a period of up to one  
10 year Federal hunting or fishing permits or stamps with re-  
11 spect to any person who is convicted under paragraph (1)  
12 of this subsection. The United States shall not be liable to pay  
13 any compensation, reimbursement, or damages in connection  
14 with any such modification, suspension, or revocation of any  
15 lease, license, permit, stamp, or other agreement.

16 (c) REWARDS.—Upon the recommendation of the Sec-  
17 retary, the Secretary of the Treasury is authorized to pay  
18 an amount equal to one-half of the civil penalty or fine paid,  
19 but not to exceed \$2,500, to any person who furnishes in-  
20 formation which leads to a finding of civil violation or a  
21 conviction of a criminal violation of any provision of this Act  
22 or any regulation or permit issued thereunder. Any officer  
23 or employee of the United States or of any State or local  
24 government who furnishes information or renders service in

1 the performance of his official duties shall not be eligible for  
2 payment under this section.

3 (d) ENFORCEMENT.—(1) The provisions of this Act  
4 and any regulations or permits issued under this Act shall be  
5 enforced by the Secretary, the Secretary of the Treasury, or  
6 the Secretary of the Department in which the Coast Guard  
7 is operating, or all Secretaries. Each such Secretary may  
8 utilize, by agreement, with or without reimbursement, the  
9 personnel, services, and facilities of any other Federal agency  
10 or any State agency for purposes of enforcing this Act.

11 (2) The judges of the district courts of the United States  
12 and the United States magistrates may, within their respec-  
13 tive jurisdictions, upon proper oath or affirmation showing  
14 probable cause, issue such warrants or other process as may  
15 be required for enforcement of this Act and any regulation  
16 issued thereunder.

17 (3) Any person authorized by the Secretary, the Secre-  
18 tary of the Treasury, or the Secretary of the Department in  
19 which the Coast Guard is operating, in furtherance of the  
20 enforcement of this Act may execute and serve any arrest  
21 warrant, search warrant, or other warrant of civil or criminal  
22 process issued by any officer or court of competent jurisdic-  
23 tion. A person so authorized may search and seize, with or  
24 without a warrant, to the extent authorized by law. Any  
25 fish, wildlife, property, or item so seized shall be held by any

1 person authorized by the Secretary, the Secretary of the  
2 Treasury, or the Secretary of the Department in which the  
3 Coast Guard is operating pending disposition of civil or  
4 criminal proceedings, or the institution of an action in rem  
5 for forfeiture of such fish, wildlife, property, or item pur-  
6 suant to paragraph (4) of this subsection, except that the  
7 Secretary may, in lieu of holding such fish, wildlife, property,  
8 or item, permit the owner or consignee to post a bond or  
9 other surety satisfactory to the Secretary.

10 (4) All fish or wildlife, or plants taken, possessed, sold,  
11 purchased, offered for sale or purchase, transported, delivered,  
12 received, carried, shipped, exported or imported contrary to  
13 the provisions of this Act, any regulation issued under this  
14 Act, or any permit issued thereunder, and all guns, traps,  
15 nets, and other equipment, vessels, vehicles, aircraft, and  
16 other means of transportation used to aid the taking, possess-  
17 ing, selling, purchasing, offering for sale or purchase, trans-  
18 porting, delivering, receiving, carrying, shipping, exporting  
19 or importing of any fish or wildlife, or plants in violation of  
20 this Act, any regulation made pursuant thereto, or any permit  
21 issued thereunder shall be subject to forfeiture to the United  
22 States.

23 (5) All provisions of law relating to the seizure, forfeit-  
24 ure, and condemnation of a vessel for violation of the cus-  
25 toms laws, the disposition of such vessel or the proceeds from

1 the sale thereof, and the remission or mitigation of such for-  
 2 feiture, shall apply to the seizures and forfeitures incurred, or  
 3 alleged to have been incurred, under the provisions of this  
 4 Act, insofar as such provisions of law are applicable and not  
 5 inconsistent with the provisions of this Act. The powers,  
 6 rights, and duties conferred or imposed by the customs laws  
 7 upon any officer or employee of the Treasury Department  
 8 shall, for purposes of this Act, be exercised or performed  
 9 by the Secretary or by such persons as he may designate.  
 10 (e) REGISTRATION.—(1) Any person who engages to  
 11 any extent in business as an importer of fish or wildlife  
 12 must register with the Secretary of the Treasury his name  
 13 and the address of each place of business at which, and all  
 14 trade names under which, he conducts such business.  
 15 (2) Any person required to register with the Secretary  
 16 of the Treasury under paragraph (1) of this subsection  
 17 shall—  
 18 (A) keep such records as will fully and correctly  
 19 disclose each importation or exportation of fish or wild-  
 20 life except nonendangered and nonthreatened shell fish  
 21 or fishery products which are imported or exported for  
 22 human or animal consumption or recreational purposes,  
 23 made by him and the subsequent disposition made by  
 24 him with respect to such fish or wildlife and  
 25 (B) at all reasonable times upon notice by a duly

1 authorized representative of the Secretary, afford such  
 2 representative access to his places of business, an oppor-  
 3 tunity to examine his inventory of imported fish or  
 4 wildlife and the records required to be kept under  
 5 subparagraph (A) of this paragraph and to copy such  
 6 records.  
 7 (3) The Secretary of the Treasury, after consultation  
 8 with the Secretary, shall prescribe such regulations as are  
 9 necessary and appropriate to carry out the purposes of this  
 10 subsection.  
 11 (f) ENFORCEMENT REGULATIONS.—(1) The Secre-  
 12 tary, the Secretary of the Treasury, and the Secretary of  
 13 the Department in which the Coast Guard is operating, are  
 14 authorized to promulgate such regulations as may be appro-  
 15 priate to enforce this Act, and to charge reasonable fees for  
 16 expenses to the Government connected with permits author-  
 17 ized by this Act, including processing applications and rea-  
 18 sonable inspections, and the transfer, board, handling, or  
 19 storage of fish, wildlife, or plants and evidentiary items seized  
 20 and forfeited under this Act. All fees collected pursuant  
 21 to this subsection shall be deposited in the Treasury to the  
 22 credit of the appropriation which is current and chargeable  
 23 for the cost of furnishing the services. Appropriated funds  
 24 may be expended pending reimbursement from parties in  
 25 interest.

1 (g) CITIZEN SUITS.—(1) Except as provided in para-  
 2 graph (2) of this subsection, any person may commence a  
 3 civil suit on his own behalf to enjoin any person, including  
 4 the United States and any other governmental instrumental-  
 5 ity or agency (to the extent permitted by the eleventh  
 6 amendment to the Constitution), who is alleged to be in vio-  
 7 lation of any provision of this Act or regulation issued under  
 8 the authority thereof. The district courts shall have jurisdic-  
 9 tion, without regard to the amount in controversy or the  
 10 citizenship of the parties, to enforce any such provision or  
 11 regulation, as the case may be.

12 (2) No action may be commenced—

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

16 (B) if the Secretary has commenced action to im-  
 17 pose a penalty pursuant to subsection (a) of this section;

18 or

19 (C) if the United States has commenced and is dili-  
 20 gently prosecuting a criminal action in a court of the  
 21 United States or a State to redress a violation of any  
 22 such provision or regulation.

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

25 (B) In any such suit under this subsection in which the

1 United States is not a party, the Attorney General, at the  
 2 request of the Secretary, may intervene on behalf of the  
 3 United States as a matter of right.

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

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

15 (h) COORDINATION.—The Secretary of Agriculture and  
 16 the Secretary shall provide for appropriate coordination of  
 17 the administration of this Act with the administration of the  
 18 animal quarantine laws (21 U.S.C. 101-105, 111-135b,  
 19 and 613-614) and section 306 of the Tariff Act of 1930  
 20 (19 U.S.C. 1306). Nothing in this Act or any amendment  
 21 made by this Act, shall be construed as superseding or limit-  
 22 ing in any manner the functions of the Secretary of Agricul-  
 23 ture under any other law relating to prohibited or restricted  
 24 importations or possession of animals and other articles. No  
 25 proceeding or determination under this Act shall preclude

1 any proceeding or be considered determinative of any issue  
 2 of fact or law in any proceeding under any Act administered  
 3 by the Secretary of Agriculture. Nothing in this Act shall  
 4 be construed as superseding or limiting in any manner the  
 5 functions and responsibilities of the Secretary of the Treas-  
 6 ury under the Tariff Act of 1930, including, but not limited  
 7 to, section 527 of such Act (19 U.S.C. 1527), relating to  
 8 the importation of wildlife taken, killed, possessed, or ex-  
 9 ported to the United States in violation of the laws or regu-  
 10 lations of a foreign country.

#### 11 ENDANGERED PLANTS

12 SEC. 13. The Secretary of the Smithsonian Institution,  
 13 in conjunction with other affected agencies, is authorized  
 14 and directed to review species of plants which are endan-  
 15 gered or threatened, and methods of providing adequate  
 16 protection including legislation for such species. He shall  
 17 report the results of such review to Congress, not later than  
 18 one year after the date of enactment of this Act. For pur-  
 19 poses of this section, there is authorized to be appropriated  
 20 not to exceed \$250,000.

#### 21 CONFORMING AMENDMENTS

22 SEC. 14. (a) Section 4(c) of the Act of October 15,  
 23 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further  
 24 amended by revising the second sentence thereof to read  
 25 as follows: "With the exception of endangered and threat-

1 end species listed by the Secretary pursuant to section 4  
 2 of the Endangered Species Act of 1973 in States wherein  
 3 a cooperative agreement does not exist pursuant to section  
 4 6(c) of such Act nothing in this Act shall be construed to  
 5 authorize the Secretary to control or regulate hunting or  
 6 fishing of resident fish and wildlife on lands not within the  
 7 System."

8 (b) Section 10(a) of the Migratory Bird Conserva-  
 9 tion Act (45 Stat. 1324, 16 U.S.C. 715i(a)) and section  
 10 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16  
 11 U.S.C. 715s(a)) are each amended by striking out "threat-  
 12 ened with extinction," and inserting in lieu thereof the fol-  
 13 lowing: "listed pursuant to section 4 of the Endangered  
 14 Species Act of 1973 as endangered or threatened species,".  
 15 (c) Section 6(a)(1) of the Land and Water Conser-  
 16 vation Fund Act of 1965 (16 U.S.C. 4601-9(a)(1)) is  
 17 amended by striking out:

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

21 and inserting in lieu thereof the following:

22 "ENDANGERED AND THREATENED SPECIES.—For  
 23 lands, waters, or interests therein, the acquisition of  
 24 which is authorized under section 5 of the Endangered  
 25 Species Act of 1973, needed for the purpose of conserva-

1 ing, protecting, restoring, or propagating endangered  
2 or threatened species of fish, wildlife, or plants.”

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

6 “SEC. 2. The Secretary is authorized to acquire areas  
7 of land, or interests therein, which are suitable for—

8 “(1) incidental fish- and wildlife-oriented recrea-  
9 tional development,

10 “(2) the protection of natural resources,

11 “(3) the protection of endangered or threatened  
12 species listed by the Secretary pursuant to section 4 of  
13 the Endangered Species Act of 1973, or

14 “(4) carrying out two or more of the purposes set  
15 forth in paragraphs (1) through (3) of this section,  
16 and are adjacent to, or within, the said conservation areas,

17 except that the acquisition of any land or interest therein  
18 pursuant to this section shall be accomplished only with  
19 such funds as may be appropriated therefor by the Congress  
20 or donated for such purposes, but such property shall not be  
21 acquired with funds obtained from the sale of Federal mi-  
22 gratory bird hunting stamps.”

23 (e) The Marine Mammal Protection Act of 1972 (16

24 U.S.C. 1361-1407) is amended—

25 (1) by striking out “Endangered Species Conser-

1 vation Act of 1969” in section (1)(B) thereof and  
2 inserting in lieu thereof the following: “Endangered  
3 Species Act of 1973”;

4 (2) by striking out “pursuant to the Endangered  
5 Species Conservation Act of 1969” in section 101(a)  
6 (3)(B) thereof and inserting in lieu thereof the follow-  
7 ing: “or threatened species pursuant to the Endangered  
8 Species Act of 1973”;

9 (3) by striking out “endangered under the En-  
10 dangered Species Conservation Act of 1969” in section  
11 102(b)(3) thereof and inserting in lieu thereof the  
12 following: “an endangered or a threatened species pur-  
13 suant to the Endangered Species Act of 1973”; and  
14 (4) by striking out “Endangered Species List, au-  
15 thorized by the Endangered Species Conservation Act  
16 of 1969,” in section 202(a)(6) thereof and inserting  
17 in lieu thereof the following: “endangered species list  
18 and threatened species list published pursuant to section  
19 4(c)(1) of the Endangered Species Act of 1973”.

20 REPEALER

21 SEC. 15. The Endangered Species Conservation Act of  
22 1969 (sections 1 through 3 of the Act of October 15, 1966,  
23 and sections 1 through 6 of the Act of December 5, 1969;  
24 16 U.S.C. 668aa-668cc-6) is repealed.

## APPLICABILITY WITHIN STATES

1  
2     **SEC. 16. (a) STATE PLAN.**—By the end of the first  
3 year after the date of enactment of this Act, a State may  
4 establish a plan for endangered and threatened species in  
5 accordance with this Act. A plan is in accordance with this  
6 Act if it meets or exceeds the requirements set forth in section  
7 6(c) of this Act and represents an effective response to the  
8 Nation's need to conserve, protect, restore, and propagate  
9 endangered and threatened species of fish or wildlife. Upon  
10 the establishment of such a plan, the Governor or the head of  
11 the State agency shall promptly transmit a certified copy to  
12 the Secretary.

13     **(b) DETERMINATION BY SECRETARY.**—Within ninety  
14 days after the Secretary receives a certified copy of a State  
15 plan established under subsection (a) or subsection (d) of  
16 this section, the Secretary shall make a determination whether  
17 such State has established a plan for endangered and threat-  
18 ened species in accordance with this Act. Unless the Secre-  
19 tary determines, pursuant to this section, that a State plan is  
20 not in accordance with this Act, the plan shall go into effect  
21 in such State on the date designated in the plan. In no event  
22 shall such State plan go into effect less than three months or  
23 more than nine months after the date of its establishment.

24     **(c) PERIODIC REVIEW.**—The Secretary shall periodi-  
25 cally, but not less than once every three years, review each

1 State plan for endangered and threatened species which has  
2 been approved under subsection (b) of this section and for  
3 which there is experience, to determine whether such plan is  
4 still in accordance with this Act and to evaluate the success  
5 of such plan in terms of the policy of this Act. To facilitate  
6 such review, the Governor or the head of the State agency in  
7 each such State shall submit to the Secretary periodically all  
8 information relevant and requested by the Secretary. The  
9 Secretary shall report to the President and Congress simul-  
10 taneously each year on the results of such reviews, including  
11 any recommendations for legislation.

12     **(d) NO STATE PLAN.**—Except as to species listed in  
13 Appendix I of the Convention, the provisions of this Act re-  
14 garding the management and taking of any State's resident  
15 species shall become applicable in their entirety within a State  
16 fifteen months after the date of enactment of this Act unless,  
17 prior to such date, the Secretary has made a determination  
18 under subsection (b) of this section that such State has  
19 established a plan for endangered and threatened species in  
20 accordance with this Act: Provided, That the provisions of  
21 subsection (a) of section 10 of this Act shall be effective upon  
22 the date of enactment of this Act within any State which does  
23 not prevent the taking of any species listed by the Secretary  
24 as an endangered species. If, at any time thereafter, the Sec-  
25 retary upon petition makes a determination, pursuant to sub-

1 section (b) of this section, that a State has established  
 2 a plan for endangered and threatened species in accordance  
 3 with this Act, such plan shall go into effect and the provisions  
 4 of this Act regarding the management and taking of any  
 5 species shall cease to be applicable or in effect within such  
 6 State on a date to be designated by the Secretary. If, after a  
 7 State plan in accordance with this Act is in effect within a  
 8 State, the Secretary makes a determination, pursuant to sub-  
 9 section (c) of this section, that such plan is no longer in ac-  
 10 cordance with this Act, the provisions of this Act regarding  
 11 the management and taking of any species shall go into ef-  
 12 fect within such State and such plan shall cease to be in effect  
 13 on a date to be designated by the Secretary.

14 (e) **PROCEDURE.**—(1) Before making any determina-  
 15 tion under this section, the Secretary shall publish a notice in  
 16 the Federal Register and afford the State and all interested  
 17 parties a reasonable opportunity to present their views by  
 18 oral and written submission.

19 (2) The Secretary shall notify in writing the Gover-  
 20 nor of the affected State of any determinations made under  
 21 this section and shall publish these determinations with rea-  
 22 sons therefor in the Federal Register.

23 (3) Any determinations made by the Secretary under  
 24 this section shall be subject to judicial review in accordance  
 25 with chapter V of title 5, United States Code, in the United

1 States court of appeals for the circuit in which is located the  
 2 State whose plan is the subject of such determination or in  
 3 the United States Court of Appeals for the District of Colum-  
 4 bia Circuit. Any such review shall be instituted within sixty  
 5 days from the date on which the determination made by  
 6 the Secretary is published in the Federal Register.

7 (f) **EFFECTIVE DATE.**—Except as otherwise provided  
 8 in this section, the provisions of this Act shall become effec-  
 9 tive in their entirety upon the date of enactment of this Act.

#### 10 MARINE MAMMALS ACT

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

#### 15 AUTHORIZATION FOR APPROPRIATIONS

16 **SEC. 18. For purposes of this Act, other than section 6**  
 17 **and section 13 of this Act, there are authorized to be appro-**  
 18 **priated such sums as are necessary, not to exceed \$3,960,000**  
 19 **for the fiscal year ending June 30, 1974; not to exceed \$6,-**  
 20 **660,000 for the fiscal year ending June 30, 1975; and not to**  
 21 **exceed \$8,870,000 for the fiscal year ending June 30, 1976.**

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