

- 1 30, 1976, and not to exceed \$10,000,000 for each of
- 2 fiscal years 1977 and 1978"; and
- 3 (2) by striking out "and not to exceed \$2,000,000
- 4 for fiscal year 1976," in paragraph (B) thereof and
- 5 inserting in lieu thereof ", not to exceed \$2,000,000 for
- 6 fiscal year 1976, not to exceed \$500,000 for the period
- 7 beginning July 1, 1976, and ending September 30,
- 8 1976, and not to exceed \$2,000,000 for each of fiscal
- 9 years 1977 and 1978."

ENDANGERED SPECIES ACT AUTHORIZATION

MARCH 11, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 8092]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 8092) to extend the authorization for appropriations to carry out the Endangered Species Act of 1973, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—  
 (1) by striking out "and not to exceed \$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof ", not to exceed \$10,000,000 for fiscal year 1976, and not to exceed the total of \$25,000,000 for fiscal years 1977 and 1978."; and  
 (2) by striking out "and not to exceed \$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof ", not to exceed \$2,000,000 for fiscal year 1976, not to exceed \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed the total of \$5,000,000 for fiscal years 1977 and 1978."

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to extend the authorization for appropriations to the Departments of Interior and Commerce to carry out the provisions of the Endangered Species Act of 1973.

LEGISLATIVE BACKGROUND

The Endangered Species Act of 1973 (16 U.S.C. 1531-1543) was passed in December 1973. Primary responsibility for this legislation

was placed with the Departments of Commerce and the Interior. General authorization of appropriations under the act for the Department to carry out functions and responsibilities, other than certain financial assistance to the States, is provided for by section 15 of the act. The authorization for appropriations under section 15 expires on June 30, 1976. Under this section, the act authorized an amount not to exceed \$4 million for fiscal year 1974, \$8 million for fiscal year 1975 and \$10 million for fiscal year 1976 to enable the Department of the Interior to carry out functions and responsibilities of the act and authorized to the Department of Commerce \$2 million for fiscal year 1974, \$1.5 million for fiscal year 1975 and \$2 million for fiscal year 1976.

Further, under section 6 which expires on June 30, 1977, the Endangered Species Act provides for grant-in-aid to States not to exceed \$10 million for the first three years after date of enactment.

Accordingly, the Secretary of the Interior transmitted to Congress on May 19, 1975, proposed legislation to extend the authorizations for appropriations and on June 2, 1975, the Secretary of Commerce transmitted the same. On June 20, 1975, Mrs. Sullivan introduced legislation incorporating the two proposed extensions in the form of H.R. 8092. A hearing was held on February 6, 1976, to consider the bill.

#### BACKGROUND AND NEED FOR LEGISLATION

Man's activities threaten a growing number of species of plants and animals with extinction. Environmental change is taking place so rapidly that further delay in protection of endangered species and their habitats pushes certain species inevitably closer to the brink of extinction, making recovery more difficult and costly.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior and the Secretary of Commerce to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is the intent of the program to prevent other species from becoming endangered.

For fiscal year 1977, the President has requested the sum of \$9,198,000 for the Department of Interior and \$541,000 for the Department of Commerce under section 15 (A) and (B), respectively, to carry out the program.

In October, 1975, the Subcommittee on Fisheries and Wildlife Conservation and the Environment held three days of oversight hearings on the administration of the endangered species program. The Departmental presentations point out that the program sorely needs an infusion of additional funds in order to assure the responsible and effective management of this important Act.

Of particular importance is the listing of species as endangered or threatened and the designation of habitat critical to the survival of those species. Once an animal or plant is listed as endangered or threatened, the Act prohibits the taking, importing, exporting or interstate transport of the species and its parts or products. These protections against commercial exploitation have been instrumental in insuring the continued survival of dozens of endangered and threatened fauna. Unfortunately, the listing process has been severely restricted by the agencies' lack of resources.

At the present time the Department of Interior, for example, has only eight professional staff working parttime on the classification of species. The result is that 1) no plants have yet been listed as endangered or threatened, although the Smithsonian Institution recommended the listing of some 3,300 species of flora in December 1974; 2) approximately 200 species listed as endangered or threatened, pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora to which the United States is a signatory, have not been placed on the U.S. list; and 3) the Departments have information concerning several thousand additional species which may require protective listing, but which the Departments have not yet started to investigate.

Considering the importance of the Endangered Species Act and the volume of classification work which remains undone, a modest increase in the authorization provided the Departments of Commerce and Interior is, in the Committee's opinion, justified. It is anticipated that these funds will be utilized for the hiring of additional staff and for the completion of appropriate scientific studies.

The problems surrounding the designation of critical habitat pursuant to the Act are much the same as those surrounding the listing of species. It is the Committee's view that classifying a species as endangered or threatened is only the first step in insuring its survival. Of equal or more importance is the determination of the habitat necessary for that species' continued existence. Once a habitat is so designated, the Act requires that proposed Federal actions not adversely affect the habitat. If the protection of endangered and threatened species depends in large measure on the preservation of the species' habitat, then the ultimate effectiveness of the Endangered Species Act will depend on the designation of critical habitats.

Unfortunately, to date, no critical habitats have been designated under the Act. The Departments of Commerce and Interior have indicated the desire to study 108 high-priority designations and are currently working on nine. A primary reason for the Departments' poor record has been budgetary and staff limitations. In the case of the Department of Interior, the same 8 staff who are responsible for the classification of species are also charged with the responsibility for designating critical habitat. Neither Department, however, has sufficient financial resources to conduct the scientific studies and surveys which are prerequisite to determining a species' critical habitat.

Lack of funding also limited the Departments' ability to implement Section 8 and Section 9(d) of the Act. Section 8 establishes a program of assistance for foreign nations interested in developing programs designed for the protection of endangered species. Funds for implementing this program are derived from excess foreign current-

cies held by the United States and not from funds appropriated under the Endangered Species Act. In Fiscal Year 1977, it appears that approximately \$600,000 in excess foreign currencies will be available for distribution to certain nations. To administer this program, certain funds have been provided under H.R. 8092.

Similarly, Section 9(d) of the Act, which establishes as an enforcement tool a registration program for importers and exporters of wildlife, has yet to be implemented. With the additional funding authorized under H.R. 8092, the Departments could begin to implement a registration program.

The Committee also perceived a need to authorize additional funds under the Endangered Species Act for the implementation of the International Convention which will enter into force during Fiscal Year 1977 or Fiscal Year 1978. The Convention charges each member nation with the responsibility for regulating the importation and exportation of flora and fauna listed as endangered or threatened pursuant to the Convention. The Convention also requires each member nation to establish a special scientific authority. The purpose of this authority is to advise the member nation on the merits of any application for the taking, or the importation or exportation of any listed species. When the Convention enters into force, the Departments of Commerce and Interior will incur certain expenses as a result of the establishment and operation of the scientific authority and will incur additional and significant enforcement responsibilities necessitating the expansion of the present enforcement program.

During the Committee's oversight hearings on the implementation of the Endangered Species and the hearings on H.R. 8092, it became clear that to fund the Endangered Species Act at the optimal level would require the expenditure of approximately \$20 million in each of Fiscal Years 1977 and 1978. However, the Committee recognizes the finite limit on available resources and therefore supported only a relatively modest increase in the existing authorization. The funding authorized pursuant to H.R. 8092 represents the minimum amount necessary for the Departments of Interior and Commerce to fulfill their responsibilities under the Act.

#### THE AMENDMENT

The Department of Interior proposed an authorization-appropriation of \$10,000,000 for FY 1977 and for 1978, while the Department of Commerce proposed an authorization-appropriation of \$2,000,000 for each of fiscal years 1977 and 1978, and \$500,000 for the transition period beginning July 1, 1976 and ending September 30, 1976. The Interior Department testified at the hearing that the transition period funding was not necessary for its Department since the Department received authorizations to continue all Fish and Wildlife Service programs during this transition period under their 1976 Appropriations Act, P.L. 94-165. Moreover, both Departments indicated during the hearings that increased authorizations would be highly desirable and consistent with their actual needs. Therefore, the Committee amended H.R. 8092 accordingly to delete the transition period funding for the Department of Interior, and increased the Department of Interior's authorization by \$5,000,000, making a total of \$25,000,000 for the next

two fiscal years, and the Department of Commerce's authorization by \$1,000,000, making a total of \$5,000,000 for the next two fiscal years.

#### COST OF THE LEGISLATION

Pursuant to clause 7 of rule XIII, of the Rules of the House of Representatives, the Committee estimates the total cost of the legislation to be \$500,000 for the transition period from July 1, 1976, to September 30, 1976, and \$30 million for fiscal years 1977 and 1978. The Committee concluded that these costs are reasonable and consistent with the estimates made by the respective Departments.

#### COMPLIANCE WITH HOUSE RULE XI

(1) With respect to the requirements of Clause 2(1) (3) (A) of Rule XI, of the Rules of the House of Representatives, three days of oversight hearings were held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on October 1, 2, and 6, 1975 on the general subject matter of the Endangered Species Act of 1973. However, the Committee has not made any formal findings or recommendations at this time pursuant to those hearings.

(2) With respect to the requirements of clauses 2(1) (3) (B) and (C), of Rule XI of the Rules, the bill does not provide new budget authority or increased tax expenditures, and it has received no estimate and comparison prepared by the Director of the Congressional Budget Office. Consequently, no such information is supplied to meet these requirements.

(3) With respect to the requirements of clause 2(1) (3) (D), of Rule XI of the Rules, the Committee has received no report from the Committee on Government Operations on this subject.

(4) The Committee reports that enactment of H.R. 8092, as amended, would have no inflationary impact on prices and costs in the operation of the national economy.

#### DEPARTMENTAL REPORTS

H.R. 8092 was the subject of Executive Communication No. 1077 from the Department of the Interior and Executive Communication No. 1142 from the Department of Commerce. In addition, a report on the legislation was received from the Department of Interior. The material mentioned above follows herewith:

[Exec. Comm. No. 1142]

THE SECRETARY OF COMMERCE,  
Washington, D.C.

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

Dear Mr. Speaker: Enclosed are six copies of a draft bill to amend section 15(B) of the Endangered Species Act of 1973 to extend the appropriation authorization, together with a statement of purpose and need in support thereof.

This proposed legislation has been reviewed by the Department in the light of Executive Order No. 11821 and has been determined not

to be a major proposal requiring evaluation and certification as to its inflationary impact.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our draft bill to the Congress.

Sincerely,

ROBERTS C. B. MORROW,  
Secretary of Commerce

Enclosures.

A BILL To amend section 15(B) of the Endangered Species Act of 1973 to extend the appropriation authorization

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531, et seq.), is amended by striking in section 15(B) the words "fiscal year 1976," and inserting in lieu thereof the words "each of the fiscal years 1976 through 1978,"

STATEMENT OF PURPOSE AND NEED

The Endangered Species Act of 1973 (16 U.S.C. 1531-1543) was passed in December 1973. Primary responsibility for this legislation was placed with the Departments of Commerce and the Interior. General authorization of appropriations under the Act for the Department to carry out functions and responsibilities, other than certain financial assistance to the States under Section 6, is provided for by Section 15 of the Act. The authorization for appropriations under Section 15 expires on June 30, 1976. Under this section, the Act authorized to the Department of Commerce \$2 million for FY 1974, \$1.5 million for FY 1975 and \$2 million for FY 1976. The authorization for appropriations under Section 6 expires on June 30, 1977.

Under Section 15 of the Act, funds in the amount of \$2.0 million will be required to carry out the program in FY 1977 and FY 1978. These figures represent the best estimate of our Department's needs to implement the program. There are many unknown factors involved in predicting the future costs of the program since our program costs are directly related to the animals and plants listed on the U.S. Endangered and Threatened Species Lists and those under consideration for possible future listing.

Amendatory legislation is vitally needed to continue the authorization under this landmark Act.

(Exec. Comm. No. 10771)

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., May 15, 1975.

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

Dear Mr. Speaker: Transmitted herewith is draft legislation to extend the authorizations for appropriations in the Endangered Species Act of 1973 (P.L. 93-205; 87 Stat. 884).

We recommend that this bill be referred to the appropriate Committee for consideration, and that it be enacted.

Man's activities threaten a growing number of species of plants and animals with extinction. Environmental change is taking place so rapidly that further delay in protection of endangered species and their habitats pushes certain species inevitably closer to the brink of extinction, making recovery more difficult and costly.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of Commerce) to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is our intent to prevent other species from becoming endangered.

In order to implement activities aimed at accomplishing these goals, the Endangered Species Act provides for grant-in-aid to States not to exceed \$10 million for the first three years after enactment and a general authorization of an amount not to exceed \$4 million for FY 1974, \$8 million for FY 1975 and \$10 million for FY 1976 to enable the Department of the Interior to carry out functions and responsibilities of the Act other than grant-in-aid.

Since December 28, 1973, we have taken these major steps in the implementation of the Act:

1. As prescribed by the Act, what were formerly the native list and foreign list of endangered species have been consolidated into one list and published.
2. Status surveys have been started and/or completed on the wolves of North America, green sea turtle, Sirenhans, American Alligator, American crocodile, grizzly bear and spotted cats.
3. Guidelines on submission of cooperative agreements and model legislation for use by the States to develop endangered species laws in accordance with provisions of the 1973 Act have been prepared and distributed.
4. Recovery plans have been prepared through first draft for 29 species.
5. Seven workshops have been conducted for training Service, other Federal agency and State personnel in recovery plan preparation.
6. Orientation workshops were conducted in each Regional Office of the U.S. Fish and Wildlife Service for Service and other Federal and State personnel to explain the provisions and applications of the 1973 Act.

Approximately \$7.37 million and 170 man-years of effort will be available in the Fish and Wildlife Service to carry out the endangered species program other than grant-in-aid and land acquisition in FY 1976. Our proposed bill would extend the authorization for appro-

priations at the FY 1976 level of \$10 million for FY 1977 and for FY 1978.

This recommendation is consistent with the President's moratorium on new Federal spending programs other than those involving energy production, national defense, and certain humanitarian efforts, and his stated policy to avoid excessive growth of Federal spending in the long run.

We urge enactment of the proposed legislation in order to assure continuation of programs aimed at preventing the continued decline of our living natural resources.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,  
*Assistant Secretary of the Interior.*

A BILL TO amend the Endangered Species Act of 1973 to extend authorizations for appropriations, and for other purposes

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the Endangered Species Act of 1973 (87 Stat. 884) is amended as described in Section 2 of this Act.*

Sec. 2. Section 15 (A) is amended by deleting the words "fiscal year 1976," and inserting in lieu thereof the words, "fiscal year 1976, 1977 and 1978."

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., February 5, 1976.

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

DEAR MADAM CHAIRMAN: This is in response to the request of your Committee for the views of this Department on H.R. 8092, a bill "To extend the authorization for appropriations to carry out the Endangered Species Act of 1973."

We recommend enactment of H.R. 8092 if it is amended as suggested herein.

H.R. 8092 would extend the authorization for appropriations at the FY 1976 level of \$10 million for FY 1977 and for FY 1978. The bill also contains a transition period authorization of \$2.5 million. The bill provides in subsection (2) an authorization for the Department of Commerce to carry out its function under the Endangered Species Act. This report does not address the Commerce authorization.

With the exception of the transition period authorization and the Commerce authorization, H.R. 8092 is identical to the provisions of the Administration's proposal for the extension of the authorization for appropriations to carry out the Endangered Species Act. The Administration's proposal was transmitted to the Congress on May 15, 1975. H.R. 8092 contains a transition period authorization of \$2.5 million which is not included in the Administration's proposed legislation.

An authorization for the transition period is unnecessary as funds to cover this period have been included in the Department of the

Interior's fiscal year 1976 appropriations Act, P.L. 94-165. Therefore, we recommend the following amendment: strike all after "1976," on line 8, page 1, through "fiscal years" on line 2 page 2 of the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYTL,  
*Assistant Secretary of the Interior.*

#### CHANGES IN EXISTING LAW

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

#### SECTION 15 OF THE ENDANGERED SPECIES ACT OF 1973

(16 U.S.C. 1542; P.L. 93-205)

#### AUTHORIZATION OF APPROPRIATIONS

Sec. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed \$4,000,000 for fiscal year 1974, not to exceed \$8,000,000 for fiscal year 1975 [and not to exceed \$10,000,000 for fiscal year 1976], not to exceed \$10,000,000 for fiscal year 1976, and not to exceed the total of \$85,000,000 for fiscal years 1977 and 1978, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed \$2,000,000 for fiscal year 1974, \$1,500,000 for fiscal year 1975 [and not to exceed \$2,000,000 for fiscal year 1976], not to exceed \$2,000,000 for fiscal year 1976, not to exceed \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed the total of \$5,000,000 for fiscal years 1977 and 1978, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

## DISSENTING VIEWS ON H.R. 8092

The rapid and excessive growth of the national debt has caused such severe problems for this Nation that a new realism has developed. The essence of this new realism is that the Federal Government can no longer incur the large deficits which have characterized the recent past. Clearly the Congress and the Nation must accept the responsibility for restraining Government spending.

Recognizing that there is a limit on available resources which will result in the setting of priorities and while it is clear that environmental protection has a very high priority, it is also clear that the Nation cannot afford to fund these priorities at the maximum level at this point in time.

For these reasons, we cannot support H.R. 8092 as reported by the Merchant Marine and Fisheries Committee. This bill exceeds the President's budget request by approximately \$3 million in fiscal year 1977. It is also likely the fiscal year 1978 authorization approved by the Committee will far exceed what the President has determined is necessary and appropriate for the Departments of Commerce and Interior to discharge their responsibilities under the Endangered Species Act.

GENE SNYDER.  
BOB BAUMAN.

[From the Congressional Record, Mar. 15, 1976]

HOUSE CONSIDERATION AND PASSAGE OF H.R. 8092, AS AMENDED  
ENDANGERED SPECIES ACT AUTHORIZATION

Mrs. SULLIVAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8092) to extend the authorization for appropriations to carry out the Endangered Species Act of 1973, as amended.  
The Clerk read as follows:

H.R. 8092

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "and not to exceed \$10,000,000 for fiscal year 1976." in paragraph (A) thereof and inserting in lieu thereof ", not to exceed \$10,000,000 for fiscal year 1976, and not to exceed the total of \$25,000,000 for fiscal years 1977 and 1978."; and

(2) by striking out "and not to exceed \$2,000,000 for fiscal year 1976." in paragraph (B) thereof and inserting in lieu thereof ", not to exceed \$2,000,000 for fiscal year 1976, not to exceed \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed the total of \$5,000,000 for fiscal years 1977 and 1978."

The Speaker. Is a second demanded?

Mr. RUPPE. Mr. Speaker, I demand a second.

The Speaker. Without objection, a second will be considered as ordered.

There was no objection.

The Speaker. The gentlewoman from Missouri (Mrs. Sullivan) is recognized.

Mrs. SULLIVAN. Mr. Speaker, H.R. 8092 extends the authorizations for appropriations to the Departments of Interior and Commerce to carry out the provisions of the Endangered Species Act of 1973. The existing authorizations for both Departments expire on June 30, 1976.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior and the Secretary of Commerce to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is the intent of the program to prevent other species from becoming endangered.

The committee held 3 days of oversight hearings on the Endangered Species Act in October 1975, to examine its implementation and administration. Although substantial progress had been made in implementing parts of the act, the testimony presented indicated that there have been many problems and delays encountered in implementing the act.

Some of those problems were clearly the result of manpower and funding shortages. In addition, the International Convention on Endangered Species took effect on July 1, 1975, which now requires us to take steps to delineate the U.S. scientific and management authorities in order to implement our responsibilities. When these steps are taken, the Departments must be properly staffed and financially equipped to do their job.

For these reasons, the committee increased the authorized appropriations for both Departments for the next 2 fiscal years. Accordingly, the Department of the Interior was authorized a total of \$25 million for fiscal year 1977 and fiscal year 1978, and the Department of Commerce a total of \$5 million for the same period.

I would urge my colleagues to support this worthwhile legislation to insure the effective management of these unique living resources.

Mr. LEGGETT. Mr. Speaker, will the gentlewoman yield?

Mrs. SULLIVAN. I yield to the gentleman from California (Mr. Leggett).

Mr. LEGGETT. Mr. Speaker, I thank the gentlewoman for yielding to me.

Mr. Speaker, I rise in support of H.R. 8092 to extend authorizations for appropriations for the Departments of the Interior and Commerce pursuant to the Endangered Species Act of 1973.

The Endangered Species Act is a complex, far reaching, and forceful conservation law which was intended to provide special protection to the dwindling number of our unique and valuable living resources. This legislation was a recognition of the fact that the variety of species in our ecosystem provide not only a pleasing aesthetic surrounding, but also an educational, scientific, and economic resource. The provisions of the Endangered Species Act have had to be implemented in a careful and judicious manner in order to achieve an effective and timely program of listing and delisting species, processing permits, cooperating with State conservation agencies, acquiring the critical habitat of endangered species, and assisting other countries in this endeavor.

The oversight hearings held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment in October 1975, served to demonstrate the magnitude of the job yet to be done in implementing and administering this important act. The Department of the Interior has been playing catchup in listing endangered species since the enactment of the strengthened amendments in 1972, and have just started to consider the designation of areas of critical habitat for protection of these species. This habitat designation is perhaps the most important step to be taken to ensure that an endangered species is preserved.

The listing process in itself is meaningless unless the Departments take the appropriate steps to protect the species habitat. Although the Interior Department has received petitions to list some 24,000 species of plants and animals, the Department has initiated action on only about 15 percent of these species and have listed only 16 species since the 1973 act without designating one critical habitat. The Department estimates that it takes 36 professional person days and five clerical

person days to list a species. Thus, the Department has a formidable task ahead.

Moreover, the act calls for an international program of financial assistance to foreign countries to develop and manage programs which the Secretary determines to be necessary and useful for the conservation of any endangered species. To date, the Department of the Interior stated that little progress has been made in this area because of funding and personnel shortages.

The most significant action yet to be taken by the United States to fulfill our international obligations pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora is the designation of implementing management and scientific authority. Apparently, the draft Executive order to implement this authority has been in the Office of Management and Budget for review for several months. The Department of the Interior recently indicated that they expect execution of this order momentarily. Once these authorities are established, the Department of the Interior must be prepared to carry out the additional responsibility contained in the International Convention.

I have only mentioned a few of the most important areas of unfinished work concerning the implementation and administration of the Endangered Species Act. Considering the importance of the Endangered Species Act and the volume of classification work which remains undone, a modest increase in the authorization provided the Departments of Commerce and Interior is, in the committee's opinion, justified. It is anticipated that these funds will be utilized for the hiring of additional staff and for the completion of appropriate scientific studies.

The Department of the Interior has requested \$10 million for fiscal year 1977 while the Department of Commerce had requested \$2 million for the same period. During our oversight hearings, both Departments indicated that although the requested funding level would be adequate, the program could not go forward at a desirable pace. Therefore, the committee made the determination that increased funding was not only desirable, but necessary to achieve an effective and workable program.

Finally, I might note that H.R. 8092 was further amended in committee to delete the transition period funding for the Department of the Interior since the Department has already received authorization for appropriations to continue all Fish and Wildlife Service programs during the transition period under the 1976 Appropriations Act.

Mr. Speaker, I would urge the Members to enact this legislation promptly so that the work of these agencies can go forward.

Mr. RUPPE. Mr. Speaker, the Earth's history is replete with examples of animal and plant species which became extinct. Until modern man's influence became felt, the primary forces threatening a species survival were the changing environment of a developing Earth and the process of natural selection. However, in today's world, man and his activities have replaced nature as the main factors threatening the survival of various species of flora and fauna.

The Endangered Species Act was born out of this Congress concern for the preservation and protection of the world's fauna and flora. The act, as has already been pointed out, has two key elements, the listing of species as endangered or threatened and the designation of habitats critical to the survival of those species. Once listed as endangered or threatened, the act prohibits the taking, importing, exporting, and interstate transport of endangered species or any parts and products thereof. These protections against commercial exploration have been a vital factor in the continued survival of hundreds of animals.

Listing, however, is only the first step toward a species protection. Of equal and perhaps greater importance is the determination of the habitat and the protection of the habitat critical to that species' survival.

Unfortunately, the Departments of Commerce and the Interior, which are charged with responsibility for implementing the Endangered Species Act, have been unable to perform their responsibilities at the optimal level.

Although many species of wildlife have been listed as endangered and threatened, the Departments have a backlog of several thousand species which they feel might require protection afforded by listing. Due to limitations on resources, the Departments have been unable to begin working on these species. The Department of the Interior for example employs only eight professionals part time to work on this listing process. Furthermore, due to limited resources, the Department has yet to list a single plant as endangered or threatened, although the Smithsonian Institute in December 1974, recommended that some 3,000 species of flora be considered for listing.

The Departments' record with respect to the designation of critical habitat has been more severely restricted by lack of resources. Although it has been determined that there are 108 species of fauna which should have a high priority in the designation of critical habitat, the Departments resources have only permitted them to begin work on nine. Again, the central limiting factor has been the lack of personnel and the lack of adequate funding necessary to undertake the necessary scientific research and surveys.

Recognizing the need to provide both the Department of Commerce and the Department of the Interior with the tools necessary to achieve the goals of the act, the Merchant Marine and Fisheries Committee approved legislation authorizing a modest increase in the authorization under the act. Although the Departments have estimated that the optimal funding of the endangered species program would be approximately \$20 million in each of fiscal year 1977 and fiscal year 1978, the committee recognizes that there are only finite resources with which to fund existing governmental programs. Therefore, the committee approved legislation provides for a modest increase in the fiscal year 1977 authorization, an increase which is well below the optimal funding the Departments estimate they require. The authorization provided in H.R. 8292 is, in my view, the minimum amount necessary for the agencies to meet their responsibilities and I urge my colleagues' support for the measure.

Mr. Speaker, I yield such time as he may consume to my distinguished colleague, the gentleman from New Jersey (Mr. Forsythe).

Mr. FORSYTHE. Mr. Speaker, I rise in support of the legislation. Mr. Speaker, in the wake of man's progress are strewn the remains of many species, plants and animals, which have become extinct. Continued commercial exploration and the impact of habitat destruction now threatens hundreds of species with a similar fate. As my colleague from Michigan has pointed out, the essential elements of the Endangered Species Act are the listing of species as endangered or threatened and the designation of critical habitat.

However, there are other programs of the Endangered Species Act which have been underfunded. For example, the act contemplates the registration of all importers and exporters of wildlife as a necessary tool of enforcement. Unfortunately, due to a lack of resources, this element of the enforcement program has yet to be implemented.

Similarly, the act establishes a program of international assistance using excess foreign currencies held by the United States to assist nations desirous of establishing an endangered species program. It appears that in fiscal year 1977 approximately \$600,000 in excess currencies will be available for distribution. Although none of the funds authorized in H.R. 8092 will be distributed overseas, certain of these funds will be used to administer this program.

Of greater importance, within the context of H.R. 8092, is the fact that the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which the United States is a signatory, will enter into force in fiscal year 1977 or fiscal year 1978. This convention charges each member nation with regulating the taking, importing, and exporting of all the species listed as endangered or threatened pursuant to the convention. Approximately 200 of these species are not yet on the U.S. list. The convention also directs that each member nation establish a scientific authority to evaluate the merits of the taking, importing, or exporting of these species. The establishment and operation of the scientific authority and the new enforcement responsibilities which will be placed on the departments require additional authorization which has been provided for in H.R. 8092. The Endangered Species Act is an important statute and I urge the adoption of H.R. 8092 which provides the minimum funding necessary for the implementation of that act.

Mr. CONTE. Mr. Speaker, I rise in support of the bill to extend the Endangered Species Act of 1973.

The goal of the endangered species program is to maintain a diversity of species of animals and plants that are endangered with extinction or threatened with endangerment. The eventual goal of the program is to restore such species to the point at which it is once again a viable component of its ecosystem.

So far, considering the limited funding, the legislation has been successful. However, the time has come to increase our efforts to enable full implementation of the act.

At face value, one naturally assumes that this legislation is designed to protect fish and wildlife. This legislation, however, is also designed to protect endangered plant life. Because of low funding, no plants have been listed as an endangered species as yet. This is a serious situation. The Smithsonian Association alone suggests that 3,000 species of the plant be put on the endangered list and come under protection of the act.

Now, I realize at first blush we might question the priority of funding efforts to protect 3,300 types of plant life. It is clear funding priorities must be considered. However, if a species of plant, which is an integral element of the diet of a species of wildlife, that species of plant must be protected. There is a natural ripple effect in the "balance of nature."

The additional funding levels in this bill would enable such valued plant life to be protected. One of the main causes of animals extinction is the absence of adequate habitat and diet. This bill, fully implemented, would attack the problem at each direction. I urge my colleagues to support this legislation.

Thank you, Mr. Speaker.

The Speaker. The question is on the motion offered by the gentleman from Missouri (Mrs. Sullivan) that the House suspend the rules and pass the bill H.R. 8092, as amended.

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

[From the Congressional Record, June 17, 1976]

HOUSE PASSAGE OF S. 3122 IN LIEU OF H.R. 8092 AS PREVIOUSLY PASSED

EXTENDING AUTHORIZATION FOR APPROPRIATIONS FOR ENDANGERED SPECIES ACT OF 1973

Mr. LEGGETT. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3122) to extend the authorization for appropriations to carry out the Endangered Species Act of 1973, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

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

Mr. FORSTNER. Mr. Speaker, reserving the right to object, I will not object, but I take this time to ask the chairman of my subcommittee to explain just what the contents of this bill are.

Mr. LEGGETT. Mr. Speaker, will the gentleman yield?

Mr. FORSTNER. I yield to the gentleman from California.

Mr. LEGGETT. Mr. Speaker, on March 15, 1976, the House passed H.R. 8092, a bill similar to S. 3122.

Mr. Speaker, H.R. 8092, as it passed the House, would amend the Endangered Species Act of 1973 to extend the authorization for appropriations to carry out the act. In this regard, the bill would authorize to be appropriated to the Secretary of the Interior \$25 million for fiscal years 1977 and 1978. The bill would also authorize to be appropriated to the Secretary of Commerce \$500,000 for the transition period—from July 1, 1976, to September 30, 1976—and \$5 million for fiscal years 1977 and 1978.

Mr. Speaker, S. 3122 as it passed the Senate, is identical to the House passed bill, except S. 3122 would authorize to be appropriated to the Secretary of the Interior the sum of \$1.8 million for the transition period.

Mr. Speaker, the Department of the Interior, in its report on the legislation, advised that it was unnecessary to provide an appropria-

tion authorization for the transition period for the Department since funds to cover this period—amounting to \$1.8 million—had been included in the Department's fiscal year 1976 appropriations pursuant to the authority contained in Public Law 94-144. Consequently, the appropriation authorization for the transition period for the Secretary of the Interior—as provided in S. 3122—is merely duplicative of the appropriation authorization contained in Public Law 99-144.

Mr. Speaker, the difference between the two versions of the bill is technical in nature and instead of insisting on the Senate passing the House bill, H.R. 8092, and substituting the language of S. 3122 as it passed the Senate and returning the House bill to the House for consideration, as it should have done, I am urging the House to adopt S. 3122, as it passed the Senate.

Mr. Speaker, it has been the practice in the past to send to the President for signature the bill which passed the House or Senate first and I realize the action I am recommending at this time is an exception to this practice. However, I am recommending that we take the Senate bill in this instance in order to avoid an extra step in the legislative process.

Mr. Speaker, S. 3122 would not result in any additional cost to the Federal Government and I urge its prompt passage.

Mr. Speaker, I hope the Senate will not make this unusual procedure necessary in the future.

Mr. FORSTNER. Mr. Speaker, I withdraw my reservation of objection. The Speaker. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3122

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "(A) not to exceed \$4,000,000" and all that follows through "\$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof "(1) not to exceed \$10,000,000 for the fiscal year ending June 30, 1976, not to exceed \$1,800,000 for the fiscal year ending September 30, 1976, and not to exceed a total of \$25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978,"; and

(2) by striking out "(B) not to exceed \$2,000,000" and all that follows through "\$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed \$2,000,000 for the fiscal year ending June 30, 1976, not to exceed \$500,000 for the fiscal year ending September 30, 1976, and not to exceed a total of \$5,000,000 for the fiscal year ending September 30, 1977, and the final year ending September 30, 1978."

Mr. RUPPE. Mr. Speaker, I rise in support of this legislation to extend the authorizations for appropriations for the Departments of the Interior and Commerce to implement their respective responsibilities under the Endangered Species Act of 1973.

The Endangered Species Act was generated by Congress' concern for the preservation and protection of the world's fauna and flora. The act has two key elements, namely, the listing of species as endangered or threatened and the designation of habitats critical to the survival of those species. Once listed as endangered or threatened, the

act prohibits the taking, importing, exporting, and interstate transport of endangered species or any parts and products thereof. These protections against commercial exploration have been a vital factor in the continued survival of hundreds of animals. Of equal and perhaps greater importance than the listing of a species as endangered is the determination of the habitat and the protection of the habitat critical to that species' survival.

Unfortunately, the Departments of Commerce and the Interior have been unable to perform their responsibilities at the optimal level. Although many species of wildlife have been listed as endangered and threatened, the Departments have a backlog of several thousand species which they feel might require protections afforded by listing. Due to the lack of personnel and adequate funding, the Departments have been unable to begin working on those species.

The Departments' record with respect to the designation of critical habitat has been more severely restricted by lack of resources. Although it has been determined that there are 108 species of fauna which should have a high priority in the designation of critical habitat, the Departments' resources have only permitted them to begin work on nine. Again, the central limiting factor has been the lack of personnel and adequate funding necessary to undertake the scientific research and surveys.

Recognizing the need to provide both the Department of Commerce and the Department of the Interior with the tools necessary to achieve the objectives of the act, the Merchant Marine and Fisheries Committee approved and the House passed legislation authorizing a modest increase in the authorizations under the act. This increase is reflected in the legislation before us today. I urge my colleagues' support for this measure.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsideration was laid on the table.

[From the Congressional Record, Mar. 10, 1976]

#### REMARKS OF SENATOR MOSS ON INTRODUCTION OF S. 3122

By Mr. Moss (by request):

S. 3122. A bill to amend the Endangered Species Act of 1973 to extend authorizations for appropriations. Referred to the Committee on Commerce.

Mr. Moss. Mr. President, I introduce by request, for appropriate reference, a bill to amend the Endangered Species Act of 1973 to extend authorizations for appropriations, and for other purposes, and ask unanimous consent that the letter of transmittal be printed in the Record together with the text of the bill.

There being no objection, the bill and letter were ordered to be printed in the Record, as follows:

S. 3122

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 (A) of the Endangered Species Act of 1973 (16 U.S.C. 1542 (A)), is amended by deleting "fiscal year 1976" and inserting in lieu thereof, "fiscal years 1976, 1977, and 1978."

U.S. DEPARTMENT OF THE INTERIOR,  
Washington, D.C., May 15, 1976.

HON. NELSON ROCKEFELLER,  
President of the Senate,  
Washington, D.C.

Dear Mr. President: Transmitted herewith is draft legislation to extend the authorizations for appropriations in the Endangered Species Act of 1973 (P.L. 93-205; 87 Stat. 884).

We recommend that this bill be referred to the appropriate Committee for consideration, and that it be enacted.

Man's activity threaten a growing number of species of plants and animals with extinction. Environmental change is taking place so rapidly that further delay in protection of endangered species and their habitats pushes certain species inevitably closer to the brink of extinction, making recovery more difficult and costly.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of Commerce) to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is our intent to prevent other species from beginning endangered.

In order to implement activities aimed at accomplishing these goals, the Endangered Species Act provides for grant-in-aid to States not to exceed \$10 million for the first three years after enactment and a general authorization of an amount not to exceed \$4 million for FY 1974, \$8 million for FY 1975 and \$10 million for FY 1976 to enable the Department of the Interior to carry out functions and responsibilities of the Act other than grant-in-aid.

Since December 28, 1973, we have taken these major steps in the implementation of the Act:

1. As prescribed by the Act, what were formerly the native list and foreign list of endangered species have been consolidated into one list and published.
2. Status surveys have been started and/or completed on the wolves of North America, green sea turtle, Sirenians, American alligator, American crocodile, grizzly bear and spotted cats.
3. Guidelines on submission of cooperative agreements and model legislation for use by the States to develop endangered species laws in accordance with provisions of the 1973 Act have been prepared and distributed.
4. Recovery plans have been prepared through first draft for 29 species.
5. Seven workshops have been conducted for training Service, other Federal agency and State personnel in recovery plan preparation.
6. Orientation workshops were conducted in each Regional Office of the U.S. Fish and Wildlife Service for Service and other Federal and State personnel to explain the provisions and applications of the 1973 Act.
7. Approximately \$7.37 million and 170 man-years of effort will be available in the Fish and Wildlife Service to carry out the endangered species program other than grant-in-aid and land acquisition in FY 1976. Our proposed bill would extend the authorization for appropriations at the FY 1976 level of \$10 million for FY 1977 and for FY 1978.

This recommendation is consistent with the President's moratorium on new Federal spending programs other than those involving energy production, national defense, and certain humanitarian efforts, and his stated policy to avoid excessive growth of Federal spending in the long run.

We urge enactment of the proposed legislation in order to assure continuation of programs aimed at preventing the continued decline of our living natural resources.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,  
Assistant Secretary of the Interior.

# S. 3122

[Report No. 94-637]

## IN THE SENATE OF THE UNITED STATES

MARCH 10, 1976

Mr. Moss (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

MAY 14, 1976

Reported by Mr. Moss, with amendments

(Texts set out after the enacting clause and insert the part placed in italics)

# A BILL

To amend the Endangered Species Act of 1973 to extend authorizations for appropriations.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 That section 15(A) of the Endangered Species Act of 1973
- 4 (16 U.S.C. 1542(A)) is amended by deleting "fiscal year
- 5 1976" and inserting in lieu thereof, "fiscal years 1976, 1977,
- 6 and 1978";

7 That section 15 of the Endangered Species Act of 1973 (16

8 U.S.C. 1542) is amended—

9 (1) by striking out "(A) not to exceed \$4,000,000"

10 and all that follows through "\$10,000,000 for fiscal year

11 1976," in paragraph (A) thereof and inserting in lieu

12

2

- 1 thereof "(1) not to exceed \$10,000,000 for the fiscal
- 2 year ending June 30, 1976, not to exceed \$1,800,000 for
- 3 the fiscal transitional period ending September 30, 1976,
- 4 and not to exceed a total of \$25,000,000 for the fiscal
- 5 year ending September 30, 1977 and the fiscal year end-
- 6 ing September 30, 1978,"; and
- 7 (2) by striking out "(B) not to exceed \$2,000,000"
- 8 and all that follows through "\$2,000,000 for fiscal year
- 9 1976," in paragraph (B) thereof and inserting in lieu
- 10 thereof "(2) not to exceed \$2,000,000 for the fiscal year
- 11 ending June 30, 1976, not to exceed \$500,000 for the
- 12 fiscal transitional period ending September 30, 1976,
- 13 and not to exceed a total of \$5,000,000 for the fiscal year
- 14 ending September 30, 1977 and the fiscal year ending
- 15 September 30, 1978,".

Amend the title so as to read: "A bill to extend the authorization for appropriations to carry out the Endangered Species Act of 1973."

Calendar No. 795

94TH CONGRESS }  
2d Session

SENATE

{ REPORT  
No. 94-837ENDANGERED SPECIES ACT OF 1973  
REAUTHORIZATION

## REPORT

OF THE

## SENATE COMMITTEE ON COMMERCE

ON

S. 3122

TO AMEND THE ENDANGERED SPECIES ACT OF 1973 TO  
EXTEND AUTHORIZATIONS FOR APPROPRIATIONS

MAY 13, 1976.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1976

Calendar No. 795

94TH CONGRESS }  
2d Session

SENATE

{ REPORT  
No. 94-837ENDANGERED SPECIES ACT OF 1973  
REAUTHORIZATIONMr. Moss, from the Committee on Commerce,  
submitted the following

## REPORT

[To accompany S. 3122]

The Committee on Commerce, to which was referred the bill (S. 3122) to amend the Endangered Species Act of 1973 to extend authorizations for appropriations, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

## PURPOSE AND SUMMARY

The purpose of S. 3122 is to extend and increase the authorization for appropriations for the Department of the Interior and the Department of Commerce for administration of the Endangered Species Act of 1973.

The bill increases the current Interior Department funding level from \$10 million per fiscal year to \$1.8 million for the fiscal transitional period and a combined total of \$25 million for the 2 fiscal years 1977 and 1978. The Commerce Department's current funding level of \$2 million per fiscal year is increased to \$500,000 for the fiscal transitional period and a combined total of \$5 million for the 2 fiscal years 1977 and 1978.

## BACKGROUND AND NEED

The Endangered Species Act of 1973 strengthens its 1966 and 1969 predecessors to give the Secretary of Interior and the Secretary of

Commerce major new authority to protect species of plants and animals which are on the brink of extinction. Using the best scientific and commercial information available to him, the Secretary of the Interior, after consultation with the States, and when a marine mammal is under consideration, with the Secretary of Commerce, has the authority to determine when a species is either endangered (in imminent danger of extinction) or threatened (likely to be in danger of extinction in the near future) and to promulgate regulations for its protection. Once a species has been designated as endangered, the act makes it illegal to take, import, export, or engage in interstate or foreign commerce in that species or in its parts or products.

The act also provides the Secretary of the Interior with the authority to—

—designate habitat which is critical for the survival of an endangered or threatened species. Once critical habitat has been designated, no Federal agency may undertake projects which endanger the existence of these species, or result in the destruction of the habitat.

—provide financial assistance to the States for endangered species programs.

—provide assistance to other nations for endangered species programs.

—provide for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which the United States is a signatory.

The ultimate goal of the Endangered Species Act is to maintain a diversity of species and to preserve in their natural ecosystems both endangered and threatened species. Wherever possible, the program seeks to restore such species to the point where it is once again a viable component of its ecosystem. Further it is the intent of the act to prevent other species from becoming endangered through restoration of habitat, research, and other scientific resource management activities.

With the exception of the State grant-in-aid program activities authorized by section 6 of the act and which expires on June 30, 1977, funding for administration of the act by the Departments of Interior and Commerce is authorized by section 15 (A) and (B) of the act. Under this section, there is authorized to be appropriated not to exceed \$4 million for fiscal year 1974, \$8 million for fiscal year 1975, and \$10 million for fiscal year 1976 for the Department of Interior to carry out its responsibilities under the act. An amount of \$2 million for fiscal year 1974, \$1.5 million for fiscal year 1975, and \$2 million for fiscal year 1976 is authorized for expenditure by the Department of Commerce. Inasmuch as the authorizations expire on June 30, 1976, it is essential that Congress extend funding under the act in order to continue this important conservation program.

On May 6, 1976, the Subcommittee on the Environment held a hearing on three bills to extend the authorization for the Endangered Species Act, including S. 2334, introduced by request of the Department of Commerce, which continues the current Commerce Department funding level through fiscal year 1978; S. 3122, introduced by request of the Department of the Interior which, as introduced, continues the Department of the Interior's current funding level through fiscal year 1978; and H.R. 8092, which combines both authorizations.

increases Interior's authorization to a total of \$25 million for fiscal years 1977 and 1978, and increases the Commerce Department's authorization to a total of \$5 million for fiscal years 1977 and 1978, and \$500,000 for the fiscal transitional period. At the hearing, representatives of the two Departments indicated that the funding levels contained in S. 2334 and S. 3122 would permit them to carry out adequately their endangered species programs for fiscal years 1977 and 1978.

Testimony received at the hearing indicated that implementation of the act has not occurred as rapidly as might be expected, due in part to a shortage of funding and personnel. For instance, although 10 species have been listed as endangered and 11 as threatened since passage of the act, the Department of Interior has information on another 20,000 species which they suspect may require protective listing. Before the species can be listed, however, the Department must carry out extensive investigations to determine their actual status. Furthermore, no plants have yet been listed as either endangered or threatened, although the Smithsonian Institute recommended the listing of some 3,000 species of flora in December of 1974. Approximately 200 species listed as endangered or threatened pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which the United States is a signatory, have not yet been placed on the U.S. list. Finally, although the key to the survival of a species is the preservation of its habitat, only one critical habitat, that for the small darter, has been designated under section 7 of the act. While the Departments of Commerce and Interior have indicated the desire to move ahead on all of these activities, to do so will require funding and personnel above currently authorized levels.

On May 11 the Senate Commerce Committee approved in executive session a substitute text for S. 3122 which combines the reauthorizations for the administration of the Endangered Species Act by the Interior Department and the Commerce Department. Interior Department funding is increased by a total of \$6.8 million over the administration's request, including \$1.8 million for the transitional period and a total increase of \$5 million for fiscal years 1977 and 1978. The authorization for the Commerce Department is increased by a total of \$1.5 million over the administration's request, including \$500,000 for the transitional period and a total increase of \$1 million for fiscal years 1977 and 1978. It is anticipated that the additional funds will be used by the Departments for scientific investigations and to implement more fully other provisions of the act. Finally, the bill combines two fiscal years' authorization into one amount in order to permit the Departments more flexibility in expenditure of these funds.

#### LEGISLATIVE HISTORY

S. 3122 was introduced by request of the Department of the Interior on March 10, 1976 and referred to the Subcommittee on the Environment on March 17, 1976. On May 6 the Subcommittee held a day of hearings on this legislation and two other bills, H.R. 8092 and S. 2334, 1976 the Senate Committee on Commerce ordered reported S. 3122 with a substitute text.

## SECTION-BY-SECTION ANALYSIS

The bill extends and increases the authorization for appropriations for the Department of the Interior and the Department of Commerce for administration of the Endangered Species Act of 1973. The current Interior Department authorization of \$10 million is increased to \$1.8 million for the transitional period and a combined total of \$25 million for fiscal years 1977 and 1978. The current Commerce Department authorization of \$2 million per year is increased to \$500,000 for the fiscal transitional period and a combined total of \$5 million for fiscal years 1977 and 1978.

## ESTIMATED COSTS

Pursuant to the requirements of section 252 of the Legislative Reorganization Act of 1969, the Committee estimates that in the event this legislation is enacted into law, the additional cost to the Federal Government would be as follows: \$2.3 million for the fiscal transitional period and a combined total of \$30 million for fiscal years 1977 and 1978.

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics*, existing law in which no change is proposed is shown in *roman*):

## SECTION 15 OF THE ENDANGERED SPECIES ACT OF 1973

(16 U.S.C. 1542; Public Law 93-203)

## AUTHORIZATION OF APPROPRIATIONS

Sec. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

[(A) not to exceed \$4,000,000 for fiscal year 1974, not to exceed \$8,000,000 for fiscal year 1975 and not to exceed \$10,000,000 for fiscal year 1976.] (1) *not to exceed \$10,000,000 for the fiscal year ending June 30, 1976, not to exceed \$1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of \$25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;* and

[(B) not to exceed \$2,000,000 for fiscal year 1974, \$1,500,000 for fiscal year 1975 and not to exceed \$2,000,000 for fiscal year 1976.] (2) *not to exceed \$2,000,000 for the fiscal year ending June 30, 1976, not to exceed \$500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of \$5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.*

## TEXT OF S. 3122, AS REPORTED

A BILL To extend the authorization for appropriations to carry out the Endangered Species Act of 1973.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "(A) not to exceed \$4,000,000" and all that follows through "\$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof "(1) not to exceed \$10,000,000 for the fiscal year ending June 30, 1976, not to exceed \$1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of \$25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,"; and

(2) by striking out "(B) not to exceed \$2,000,000" and all that follows through "\$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed \$2,000,000 for the fiscal year ending June 30, 1976, not to exceed \$500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of \$5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,".

## AGENCY COMMENTS

Inasmuch as S. 2334 and S. 3122 were introduced by request, the Committee received no agency comments on these bills. The Committee did receive one agency comment on H.R. 8092, which is similar to S. 3122, as reported. This is as follows:

GENERAL COUNSEL OF THE U.S. DEPARTMENT OF COMMERCE,  
*Washington, D.C., April 30, 1976.*

Hon. WARREN G. MAGNITSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

Dear Mr. CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 8092, an act to extend the authorization for appropriations to carry out the Endangered Species Act of 1973.

H.R. 8092 would amend the Endangered Species Act of 1973 by extending the authorization for appropriations to the Departments of Commerce and the Interior. The existing authorization for both Departments expires June 30, 1976.

The Department strongly supports enactment of legislation to extend the authorization of appropriations for the Department of Commerce under section 15(B) of the Endangered Species Act of 1973. Passage is imperative to the continuation of our program for the conservation of "endangered" and "threatened" species.

H.R. 8092, an act, increases the appropriation authorization under section 15(B) of the Endangered Species Act of 1973 for the Department of Commerce to \$5 million for fiscal years 1977 and 1978. The Department has submitted to the Congress draft legislation authorizing extension of the authorization at the level of \$2 million per year

for fiscal years 1977 and 1978. This legislation has been introduced as S. 2334. We recommend that clause (2) of H.R. 8092 be amended to conform to the provisions of S. 2334. We would defer to the Department of the Interior as to clause (1) of H.R. 8092.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the administration's program.  
Sincerely,

JOHN THOMAS SMITH II,  
*General Counsel.*

[From the Congressional Record, May 18, 1976]

SENATE CONSIDERATION AND PASSAGE OF S. 3122, AS AMENDED

ENDANGERED SPECIES ACT AUTHORIZATIONS

The Senate proceeded to consider the bill (S. 3122) to amend the Endangered Species Act of 1973 to extend authorizations for appropriations which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out: "(A) not to exceed \$4,000,000" and all that follows through "\$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof "(1) not to exceed \$10,000,000 for the fiscal year ending June 30, 1976, not to exceed \$1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of \$25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978"; and

(2) by striking out "(B) not to exceed \$2,000,000" and all that follows through "\$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed \$2,000,000 for the fiscal year ending June 30, 1976, not to exceed \$500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of \$5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to extend the authorization for appropriations to carry out the Endangered Species Act of 1973."

[From the Congressional Record, June 21, 1976]

S. 3122 PRESENTED TO THE PRESIDENT

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, June 21, 1976, he presented to the President of the United States the following enrolled bills:

- \* \* \* \* \*
- S. 3122. An act to extend the authorization for appropriations to carry out the Endangered Species Act of 1973.
- \* \* \* \* \*

ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Fish and Wildlife Miscellaneous, Part 4. Hearings, 94th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1976. 354 p.

Hearings on Endangered Species Authorization held Feb. 5, 6, 1976. Hearings on reimbursement for livestock loss caused by endangered species held on Mar. 26, 1976. "Serial No. 94-30"

Hearings to consider eight bills pertaining to management of marine and wildlife resources, including:

H.R. 8092, to amend the Endangered Species Act to extend the authorization for appropriations at the fiscal year 1976 level for fiscal years 1977-78.

H.R. 12057 and identical H.R. 12554, to amend the Endangered Species Act to authorize the reimbursement for any loss of or injury to livestock or pets caused by any endangered or threatened species inhabiting an area under Interior Dept control.

Hearings on H.R. 8092 include testimony from: C. Stevens (Society for Animal Protective Legislation), C. E. Wilson (Aububon Society), J. W. Grandy (Defenders of Wildlife), J. S. Gottschalk (Intl Assn of Game, Fish, and Conservation Comms), L. A. Greenwalt (FWS), J. W. Gehringer (NMFS).

Hearings on H.R. 12057 include testimony from: G. W. Milias (FWS), M. L. Cotner (USDA), R. Holmes (Minn DNR), J. W. Grandy (Defenders of Wildlife).

U.S. Congress, Senate, Committee on Commerce, Subcommittee on Environment. To amend the Endangered Species Act of 1973. Hearings, 94th Congress, 2d session, May 6, 1976. Washington, U.S. Govt. Print. Off., 1976. 190 p. "Serial No. 94-89"

Hearings to consider S. 2334 and similar S. 3211, H.R. 8092, to authorize fiscal year 1976 transition period, fiscal year 1977 and fiscal year 1978 appropriations for Commerce and/or Interior Departments Administration of Endangered Species Act of 1973.

Hearing also considers oversight of the Endangered Species Act and S. 2929 and similar H.R. 10229, to propose exemptions for the interstate sale of scrimshaw and whale products stockpiled prior to enactment of the Act.

Submitted articles, correspondence, and statements include:

a. Zimmerman, David, R. "That the Peregrine Shall Live" Audubon, Nov. 1975 (p. 133-141);

b. Cade, Tom J., "Plans for Managing the Survival of the Peregrine Falcon" Raptor Research Rpt., No. 2, 1974 (p. 141-151);

c. National Parks and Conservation Association, "Help Save Our Endangered Plants" reprints of articles from Environmental J. 1975 (p. 167-190).

Hearings on May 6 include testimony from L. M. Talbot (CEQ), and G. W. Milias (FWS).

Hearing on whale products includes J. W. Gehringer (MMGS), L. Brooks (GSA), K. L. Newman (Archer Daniels Midland Co.), A. S. Bistrizky (Scandinavian Oil Co.), W. Meckes (Werner G. Smith, Inc.), A. Wickham (Friends of the Earth), S. Stevens (Society for Animal Protective Legislation).

Hearings on programs oversight includes S. Whitney (Coll. of William and Mary), L. Hood (Calif. Native Plant Society, J. S. Gottschalk (Assn of Game, Fish and Conservation Comms), M. Newman (Fund for Animals), T. Cooper (Defenders of Wildlife), J. W. Grandy (Defenders of Wildlife).

Hearings on zoo and circus animals includes R. Thrun (Ringling Bros-Barium and Bailey Combined Shows), G. E. Steele (Zoological Action Committee).

Hearings on Peregrine falcons includes R. A. Graham (USAF), S. A. Marcus (North Amer Falconers Assn).

ENDANGERED SPECIES ACT AMENDMENTS, PUBLIC LAW 94-359

#### BACKGROUND

The following quoted material is taken from a review of fisheries and wildlife conservation legislation of the 94th Congress written by CRS and issued as a committee print by the Senate Committee on Interior and Insular Affairs. (See: Congress and the Nation's Environment: Energy and Natural Resources Actions of the 94th Congress, January 1977. Committee Print, Senate Committee on Interior and Insular Affairs. Washington, U.S. Govt. Print. Off. pp. 1127-1133):

The purpose of this legislation was to improve management of the Endangered Species Act of 1973 and to allow for the limited disposal of pre-Act, legally-obtained endangered species parts and products. The enactment of the Endangered Species Act of 1973 considerably strengthened previously existing law to protect species which are endangered or becoming endangered. It set strict prohibitions on the import and export and interstate (but not intrastate) commerce in endangered species parts or products. Implementation and administration of the Act over the past three years had given the Departments of Commerce and the Interior sufficient experience in working with statutory provisions of the Act to identify certain problems related thereto. The two Departments in October 1975 thus submitted by Executive Communication proposed amendments to the Act to clarify and remedy the problem areas. While these proposals were not introduced in bill form until October 20, 1975 (as H.R. 10229), they were the general subject of discussion during oversight hearings which the House Subcommittee on Fisheries and Wildlife Conservation and the Environment held on October 1, 2, and 6, 1975 (Serial 94-17).

More specific problem areas which had previously received attention related to inconsistencies between the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 with respect to endangered species parts and products, most particularly scrimshaw, sperm oil and spermaceti. The Marine Mammal Protection Act (P.L. 92-592) prohibits the importation and sale in interstate and foreign commerce of parts and products of marine mammals but the prohibitions do not apply to marine mammals taken prior to the effective date of the Act, December 21, 1972. The Endangered Species Act of 1973 (P.L. 93-205), however, lacked such retroactive exemptions. Hearing testimony indicated the inconsistency had led to confusion in the enforcement of the laws as well as financial hardship for scrimshanders and other artisans who

death in carved whale bone and teeth and who possessed sometimes substantial inventories of legally acquired materials used in their craft but who were then prohibited under the 1973 Act from marketing their finished products. Similarly, stockpiles of sperm whale oil held by the General Services Administration (GSA), acquired between 1948 and 1952 pursuant to the Strategic and Critical Materials Stockpiling Act, and declared surplus and no longer strategic in 1972 by the International Materials Stockpiling Act, were likewise kept from final commercial disposal. Both private persons and the government thus held sperm oil stocks, legally acquired, which they could not put into commercial use and which were costing significant funds in storage costs just to hold. Several bills had been introduced in the 93rd and 94th Congresses addressing these problems deriving from the inconsistency between the 1972 and 1973 Acts.

The House Subcommittee on Fisheries and Wildlife Conservation and Environment held hearings on June 9 and 10, 1975 (Serial 94-7) on several bills to amend the Endangered Species Act to provide for specific exemptions for pre-Act, legally obtained sperm oil and scrimshaw. Action on those bills was then held off until completion of the October 1975 oversight hearings resulting in ultimate action on a bill offering more general exemptions and including provisions of amendments as suggested by the Executive Communications Committee, having considered without action in the 93rd Congress bills to provide relief to scrimshanders, obtained departmental and public views—through a public comment period, but not by hearings—on a similar measure introduced in the 94th Congress and then reported a bill concerned with the scrimshaw problem alone.

Specifically, S. 229 was designed to preserve the art of scrimshaw. As introduced S. 229 would amend the Endangered Species Act of 1973 by providing the Secretary of Commerce authority to grant exemptions to the prohibitions on interstate commerce in marine mammal parts to persons "for stocks for inventories of bone and teeth of marine mammals of the order Cetacea, including parts of products thereof, lawfully held within the United States on December 21, 1972." The exemption would accompany subsequent sales of such parts and products to ultimate purchasers. The bill placed the burden of proof on seekers of such exemptions to demonstrate their qualifications for same, the legal presumption prior to such demonstration being that possession of marine mammal parts or products would be in violation of the Marine Mammal Protection Act of 1972. Because of various public and Senatorial concerns that actions taken in the interests of scrimshanders not reopen commercial markets which could encourage more illicit trade in marine mammal parts to the detriment of such animals and thus negate the intent of the Marine Mammal Protection Act, the Senate

Commerce Committee reported an amendment to S. 229 in the form of a substitute bill which contained a number of new provisions (see Senate Report 94-63, pp. 2 and 3).

The Senate Commerce Committee reported S. 229 on April 4, 1975; the full Senate approved it on April 14th after making one small amendment on the floor. Offered by Mr. Moss, the additional conforming amendment provided clarifying language to insure that with respect to exemptions granted for the sale and movement in commerce of finished scrimshaw products for personal use, that the persons wishing to sell those products must also demonstrate that they have been legally taken, legally acquired, and that the person has a right to carry it in interstate commerce or dispose of it. The amendment was not contested.

The House Merchant Marine and Fisheries Committee reported its bill, H.R. 10229, on February 11, 1976. The House suspended rules and passed the bill on February 17, 1976. As reported and subsequently passed, the bill amended the Endangered Species Act of 1973 to permit the Secretary of the Interior to react more quickly to emergency protection needs of resident endangered species by waiving in such cases the requirement for a 90 day waiting period for comments and recommendations regarding a given proposed emergency regulation. The bill allowed a limited exemption to the prohibitions contained in the Endangered Species Act for certain endangered species parts or products which were legally obtained and held in the United States prior to December 28, 1973 (i.e., sperm whale oil and scrimshaw). In allowing such exemptions, the amendments to the Act require that the Convention on International Trade in Endangered Species of Wild Flora and Fauna be adhered to, and that certain procedures and conditions be scrupulously followed. In general, the terms and conditions set forth in the House bill were more stringent than those in the Senate bill.

Following passage by the House of H.R. 10229, the Senate-passed bill, S. 229, was taken up, amended to replace the contents with those of H.R. 10229, and then the amended S. 229 was passed and sent back to the Senate. On June 24, 1976 the Senate accepted the House amendments with three additional clarifying amendments. These had the effect of further defining the scope of the bill, assuring that contracts which the General Services Administration had with private firms for the disposal of surplus stocks of sperm whale oil be performed as contemplated, and of making clear that the scope of limiting exemptions did not extend to exonerate any person for any act committed prior to the enactment of S. 229 in violation of the provisions for which exemptions were not being granted nor to immunize any person from prosecution for any such illegal act. The House then concurred in these Senate amendments to the House amendments to S. 229, on June 29, 1976 and the bill was signed into law (P.L. 94-359) on July 12, 1976.

January 17, 1975—S. 229 introduced and referred to Senate Committee on Commerce.  
 April 4, 1975—S. 229 reported to Senate by the Committee on Commerce with amendment, S. Rept. 94-68.  
 April 14, 1975—S. 229 passed Senate, amended.  
 April 15, 1975—S. 229 referred to House Committee on Merchant Marine and Fisheries.  
 October 20, 1975—H.R. 10229 introduced and referred to House Committee on Merchant Marine and Fisheries.  
 February 11, 1976—H.R. 10229 reported to House by the Committee on Merchant Marine and Fisheries with amendment, H. Rept. 94-823.  
 February 17, 1976—H.R. 10229 passed House, amended.  
 February 17, 1976—S. 229 passed House, amended, in lieu of H.R. 10229.  
 June 24, 1976—Senate agreed to House amendment to S. 229, with an amendment.  
 June 29, 1976—House agreed to Senate amendment to S. 229 as amended.  
 July 1, 1976—S. 229 presented to the President.  
 July 12, 1976—S. 229 signed into law (P.L. 94-359).



Public Law 94-359  
 94th Congress, S. 229  
 July 12, 1976  
**211 a/c**

To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 4 (1) (2) (B) (i) of the Endangered Species Act of 1973 (16 U.S.C. 1533 (b) (2) (B) (i)) is amended by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof subsection (b) (1) (A), (B), and (C); Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1530) is amended by adding at the end thereof the following new subsections:

Endangered Species Act of 1973, amendment.

Definitions.

"(f) (1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm, whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Exemption.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

16 USC 1538.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the following prohibitions:

Application.

"(A) The prohibition on exportation from the United States set forth in section 9(a) (1) (A) of this Act.

"(B) Any prohibition set forth in section 9(a) (1) (E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

**Exemption certification.**  
 16 USC 1538.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—  
 "(A) any prohibition in section 9(a) of this Act which is exempted;  
 "(B) the pre-Act endangered species parts to which the exemption applies;  
 "(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and  
 "(D) any term or condition prescribed pursuant to paragraph (b) (A) or (B), or both, which the Secretary deems necessary or appropriate."  
 "(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—  
 "(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and  
 "(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;  
 to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (1) of this Act.  
 "(8) (A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notices published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a) (1) (F).  
 "(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.  
 "(7) Nothing in this subsection shall be construed to—  
 "(A) exonerate any person from any act committed in violation of paragraphs (1) (A), (1) (E), or (1) (F) of section 9(a) prior to the date of enactment of this subsection; or  
 "(B) immunize any person from prosecution for any such act.  
 "(8) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation."  
 Sec. 3. Section 10 of the Endangered Species Act of 1973 (16 USC 1539) is further amended—  
 (1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and  
 (2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such thirty-day period may be waived by

**Regulations.**

16 USC 6533.  
 Pre-Act endangered species parts, sales contracts, validity.

Waiver.

the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit."  
 Sec. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e) (3)) is amended—  
 (1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and  
 (2) by striking out the period at the end thereof and inserting in lieu thereof the following: "; but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."  
 Sec. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof: "Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations."  
 Approved July 12, 1976.

Notice, publication in Federal Register, Enforcement.

**LEGISLATIVE HISTORY**

HOUSE REPORT No. 94-823 accompanying H. R. 10229 (Comm. on Merchant Marine and Fisheries).  
 SENATE REPORT No. 94-63 (Comm. on Commerce).  
 CONGRESSIONAL RECORD.  
 Vol. 121 (1975): Apr. 14, considered and passed Senate.  
 Vol. 122 (1976): Feb. 17, H. R. 10229, amended, in lieu of H. R. 10229.  
 June 24, Senate agreed to House amendment with amendments.  
 June 29, House concurred in Senate amendments.

# H. R. 10229

## IN THE HOUSE OF REPRESENTATIVES

October 20, 1975

Mrs. STEVENS (for herself and Mr. ZERRUCCI) introduced the following bill:  
which was referred to the Committee on Merchant Marine and Fisheries

### A BILL

To amend the Endangered Species Act of 1973.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 That the Endangered Species Act of 1973 (87 Stat. 884:

4 16 U.S.C. 1531-1543) is amended as follows:

5 (a) Section 4 (f) (2) (B) (ii) (87 Stat. 889) is

6 amended by striking “, (B), and (C)” after “subsection

7 (b) (A)”.

8 (b) Section 10(b) (87 Stat. 896) is amended by add-

9 ing new paragraphs (4), (5), and (6) as follows:

10 “(4) The Secretary may grant to any person sub-

11 ject to the jurisdiction of the United States, under such

1

2

1 terms and conditions as he may prescribe, exemption-  
2 to the prohibitions on exportation in section 9(a) (1)  
3 (A) and to the prohibitions in sections 9(a) (1) (E)  
4 and (F) for stocks or inventories of parts or products  
5 of endangered species lawfully held within the United  
6 States on December 28, 1973, in the course of a com-  
7 mercial activity: *Provided*, That such an exemption  
8 shall not violate the Convention or other provisions of  
9 law: *Provided further*, That such an exemption may  
10 apply to such length of time as the Secretary may  
11 determine.

12 “(5) The Secretary may grant to any person sub-  
13 ject to the jurisdiction of the United States, under such  
14 terms and conditions as he may prescribe, exemptions to  
15 the prohibitions in section 9(a) (1) (A), (E), and  
16 (F) for live endangered species of fish or wildlife law-  
17 fully held in captivity in the United States on Decem-  
18 ber 28, 1973: *Provided*, That such exemption shall not  
19 violate the Convention or any other provisions of law:  
20 *Provided further*, That such an exemption may apply to  
21 such length of time as the Secretary may determine.

22 “(6) (A) Any such exemption may be granted un-  
23 der subparagraphs (4) and (5) of this subsection by  
24 such Secretary upon such terms and conditions as he  
25 shall prescribe, which may include, but are not limited

1 to, requiring such persons to register inventories within  
 2 a time certain to be set by the Secretary; to maintain  
 3 complete sales records and such other documents and  
 4 materials as the Secretary may prescribe; to permit duly  
 5 authorized agents of such Secretary to inspect any such  
 6 inventories and records; and to prepare and submit to  
 7 such Secretary any reports requested by him: *Provided*,  
 8 That if the Secretary requires such inventories under  
 9 this subsection, he shall only grant an exemption pursu-  
 10 ant to subparagraphs (4) and (5) for the holdings re-  
 11 ported in such inventories: *Provided further*, That no  
 12 regulations issued under this subsection shall be subject  
 13 to the provisions of section 4 (f) (2) (A) (i).

14 "(B) With respect to any act prohibited by section  
 15 9 (a) (1) (A), (E), and (F) for live endangered spe-  
 16 cies of fish or wildlife, or for stocks or inventories of parts  
 17 or products of endangered species, there shall be a re-  
 18 butable presumption that the live endangered species of  
 19 fish or wildlife, or the stocks or inventories of parts or  
 20 products of endangered species involved in such act was  
 21 not lawfully held within the United States on Decem-  
 22 ber 28, 1972:"

23 (c) Section 10 (c) (87 Stat. 896) is amended by—

24 (1) striking the word "subsection" in the first sen-

1 tence and inserting in lieu thereof the word "section",  
 2 and

3 (2) striking the period at the end of the second  
 4 sentence and inserting in lieu thereof " , except that the  
 5 thirty-day period may be waived by the Secretary in an  
 6 emergency situation where the health or life of an en-  
 7 dangered animal is threatened, and no reasonable alter-  
 8 native is available to the applicant. Notice of any emer-  
 9 gency waivers granted pursuant to this subsection must  
 10 be published in the Federal Register within ten days  
 11 following the issuance of the permit".

12 (d) Section 11 (e) (3) (87 Stat. 899) is amended by—

13 (1) adding "make arrests without a warrant for  
 14 any violation of this Act if they have reasonable grounds  
 15 to believe that the person to be arrested is committing  
 16 the violation in his presence or view, and" before the  
 17 words "execute and serve any arrest warrant."; and

18 (2) striking the period at the end of the subsection  
 19 and inserting in lieu thereof " ; upon forfeiture, or waiver,  
 20 of any such property to the United States, it shall be  
 21 disposed of by the Secretary in such a manner, consistent  
 22 with the purposes of this Act, as the Secretary deems  
 23 appropriate".

Exemption  
certification.  
16 USC 1538.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (i) of this Act.

"(6) (A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a) (1) (F).

"(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exempt any person from any act committed in violation of paragraphs (1) (A), (1) (E), or (1) (F) of section 9(a) prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act.

"(8) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation."

Sec. 3. Section 10 of the Endangered Species Act of 1973 (16 USC, 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: " ; except that such thirty-day period may be waived by

the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit."

Sec. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 USC, 1540(e) (3)) is amended—

(1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: " but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."

Sec. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 USC, 1532(1)) is amended by striking the period and inserting in lieu thereof: "Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations."

Approved July 12, 1976.

Notes,  
publication  
in Federal  
Register,  
Enforcement.

the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit."

Sec. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 USC, 1540(e) (3)) is amended—

(1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: " but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."

Sec. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 USC, 1532(1)) is amended by striking the period and inserting in lieu thereof: "Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations."

Approved July 12, 1976.

16 USC 6533.  
Pre-Act en-  
dangered  
species parts,  
sales contracts,  
validity.

Regulations.

Waiver.

LEGISLATIVE HISTORY

HOUSE REPORT No. 94-823 accompanying H. R. 10229 (Comm. on Merchant Marine and Fisheries).

SENATE REPORT No. 94-63 (Comm. on Commerce).

CONGRESSIONAL RECORD: Apr. 14, considered and passed Senate,

Vol. 121 (1975) Apr. 17, considered and passed House, amended, in lieu of H. R. 10229.

June 24, Senate agreed to House amendment with amendments.

June 29, House concurred in Senate amendments.

# H. R. 10229

## IN THE HOUSE OF REPRESENTATIVES

October 30, 1975

Mrs. STANWELL (for herself and Mr. ZERENGER) introduced the following bill:  
which was referred to the Committee on Merchant Marine and Fisheries

### A BILL

To amend the Endangered Species Act of 1973.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 That the Endangered Species Act of 1973 (87 Stat. 884:

4 16 U.S.C. 1531-1543) is amended as follows:

5 (a) Section 4 (f) (2) (B) (ii) (87 Stat. 889) is

6 amended by striking “ (B), and (C) ” after “subsection

7 (b) (A) ”.

8 (b) Section 10 (b) (87 Stat. 896) is amended by add-

9 ing new paragraphs (4), (5), and (6) as follows:

10 “(4) The Secretary may grant to any person sub-

11 ject to the jurisdiction of the United States, under such

1

1 terms and conditions as he may prescribe, exemptions

2 to the prohibitions on exportation in section 9 (a) (1)

3 (A) and to the prohibitions in sections 9 (a) (1) (E)

4 and (F) for stocks or inventories of parts or products

5 of endangered species lawfully held within the United

6 States on December 28, 1973, in the course of a com-

7 mercial activity: *Provided*, That such an exemption

8 shall not violate the Convention or other provisions of

9 law: *Provided further*, That such an exemption may

10 apply to such length of time as the Secretary may

11 determine.

12 “(5) The Secretary may grant to any person sub-

13 ject to the jurisdiction of the United States, under such

14 terms and conditions as he may prescribe, exemptions to

15 the prohibitions in section 9 (a) (1) (A), (E), and

16 (F) for five endangered species of fish or wildlife law-

17 fully held in captivity in the United States on Decem-

18 ber 28, 1973: *Provided*, That such exemption shall not

19 violate the Convention or any other provisions of law:

20 *Provided further*, That such an exemption may apply to

21 such length of time as the Secretary may determine.

22 “(6) (A) Any such exemption may be granted un-

23 der subparagraphs (4) and (5) of this subsection by

24 such Secretary upon such terms and conditions as he

25 shall prescribe, which may include, but are not limited

1 to requiring such persons to register inventories within  
 2 a time certain to be set by the Secretary; to maintain  
 3 complete sales records and such other documents and  
 4 materials as the Secretary may prescribe; to permit duly  
 5 authorized agents of such Secretary to inspect any such  
 6 inventories and records; and to prepare and submit to  
 7 such Secretary any reports requested by him: *Provided*,  
 8 That if the Secretary requires such inventories under  
 9 this subsection, he shall only grant an exemption pertain-  
 10 ant to subparagraphs (4) and (5) for the holdings re-  
 11 ported in such inventories: *Provided further*, That no  
 12 regulations issued under this subsection shall be subject  
 13 to the provisions of section 4 (1) (2) (A) (i).

14 “(B) With respect to any act prohibited by section  
 15 9 (a) (1) (A), (E), and (F) for live endangered spe-  
 16 cies of fish or wildlife, or for stocks or inventories of parts  
 17 or products of endangered species, there shall be a re-  
 18 buttable presumption that the live endangered species of  
 19 fish or wildlife, or the stocks or inventories of parts or  
 20 products of endangered species involved in such act was  
 21 not lawfully held within the United States on Decem-  
 22 ber 28, 1973:”

23 (c) Section 10 (c) (87 Stat. 890) is amended by—  
 24 (1) striking the word “subsection” in the first sen-

1 reuce and inserting in lieu thereof the word “section”;  
 2 and  
 3 (2) striking the period at the end of the second  
 4 sentence and inserting in lieu thereof “; except that the  
 5 thirty-day period may be waived by the Secretary in an  
 6 emergency situation where the health or life of an en-  
 7 dangered animal is threatened, and no reasonable alter-  
 8 native is available to the applicant. Notice of any emer-  
 9 gency waivers granted pursuant to this subsection must  
 10 be published in the Federal Register within ten days  
 11 following the issuance of the permit”.

12 (d) Section 11 (e) (3) (87 Stat. 899) is amended by—  
 13 (1) adding “make arrests without a warrant for  
 14 any violation of this Act if they have reasonable grounds  
 15 to believe that the person to be arrested is committing  
 16 the violation in his presence or view, and” before the  
 17 words “execute and serve any arrest warrant.”; and  
 18 (2) striking the period at the end of the subsection  
 19 and inserting in lieu thereof “; upon forfeiture, or waiver,  
 20 of any such property to the United States, it shall be  
 21 disposed of by the Secretary in such a manner, consistent  
 22 with the purposes of this Act, as the Secretary deems  
 23 appropriate”.

## ENDANGERED SPECIES ACT AMENDMENTS

FEBRUARY 11, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

### REPORT

[To accompany H.R. 10229]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 10229) to amend the Endangered Species Act of 1973, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That section 4(f)(2)(B) (H) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)(B) (H)) is amended by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof "subsection (b) (1) (A)".

Sec. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f) (1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(1) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(11) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carrying of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on exportation from the United States set forth in section 9(a) (1) (A) of this Act.

"(B) Any prohibition set forth in section 9(a) (1) (E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the 3-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection.

To ensure that any such part so exempted is adequately accounted for and not disposed contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (1) of this Act.

"(6) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

Sec. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

"(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

"(2) by striking out the period at end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: " , except that such 30-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within 10 days following the issuance of the exemption or permit."

Sec. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e) (3)) is amended—

"(1) by inserting immediately before the words "execute and serve any arrest warrant" in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

"(2) by striking out the period at the end thereof and inserting in lieu thereof the following: " , but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."

Sec. 5. Paragraph (1) of section 8 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof " , provided, however, that it does not include exhibition of commodities by individuals or similar cultural or historical organizations."

Amend the title to read as follows:

A bill to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

#### PURPOSE OF THE LEGISLATION

The purpose of the legislation is to improve management of the Endangered Species Act of 1973 and to allow for the limited disposal of pre-Act, legally-obtained endangered species parts and products.

More specifically, the bill makes a number of minor changes to clarify certain ambiguities, avoid lapses of coverage, and unnecessary administrative burdens, and to create greater consistency with other similar conservation legislation, the Marine Mammal Protection Act of 1972.

#### LEGISLATIVE BACKGROUND

The enactment of the Endangered Species Act of 1973, significantly strengthened the existing law to protect species which are endangered or becoming endangered. Further, it set strict prohibitions on the import and export and interstate sale of endangered species parts or products. The Act did not restrict the intrastate sales of endangered species parts and products.

During the implementation and administration of the Act, the Departments of Interior and Commerce have gained considerable experience and have recognized certain problems in working with statutory provisions.

Therefore, on October 1, 1975, the two Departments submitted by Executive Communication amendments to the Act to clarify and remedy the problem areas. These amendments were the general subject of discussion during oversight hearings which were held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on October 1, 2, and 6, 1975. Earlier, the Subcommittee had held hearings on several bills which amended the Act to provide for specific exemptions for pre-Act, legally obtained scrimshaw (H.R. 2067) and whale oil (H.R. 3456) from the prohibitions of the Act. These bills were held in abeyance until completion of the oversight hearings, at which time the discussion centered on whether specific or general exemption should be granted.

On October 20, 1975, the Administration amendments were introduced in the form of H.R. 10229. Inasmuch as the substance of the bill had been considered during five days of previous hearings, the Subcommittee considered the bill in open markup on November 6 and 7, whereafter it was reported to the Full Committee with amendments. The Full Committee held an open mark-up session on February 4, 1976, and ordered the bill reported with one additional amendment to the Subcommittee's amended version.

#### BACKGROUND AND NEED FOR THE LEGISLATION

In 1973 Congress passed the Endangered Species Act of 1973 which strengthened its 1969 predecessor by prohibiting not only the importation but also the sale of endangered species and their parts and products in interstate and foreign commerce. The Endangered Species Act,

however, contained no retroactive exemptions for the interstate sale of parts and products of endangered marine mammals which were legally held under the Marine Mammal Protection Act of 1972. As a result of this inconsistency between the two laws, a severe economic hardship was inflicted upon those individuals who were engaged in legitimate commercial activities and who were holding large inventories prior to the passage of the Act. Considerable testimony was presented to the Subcommittee during hearings which highlighted this problem with respect to scrimshaw and whale oil. Although the Committee felt that the commercial demand for endangered species should be eliminated and that the U.S. should take the lead by curtailing the demand of its citizens, at the same time the Committee felt that relief should be granted in these two instances.

In the case of scrimshaw, the Committee was concerned not only with the economic hardship caused by the Act but also with the preservation of the art of scrimshaw which was originated during the Nation's early years by New England whalers. These men etched designs in and carved figures from whale bone and teeth as a means of passing time during the long months spent away from home on whaling expeditions. As the Nation grew and expanded westward, the popularity of scrimshaw grew as well and today the artists practice throughout the country in New England and in areas such as the Pacific Northwest, the Southwest, Alaska and Hawaii. Today's artisans, in addition to practicing scrimshaw as it was originated in New England, have adapted the art and developed new innovations which reflect the heritage of other sections of the Nation and which are not restricted to nautical motifs.

Due to the prohibitions in the Endangered Species Act of 1973, many scrimshanders were forced to abandon their profession because the interstate market, which accounted for 85 to 95 percent of their sales, was now closed to them. Unable to dispose of their legally acquired stocks and unable to sell new scrimshaw except in intrastate commerce, these individuals turned to other professions. Although other media such as beef bone could be legally utilized, most artisans have not had sufficient time to adapt their craft to other materials. Thus, to permit these individuals to dispose of their legally acquired stocks and to assure the preservation of the art of scrimshaw, the Committee has established a special exemption from the Endangered Species Act for scrimshaw.

In respect to sperm whale oil, the legislation would permit the General Services Administration (GSA) to dispose of its stockpile of 14,739,520 pounds. This oil, which is derived from the endangered sperm whale and which is used primarily as a lubricant, was acquired between January, 1948, and June 1952, pursuant to the Strategic and Critical Materials Stockpiling Act. However, in late 1972 the Interdepartmental Materials Advisory Committee determined that sufficient substitutes existed for sperm oil and that it should not be considered a strategic material. This decision was concurred in by the Department of Defense.

At the time the stockpile was declared surplus to the Nation's needs, GSA had 23,400,000 pounds of oil in storage. Although some 8.7 million pounds have been disposed of, the prohibitions contained in the

Endangered Species Act have prevented GSA from contracting for further sale of the remainder.

The annual cost of storing this material is \$38,568 per year and the total cost of storage since the oil was declared surplus has been \$77,136. It is expected that the Government would realize a profit of approximately \$2.7 million from the sale of the sperm whale oil. To eliminate this burden on the taxpayers and to permit persons who are now holding legally acquired stocks of sperm oil to dispose of that oil, the Committee in H.R. 10229 has provided a special exemption for the sale of this oil.

The additional sections of the bill were considered to be "housekeeping" changes required for effective management of the endangered species program.

#### SECTION-BY-SECTION ANALYSIS

Section 1 amends section 4(f) (2) (B) (ii) of the Act to waive the requirement that each state be allowed 90 days to submit its comments and recommendations on any regulations issued by the Secretary of the Interior or the Secretary of Commerce in regard to an emergency or posing a significant risk to the well-being of any endangered or threatened species. As presently written, the Endangered Species Act mandates this 90-day delay before the emergency regulations may become effective. It seemed to the Committee that a 90-day comment period was incongruous with the need for prompt action in emergency situations. It should be noted, however, that the Committee left untouched that section of the Act which limits the duration of the emergency regulations to 120 days.

Section 2 amends the Endangered Species Act by adding new subsections (f) and (g) at the end of section 10. The new subsection (f) establishes a mechanism for granting exemptions under the Act for certain pre-act endangered species parts.

Subsection (f) (1) (A) defines for the purposes of this subsection the term "pre-act endangered species part" to mean 1) any sperm whale oil which was lawfully held in the United States on December 20, 1973, the effective date of the Endangered Species Act; and 2) any finished scrimshaw product or the raw material for such product, if such product or the raw material was lawfully held in the United States on December 20, 1973.

Subsection (f) (1) (B) further defines scrimshaw product to mean any art form which involves the etching or designs upon or the carving of figures, patterns, or designs from any bone or tooth from any mammal from the order Cetacea.

Subsection (f) (2) authorizing the Secretary of Commerce, who pursuant to the Act has management responsibility for scrimshaw and sperm whale oil, to grant an exemption for the exportation from the United States and for the interstate sale of legally-held scrimshaw and sperm whale oil.

Subsection (f) (3) directs that any person seeking an exemption shall apply to the Secretary, however, no such application may be considered unless the application is received within one year, contains a complete and detailed inventory of all pre-act endangered species

parts for which the applicant seeks an exemption, is accompanied by appropriate documentation to prove that the parts were legally held on December 20, 1973, and contains such other information as the Secretary may require.

Subsection (f) (4) requires that any certificate of exemption issued by the Secretary shall specify the specific actions authorized by the permit, the parts and products to which the exemption applies, and the duration of the permit provided; however, that no permit may remain in effect for more than three years after issuance and any term or condition promulgated pursuant to section (f) (5) as the Secretary deems appropriate.

Subsection (f) (5) authorizes the Secretary to prescribe such regulations as he deems appropriate. Such regulations may set forth requirements that applicants register inventories, keep complete sales records, permit the inspection of such inventories and records, and file periodic reports with the Secretary. The Secretary may also impose conditions on any subsequent purchasers of any pre-act endangered species part covered by an exemption to insure that any such part is not disposed of contrary to the provisions of the Endangered Species Act.

Subsection (g), also added by section 2, provided for an affirmative defense where a prima facie violation of the Act is established whereby the holder must show that the permit or exemption is applicable, has been granted, and is valid and in force. A similar provision is found in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USC 855 (b)) and the Act Prohibiting Foreign Fishing Vessels in the Territorial Waters of the United States (Bartlett Act) (16 USC 1082), and has been upheld in the Federal Court of Appeals.

Section 3(1) amends section 10(c) of the Endangered Species Act to clarify that notice of review of permit applications applies to the entire section 10 and not just subsection (c).

Section 3(2) makes a technical change in the Act by adding a new sentence to section 10(c) which provides that the 30-day comment period which must precede the issuance of any permit or exemption under the Act may be waived in an emergency situation where the health or life of an endangered animal was threatened and where no reasonable alternative is available to the applicant.

While the 30-day comment period has caused a lengthening of the time required to issue permits, it has apparently been generally accepted. However, there have been occasions during the past year where the health or life of an animal on the endangered species list has been threatened because of the lack of ability to waive the strict 30-day notice requirement.

The emergency waiver would not be available for the convenience of the applicant, or even to avoid serious economic loss to the applicant. It would be available only to protect the health or life of the endangered animal itself. The applicant would have to make a showing that no reasonable alternative was available. It should be noted, however, that an alternative would be considered reasonable even if it involved substantial economic loss to the applicant.

Section 4(1) amends section 11(e) (3) of the Act to permit duly authorized enforcement agents to make arrests without a warrant if the agent has reasonable grounds to believe that the person can be

arrested for committing a violation in his presence or review. This authority was in the Endangered Species Conservation Act of 1969, is found in all other wildlife legislation, and was in the bills which were the basis of this Act. It appears to have been inadvertently omitted in the drafting process. It is a traditional law enforcement authority, and is necessary in the proper enforcement of this Act with its broad scope of prohibitions.

Section 4(2) further amends section 11(e) (3) of the Act to authorize the disposal other than by general sale to the public of any endangered species, parts, or products which have been forfeited to and stored by the government, thus sparing the taxpayers another unnecessary storage cost. Without these amendments the government lacks the authority to dispose of the forfeited items. The legislation makes it clear, however, that these items may not be disposed of by sale to the general public, thereby reducing the enforcement burden upon the Departments of Commerce and Interior and reducing the likelihood of the introduction of smuggled products into this Nation.

Finally, Section 5 would exclude from the definition of "commercial activity" in section 3 of the Act the exhibition of commodities by museums or smaller cultural or historical organizations. The effect of this amendment is to allow the interstate exchange of displays between such organizations without violating the Act.

#### COST OF THE LEGISLATION

The Committee estimates that no additional costs would be incurred in carrying out H.R. 10229, as amended, in the current fiscal year or in any of the years following this fiscal year.

#### COMPLIANCE WITH HOUSE RULE XI

(1) With respect to the requirements of cause 2(1)(3) (A) of Rule XI, of the Rules of the House of Representatives, three days of overnight hearings were held on the subject matter of this legislation in October 1975. Some 34 witnesses were heard by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

(2) With respect to the requirements of clauses 2(1)(3) (B) and (C), of Rule XI of the Rules, the bill does not provide new budget authority or increased tax expenditures, and it has received no estimate and comparison prepared by the Director of the Congressional Budget Office. Consequently, no such information is supplied to meet these requirements.

(3) With respect to the requirements of clause (2) (1) (3) (D), of Rule XI of the Rules, the Committee has received no report from the Committee on Government Operations on this subject.

(4) The Committee reports that enactment of H.R. 10229, as amended, would have no inflationary impact on prices and costs in the operation of the national economy.

#### DEPARTMENT REPORTS

The Department of the Interior transmitted to the Congress, as Executive Communication No. 1815, draft legislation which became

H.R. 10229 when introduced. This Executive Communication along with reports received from the Departments of the Interior, Commerce and State follow herewith:

[Ex. Comm. No. 1815]

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., September 30, 1975.

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

Dear Mr. Speaker: Transmitted herewith are the Department of the Interior's proposed amendments to the Endangered Species Act of 1973 (P.L. 93-205; 87 Stat. 884).

We recommend that this proposal be referred to the appropriate Committee and that it be enacted.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of Commerce) to prevent the extinction of plants and animals. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthen the Secretary's ability to protect and manage listed species.

The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystem species that are endangered with extinction or threatened with endangerment. Wherever possible the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is intended to prevent other species from becoming endangered or threatened.

Since enactment of the 1973 Endangered Species Act, we have become aware of a number of problems; certain provisions need clarification or modification to expedite management and to insure equity to those individuals impacted by the Act.

Enclosure: The draft bill is now H.R. 10229 as introduced.

Of great concern to the Department of the Interior is the situation where individuals legally possessed, prior to enactment of the 1973 Act, parts or products of endangered species for the purpose of sale or for other activities of a commercial nature. A similar situation exists with respect to live animals. For example, prior to enactment of the 1973 Endangered Species Act, zoos and circuses and various other types of live animal dealers regularly engaged in the sale and interstate transport of surplus or unneeded animals which were Federally listed as endangered. The Endangered Species Act of 1969 did not prohibit such commercial activity, but prohibited only the importation of species listed as endangered. With passage of the 1973 Act, such commercial activity was prohibited.

This Department fully supported this prohibition so as to reduce the demand for certain animals whose continued existence was, and is, in jeopardy. However, we recognize that such a prohibition has also caused economic hardship on many individuals who were engaged in legitimate commercial activities prior to passage of the 1973 Act.

It is our judgment that the commercial demand for endangered animals should be reduced, and the United States should take the lead by reducing the demand of its citizens. However, we believe that a gradual reduction of this demand would create less severe economic hardship for many legitimate commercial enterprises.

The amendments proposed in subsection (b) of the proposed legislation would resolve the problems with respect to live animals and their parts or products of endangered species. The remaining proposed amendments would: (1) eliminate the 90 day comment period in issuance of emergency regulations. Such regulations cease to be in effect after 120 days unless the standard regulatory procedure is applied. As provided for in the current law, such regulations may be promulgated only in the case of an "emergency posing a significant risk to the well being of any species of fish or wildlife" and only if the Secretary publishes in the Federal Register the "detailed reasons why such regulation is necessary;" (2) clarify that notice of review of permit applications applies to the entire section 10, not just subsection (c); (3) waive the 30 day notice requirement in issuance of a permit where the health or life of an animal on the endangered species list is threatened; (4) authorize law enforcement personnel to arrest, without a warrant, persons committing violations in their presence or view; and (5) provide the Secretary with authority to dispose of forfeited property.

We urge enactment of this proposed legislation in order to assure the efficient administration of the Endangered Species Act of 1973.

The Office of Management and Budget has advised that there is no objection to the presentation of this draft bill from the standpoint of the Administration's program.

Sincerely yours,

NATHANIEL P. REED,

*Assistant Secretary of the Interior.*

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
*Washington, D.C., November 18, 1975.*

Hon. ROBERT L. LEGGETT,  
*Chairman, Fisheries and Wildlife Conservation and the Environment Subcommittee, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D.C.*

Dear Mr. CHAMRAN: This is in response to the urgent request of Subcommittee counsel for the views of the Department of Commerce on the Subcommittee amendments to H.R. 10229, a bill "To amend the Endangered Species Act of 1973."

H.R. 10229 is an Administration bill that was developed jointly by the Department of Commerce and the Department of the Interior. While H.R. 10229 and the amendment each aim to improve management and promote equitable treatment for certain individuals affected by the Endangered Species Act, the relief provided in the amended version is unduly circumscribed. For that reason, we recommend adoption of the original bill.

The Subcommittee amendment would require submission of applications for exemptions within a year after regulations are promulgated

to put the amendments into effect. In addition, the exemptions granted under the amended bill would expire three years after the granting of an exemption. H.R. 10229 as introduced contains no such restrictions but would provide the Secretary discretion to limit the life of any exemption as appropriate. An arbitrary statute limitation may lead to inequitable administration. Furthermore, the amendment appears to contemplate the filing of applications for exemptions and the granting of certificates of exemption on a case-by-case basis. Such a process will undoubtedly increase the costs of administration and involve processing delays. Accordingly, we recommend adoption of the exemption procedures contemplated in H.R. 10229 as introduced. They are both fair and easy to administer.

The exemption granted by H.R. 10229 would apply to all parts and products of endangered species lawfully held in stock within the United States on December 28, 1973. The amendment would restrict the exemption to sperm whale oil (which includes spermaceti) and scrimshaw lawfully held within the United States on December 28, 1973, thereby removing the availability of the exemption from persons holding parts or products of endangered species other than those species holding stocks or carved scrimshaw, but scrimshanders could not purchase raw materials for carving from suppliers having stock on hand. Indeed, the wording of the provision casts doubt on the ability of scrimshanders to carve and sell ivory that was in their possession as uncarved stock on December 28, 1973. We urge that the provision be expanded to encompass the exemptions included in H.R. 10229 as originally introduced.

The provision found in the original bill creating a rebuttable presumption that items were not lawfully held within the United States on the effective date of the Endangered Species Act is replaced in the amendment by a provision that any person claiming the benefit of an exemption would have the burden of proving its applicability, existence, and validity. We understand that the intent of both provisions is similar and is designed to ensure that in order to prove an offense under the Act, the Government is not required to prove that no exemption applies and that no permit was granted under the Act.

We note that the parenthetical phrase added to § 11 (e) (3) of the Act by the amendment permits disposition of forfeited or abandoned property by the Secretary in a manner consistent with the purposes of the Act but specifically precludes sale to the general public. We believe the discretion of the Secretary is sufficiently circumscribed by requiring disposition consistent with the purposes of the Act, and we find no reason for precluding public sale by statute.

Finally, we note that we believe may be an oversight in the final line of page 5 of the amendment which refers to "section 4(f) (2) (A) (i)." We believe that the reference should be more appropriately "section 4(f) (2) (A)." Such a change would make the amendment consistent with the change of the word "subsection" in section 10(c) of the Act to "section."

The remaining provisions of the amendments are either identical to or closely parallel those contained in H.R. 10229.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

ROBERT B. ELLERT,  
*Acting General Counsel.*

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., November 18, 1975.

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

DEAR MRS. SULLIVAN: This is in response to your request for our views on H.R. 10229 as reported with amendments by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

We oppose enactment of section 2 as amended to exempt from certain prohibited acts of the 1973 Endangered Species Act sperm whale oil and scrimshaw lawfully held in the course of a commercial activity prior to December 28, 1973.

We see no justifiable reason for providing an exemption for certain whale parts or products and not for other whale parts or products such as ambergris. Further, we see no justifiable reason for singling out dealers in whale oil and scrimshaw from dealers in other endangered animals or their parts or products likewise impacted by the 1973 Endangered Species Act.

There are individuals who legally possessed, prior to enactment of the 1973 Act, live endangered species and parts or products of endangered species for the purpose of sale or for other activities of a commercial nature. The Endangered Species Act of 1969 prohibited only the importation of species listed as endangered. Sale, interstate transport, export and other activities of a commercial nature were not prohibited. With passage of the 1973 Act such activity became illegal. Tortoise, spotted cat and reptilian products exist in this country in commercial quantities, and we have some indication of commercial stocks in other endangered species parts or products lawfully acquired prior to the 1973 Act. Regardless of the extent or volume, the individuals in possession of such items should have the same opportunities as those in possession of scrimshaw or whale oil. Indeed, we question the constitutionality of the Subcommittee's amendment discriminating between two different classes of people essentially in the same situation without some rationale for the distinction.

We urge reconsideration of this action by the full Committee. The amendments proposed by the Administration and introduced by you and Congressman Zefaretti on October 20, 1975, would provide equitable treatment to all individuals lawfully possessing for commercial purposes pre-Act live endangered species or parts or products of such species.

We have no objections to the enactment of sections 1, 3 and 4 of the Subcommittee's reported bill. We note that the provisions contained in

these sections are either similar or identical to sections (a), (c) and (d) of H.R. 10229 as introduced.

We hope these comments will be of value to you in consideration of this legislation by the full committee.

Sincerely yours,

Douglas P. Whelan,  
*Deputy Assistant Secretary  
for Fish and Wildlife Parks.*

DEPARTMENT OF STATE,  
Washington, D.C., January 30, 1976.

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

DEAR MADAM CHAIRMAN: This is in response to your communication of October 23, 1975, regarding the views of the Department of State on H.R. 10229, a bill "to amend the Endangered Species Act of 1973." H.R. 10229 would permit certain waivers of the provisions of the Endangered Species Act with regard to endangered species or their parts or products lawfully held on December 28, 1973, provided that such waivers are consistent with U.S. obligations under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (The Convention).

We understand that H.R. 10229 is not intended to alter or supersede any international legal obligations arising under the Convention. In this regard, we note the provisos in proposed subparagraphs 10(1) (4) and (5) that any exemptions granted pursuant to these provisions "shall not violate the Convention." Thus, a transaction otherwise eligible for an exemption under subparagraph 4 or 5 would not be so eligible if it was otherwise prohibited by the Convention. In such a case, if an exemption under Article VII of the Convention was not obtainable, then the provisions of the Convention regulating trade in specimens of that species would govern.

Other aspects of this legislation relate essentially to domestic matters which are outside the responsibilities of this Department. Accordingly, we defer to the views of other interested agencies regarding the desirability of its adoption.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

ROBERT J. McCLOSKEY,  
*Assistant Secretary for Congressional Relations.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be

omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENDANGERED SPECIES ACT OF 1973

(87 Stat. 884; Public Law 93-205)

SEC. 3. For the purposes of this Act—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling; provided, however, that it does not include exhibition of commodities by museums or similar cultural or historical organizations.

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(f) REGULATIONS.—(1) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

(ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the wellbeing of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b) (A), (B), and (C) subsection (b) (1) (A) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

SEC. 10. (c)

NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application; except that such 30-day period may be waived by the Secretary in an emergency situation where the health or life of an

endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within 10 days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

SEC. 10. (e)

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 108 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) (1) As used in this subsection—

(A) The term "pre-Act endangered species part" means— (i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or (ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(9) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act. (B) Any prohibition set forth in section 8(a)(1)(E) or (F) of this Act.

(9) Any person seeking an exemption described in paragraph (9) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the 3-year period beginning on the date of issuance of the certificate; and

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to ensure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (i) of this Act.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

SEC. 11. (e) \* \* \*

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be

arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

\* \* \* \* \*

[From the Congressional Record, Feb. 17, 1976]

HOUSE CONSIDERATION AND PASSAGE OF S. 10229, AS AMENDED

ENDANGERED SPECIES ACT AMENDMENTS

Mrs. SULLIVAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 10229) to amend the Endangered Species Act of 1973, as amended. The Clerk read as follows:

H.R. 10229

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(f) (2) (B) (ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f) (2) (B) (ii)) is amended by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof "subsection (b) (1) (A)."

Sec. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f) (1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any unfinished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carrying of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on exportation from the United States set forth in section 9(a) (1) (A) of this Act.

"(B) Any prohibition set forth in section 9(a) (1) (E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no close of the three-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted as adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (1) of this Act.

"(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation."

Sec. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit."

Sec. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e) (3)) is amended—

(1) by inserting immediately before the words "execute and serve any arrest warrant" in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: "; but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale of the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."

Sec. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof: "Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations."

The SPEAKER pro tempore. Is a second demanded?

Mr. FORSTYHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Missouri (Mrs. Sullivan) and the gentleman from New Jersey (Mr. Forsthe) will be recognized for 20 minutes each.

The Chair recognizes the gentlewoman from Missouri (Mrs. Sullivan).

Mrs. SULLIVAN. Mr. Speaker, H.R. 10229 embodies several amendments to the Endangered Species Act of 1973 which should be expeditiously enacted to assure the effective management of this important act.

The amendments contained in H.R. 10229 were the subject of extended committee consideration and discussion with both the Federal agencies and those affected by the act. This bill would modify and

clarify certain troublesome language in the 1973 act and would assist the responsible agencies in enforcing its provisions. Similar conservation legislation, the Marine Mammal Protection Act of 1972, was passed to provide special protection for marine mammals throughout the world by removing the U.S. market for the parts and products of these mammals. This act prohibited the importation and sale in interstate and foreign commerce of such parts and products, although these prohibitions did not apply to marine mammals taken prior to December 21, 1972, the effective date of the act.

The Endangered Species Act of 1973, unlike the Marine Mammal Protection Act, contained no retroactive exemption for the interstate sale of parts and products of endangered marine mammals which were legally held under the 1972 act. This inconsistency has caused considerable trouble in the enforcement of the laws and has created financial hardships for scrimshanders and other artisans who deal in carved whale bone and teeth as well as those who held large inventories of sperm whale oil.

With respect to such whale oil and scrimshaw, H.R. 10229 would remedy this inconsistency between the two acts. It would provide limited but adequate exemptions for the disposal of these items without sacrificing the intent or diminishing the effectiveness of the 1973 Endangered Species Act.

Finally, H.R. 10229 makes several essential changes in the Endangered Species Act to provide for more flexibility in the interpretation of key provisions controlling the promulgation of emergency regulations in cases of where the health or life of endangered species is threatened; the disposal by the Government of species, parts, or products which have been forfeited to the United States; and the enforcement of the act's prohibitions. These technical amendments were recommended and are supported by the administration in order to remedy a number of problems which have emerged over the past several years in the course of administering the provisions of the act.

I urge the support of all Members to enact H.R. 10229.

Mr. LEAGERR. Mr. Speaker, as chairman of the subcommittee that heard this matter, I rise in support of H.R. 10229. This bill is essential to the equitable and effective management of the Endangered Species Act of 1973.

The phrase "extinct is forever" emphasizes the unique and serious nature of the problem facing the world's endangered species. Unlike some problems which can be remedied after a mistake is made, the extinction of a species is irreversible. The occurrence of such a loss is not merely aesthetic, but educational, scientific, economic, and perhaps even ethical.

Between the years 1600 and 1850, only five domestic species became extinct. By contrast, 57 such species became extinct since 1850. At present, the estimated annual rate of animal extinction is between one and two species. This fact led to the enactment of a series of laws to protect the welfare of endangered species. The most recent legislation was the Endangered Species Act of 1973.

I would like to explain the significance and effect of the Endangered Species Act amendments contained in H.R. 10229. The 1973 act strengthened its 1969 predecessor by prohibiting not only the importa-

tion but also the sale of endangered species and their parts or products in interstate and foreign commerce. In addition, it provided for the establishment of specified comment periods for the issuance of new regulations affecting the determination of management of endangered species.

These new provisions along with others created a strong and a nearly unheralded law for the protection of such species. As the provisions of the 1973 act have been implemented by the agencies and applied to existing conditions, certain ambiguities and incidental problems have surfaced which now require our legislative attention. H.R. 10229 is designed to address these perturbations and clarify the act.

The first amendment contained in H.R. 10229 relates to the situation where an emergency condition poses a significant risk to the wellbeing of an endangered species of fish or wildlife. Under the existing act, if the jeopardized species is a resident species, the Secretary of Interior cannot issue emergency regulations until: First, notice is published in the Federal Register; second, notification of the contemplated action is given to the Governor of each State within which such species is then known to exist; third, 90 days is allowed after notification for each such State to submit its comments and recommendations, unless such period is otherwise shortened by agreement between the parties; and fourth, a summary of all such comments and recommendations received by the Secretary is published in the Federal Register. This procedure albeit worthwhile in the ordinary course of business, is inappropriate and cumbersome in an emergency situation which demands prompt action. Therefore, the first amendment would relieve the Secretary from waiting the required 90 days for comments and recommendations and the publication of a summary in the Federal Register for resident species in those instances where an emergency exists. However, this amendment leaves untouched the procedural safeguard that limits the force and effect of any such emergency regulations to 120 days unless, within the 120 days, the exempted 90-day comment period and required publications are complied with.

The second amendment in H.R. 10229 would allow a limited exemption to the prohibitions contained in the Endangered Species Act for certain endangered species parts or products which were legally obtained and held in the United States prior to its enactment on December 28, 1973. These exemptions apply only to sperm whale oil and to scrimshaw which is defined as the art form involving the carving or etching and engraving of designs upon the bone and teeth of marine mammals of the order Cetacea—*Cē ta' shē a*. As referred to earlier, the passage of the 1973 act, without the retroactive exemption similar to the one contained in the Marine Mammal Protection Act of 1972, caused severe economic hardship to those who heretofore could sell such pre-act endangered marine mammals parts or products in interstate or foreign commerce.

This amendment allows such exemptions, that is, the sale in interstate and foreign commerce or exportation so long as it does not violate the Convention on International Trade in Endangered Species of Wild Flora or Fauna. However, it also prescribes certain procedures and conditions which must be followed.

Any person seeking an exemption must make application to the Secretary before the close of the one 1-year period beginning on the

date on which regulations promulgated by the Secretary first take effect: such application must contain a complete and detailed inventory of all preact endangered species parts for which the applicant seeks exemptions and must be accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a preact endangered species part is in fact such a part.

Further, if the Secretary approves such an application, any certificate of exemption issued must detail the prohibition exempted, the preact endangered species parts to which the exemption applies, and the time period for such exemption which may in no case be longer than 3 years from the time of certification.

Finally, the Secretary shall prescribe such regulations as he deems necessary, including, but not limited to, terms and conditions which may be imposed on applicants for exemptions; requirements that applicants register inventories, keep complete sales records permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary. Further, terms and conditions may be imposed on any subsequent purchase of any preact endangered species part covered by any exemption granted to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this act.

I might note parenthetically that these conditions are more stringent than those set by the other body when it passed a similar amendment to the Endangered Species Act—S. 929—for a scrimshaw exemption.

The last subsection of this amendment provides an affirmative defense in connection with any action alleging a violation of the prohibition contained in section 9 of the act. In such a case, any person claiming the benefit of any exemption or permit has the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation—similar provisions are found in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 885(b)) and in the act prohibiting foreign fishing vessels in the territorial waters of the United States. Section 3(1) of H.R. 10929 is a technical amendment which clarifies the intent of the notice and review requirements to apply to all applications for an exemption or permit.

Section 3(2) of H.R. 10929 also applies to emergency situations, as discussed earlier where the health or life of an endangered species is threatened.

Under the existing provision, the Secretary must publish notice in the Federal Register of each application for an exemption or permit allowing 30 days for comments. The amendment would permit the Secretary to waive the 30-day comment period in emergency situations where no reasonable alternative is available to the applicant.

If the Secretary should waive the 30-day comment period, he must publish notice of such waiver within 10 days following the issuance of any emergency exemption or permit. It should be noted that this emergency waiver is not intended for the mere convenience of an applicant, or even to avoid serious economic loss.

Section 4(1) of H.R. 10929 amends the act to permit duly authorized enforcement agents to make arrests without a warrant if the agent has

reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view. Similar authority is found in other wildlife legislation, for example, Marine Mammal Protection Act of 1972 (16 U.S.C. § 1377(c)); Protection of Bald and Golden Eagles Act (16 U.S.C. § 668b. (a)); Administration of National Wildlife Refuge System Act (16 U.S.C. § 684d(f)); and the Migratory Bird Treaty Act (16 U.S.C. 106). Moreover, it is traditional law enforcement authority and is necessary in the proper enforcement of this act with its broad scope of prohibition.

Section 4(2) also amends the enforcement section of the Endangered Species Act to authorize the disposal of endangered species, parts or products which have been forfeited to and stored by the Government. The manner of such disposal must be consistent with the purposes of the act. In that regard, the committee felt that disposal by public sale to the general public would tend to perpetrate the market and desire for such items, thus increasing the likelihood of contraband.

Last, section 5 of the bill deals with the problem of museums and similar cultural and historical organizations to exchange displays of endangered species, parts or products across State line for exhibition without violating the act. Interstate transfers are only prohibited if they are in the course of a commercial activity. Inasmuch as the definition of the term "commercial activity" in the act is broad and not all together precise, this amendment would clarify its meaning to specifically exclude the exhibition of commodities by museum and the like from its definition.

I would like to add one important point of clarification with respect to this definitional amendment. Recently, the Department of the Interior, by administrative regulation on September 26, 1975, further defined the term "industry and trade" as it is used in the act's definition of the term "commercial activity." The new DOI definition narrows the scope of those activities which are prohibited by the act, that is, activities which involve "the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit." This definition is broader than our amendment in the sense that it would probably permit other persons or institutions to make nonprofit transfers. However, our amendment was necessary because the Department of Commerce has not adopted the same definitions as the Department of the Interior. The amendment in H.R. 10929 is not intended to limit the Department of the Interior's definition.

Mr. FORSTNER, Mr. Speaker, when the Endangered Species Act of 1973 was passed, many persons, including the U.S. Government, found themselves holding inventories of endangered species parts and products which suddenly they could not dispose of. Particularly hard-hit were American scrimshanders who were selling between 85 percent and 95 percent of their uniquely American art form in interstate commerce. H.R. 10929 recognizes the economic plight of these individuals by permitting them to dispose of their legally acquired stocks.

H.R. 10929 also recognizes that GSA is spending approximately \$38,500 per year to maintain a sperm oil stockpile which the Intergovernmental Materials Advisory Committee has declared to be surplus to the Nation's needs. If GSA could dispose of this oil, the taxpayers would be spared unnecessary storage costs and would realize a gain of

\$2.7 million from the sale. If enacted, H.R. 10229 would spare the taxpayers another unnecessary storage cost by authorizing the disposal of endangered species parts and products which have been forfeited to and stored by the Government. Without these amendments, the Government lacks the authority to dispose of the forfeited items.

H.R. 10229, however, makes other important and necessary changes in the Endangered Species Act. It is, as has been pointed out, incongruous to promulgate emergency regulations and then have to wait 90 days to implement them. It is also less than logical to require a 30-day comment period before granting an emergency permit for the treatment of a stranded or beached endangered species. Yet, technically, this is what the act now requires.

Mr. Speaker, H.R. 10229 is a simple and straight-forward bill which rights an economic wrong, saves the taxpayers money, and makes administration of an important statute easier.

Mr. Mosher. Mr. Speaker, I strongly support H.R. 10229, a bill to authorize amendment of the Endangered Species Act, to permit interstate commerce in sperm oil and scrimshaw products lawfully acquired prior to enactment of ESA.

I greatly appreciate the intelligent, sensitive, responsible way that this legislation has been perfected in the Merchant Marine Committee, thanks to the bipartisan leadership of our colleagues, Messrs. Leggett and Forsythe, and the cooperation of the chairlady from Missouri (Mrs. Sullivan).

Just a year ago, I introduced legislation—H.R. 3465—to authorize disposition by the Federal Government of certain sperm whale oil held in the national strategic stockpile.

This particular oil, most of which is now a quarter of a century old, was placed in storage by the Government after World War II because of its "strategic and critical" properties as a lubricant. However, in the course of the years, adequate substitutes have been developed for all essential uses of this oil, and 3 years ago the Government oil was declared surplus.

Consequently the General Services Administration entered into contracts during 1973 for the sale of the stockpiled oil for a total of approximately \$7.5 million. As the first deliveries were being made to private companies the Endangered Species Act became effective. Its stringent technical provisions prohibited the sale or shipment of products derived from animals on the endangered species list blocked GSA from fulfilling its contracts. Since that time, this legal snafu has caused the bulk of the stockpiled oil to remain in storage—at a cost of more than \$3,000 per month—and of no use to anyone.

As a strong supporter of the Endangered Species Act, indeed, as one of its original cosponsors, I have no intention to weaken or dilute that important and valuable law.

My bill—H.R. 3465—was really a very simple one. What I hoped to accomplish was threefold; to save the American taxpayers an appreciable amount of money, to add revenue for the Federal Treasury, and to allow the Government to fulfill its contractual obligations.

In recent years commercial users of sperm whale oil are, one by one, switching irreversibly to using sperm oil substitutes instead of the genuine substance. As the oil's value continues to decline—as a result

of diminishing demand—the Government continues to charge itself—and therefore the taxpayers—\$38,500 annually for storage costs when it could bring an additional \$3 million—the estimated value of the unsold oil—into the Treasury and inject almost \$7 million into the private sector upon processing.

These are impressive figures, especially as we once again enter into the maze of the budgetary process. It certainly was not the intention of the Congress to create this tieup of the Government-held supply of 25-year-old sperm oil.

The question of privately stockpiled scrimshaw prohibited from interstate commerce arose as a related issue. Thus, during the thorough hearings by the Merchant Marine Committee's Subcommittee on Fisheries and Wildlife, the members indicated their desire to also address that issue as well as that of privately held sperm whale oil—amounting to some 8 million pounds. The committee chose to add these provisions to the clean bill that is before us today.

I hasten to note that while this bill does provide for the sale of publicly held sperm oil, it contains very stringent safeguards to assure that disposition of this oil is such that there is virtually no likelihood that this whale oil may become a commodity to be used in illicit trade or for export. Any fears of this nature are unwarranted.

Obviously, the intent of this bill does not contemplate killing more whales. It is bad enough that so many whales were killed more than two decades ago to obtain this oil. I do not see the sense in aggravating this situation now by continuing the impoundment of this oil from the sperm whales that have been dead for so many years.

There is an extremely limited, finite supply of this oil available for industrial use. The users realize this; in fact, a good many former users have indicated that they are irrevocably out of the sperm oil market. Once this supply is exhausted the users will turn to substitutes that are or will be available on the market.

My use of the future tense here reflects a very fortunate and documented scientific discovery in the Southwestern United States. The seed oil of the jojoba bush, an obscure and peculiar desert plant, has a remarkable chemical similarity to sperm whale oil and it is anticipated that upon processing the jojoba bean oil could be used as a sperm oil substitute for the complete range of uses.

However, it is time-consuming and expensive to harvest the wild beans, so plans call for jojoba bean plantations on certain Indian reservations in Arizona and California. A minimum 5-year lag is anticipated before the jojoba bean oil will be available on the commercial market. It is expected that the finite supply of sperm whale oil will be just about exhausted by then. This bill provides for the interim period. The oil will be generally available for this short time only and then it will be gone.

H.R. 10229 is an extremely practical measure. It signals the end of one type of industry and the transition to another, far more socially desirable industry.

Mr. Speaker, I know from my own research that it is necessary and beneficial for us to amend the Endangered Species Act to permit the sale of the surplus sperm whale oil held by the General Administration. And I trust the judgment of my fellow committee members that

it is equally desirable to permit the sale of other sperm whale oil and scrimshaw that was properly acquired before the ESA was enacted. Thus, I support passage of H.R. 10299.

Mrs. SULLIVAN. Mr. Speaker, we have no further requests for time. The Speaker pro tempore (Mr. McFall). The question is on the motion offered by the gentleman from Missouri (Mrs. Sullivan) that the House suspend the rules and pass the bill H.R. 10299, as amended.

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

The title was amended so as to read: "A bill to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act." A motion to reconsider was laid on the table.

[From the Congressional Record, Feb. 17, 1976]

HOUSE CONSIDERATION AND PASSAGE OF S. 229, AS AMENDED IN LIEU OF H.R. 10299

Mrs. SULLIVAN. Mr. Speaker, I ask unanimous consent that the Committee on Merchant Marine and Fisheries be discharged from further consideration of the Senate bill (S. 229) to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The Speaker pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The Clerk read the Senate bill as follows:

S. 229

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

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

(1) All forms of art and culture which reflect this Nation's heritage should be preserved as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this part of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Sec. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea."

Sec. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (b)) is amended by adding at the end thereof the following two new paragraphs:

"(4) (A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a) (1) of this Act—

"(1) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(2) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, if such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than seven years after the date of enactment of this provision.

As used in this paragraph, the term "lawfully" refers to the laws of the United States and to laws of the several States and political subdivisions thereof. Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

"(B) Any person who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(1) submit to such Secretary, within one hundred and twenty days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

"(2) apply to such Secretary for such exemption, in such form and manner and with such submission as such Secretary shall prescribe; and

"(3) submit to such Secretary sales records, reports, and other documents and materials, to the extent reasonably necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with the subparagraph (A).

"(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be effective on the date of final publication, notwithstanding any other provision of this Act.

"(5) Within one hundred and twenty days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an interagency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (4) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within twelve months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations."

MOTION OFFERED BY MRS. SULLIVAN

Mrs. SULLIVAN. Mr. Speaker, I offer a motion.

Mrs. Sullivan moves to strike out all after the enacting clause of S. 229 and to insert in lieu thereof the provisions of H.R. 10229, as passed.

The motion was agreed to.

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

The title was amended so as to read: "A bill to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 10229) was laid on the table.

[From the Congressional Record, June 29, 1976]

#### HOUSE CONCURRENCE IN SENATE AMENDMENTS TO HOUSE AMENDMENTS TO S. 229

##### ENDANGERED SPECIES ACT OF 1973 AMENDMENTS

Mr. LEAGERT. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 229) to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes, with Senate amendments to the House amendments thereto, and concur in the Senate amendments to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendments to the House amendments, as follows:

Page 1, line 12, of the House engrossed amendment, after "oil" insert; "including derivatives thereof."

Page 4, after line 21 of the House engrossed amendment, insert:

"(6) (A) Any contract for the sale of pre-Act Endangered Species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under subsection 9(a) (1) (F)."

"(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exonerate any person from any act committed in violation of paragraphs (1) (A), (1) (E), or (1) (F) of section 9(a) prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act."

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. ROUSSEIOR. Mr. Speaker, reserving the right to object, will the gentleman explain what this does?

Mr. LEAGERT. If the gentleman will yield, yes. The legislation very simply clarifies the term "sperm whale oil" by adding "including derivatives thereof" to the bill as it was passed by the House.

Second, it keeps in force and effect the GSA contracts and advises that any enforcement activities heretofore taking place will continue.

Mr. ROUSSEIOR. Mr. Speaker, further reserving the right to object, is there anything added by the Senate amendments?

Mr. LEAGERT. There is nothing added. We have the Senate amendments to the House amendments to the Senate bill, but the amendments are as I have just stated.

Mr. ROUSSEIOR. Mr. Speaker, I thank the gentleman. I withdraw my reservation of objection.

Mr. LEAGERT. Mr. Speaker, the House passed S. 229 on February 17, 1976, to amend the Endangered Species Act of 1973 to allow the limited disposal of preact, legally obtained endangered species parts and products. In addition, the House further amended S. 229 to include a number of minor technical changes to clarify certain ambiguities, to avoid lapses of coverage, and unnecessary administrative burdens in the original legislation.

As the Senate originally passed S. 229 on April 14, 1975, the bill only allowed certain exemptions for a limited period of time for the sale of finished scrimshaw products in interstate commerce. The House expanded the limited exemptions to include sperm whale oil as well as scrimshaw products and raw stocks normally held prior to December 28, 1973. The House amendments also included technical changes in the Endangered Species Act to:

First. Provide an affirmative defense for prima facie violations of section 9;

Second. Clarify the notice of review of permit of applications provisions;

Third. Clarify the 30-day comment period preceding permit issuance;

Fourth. Strengthen and clarify the enforcement provision;

Fifth. Authorize the disposal of forfeited or confiscated endangered species parts or products; and

Sixth. Clarify the definition of "commercial activity."

After S. 229 was amended by the House and returned to the Senate, the Senate acted on June 24, 1976, by accepting the House amendments with three additional clarifying amendments as follows:

First. The first amendment clarified the term "sperm whale oil" by adding "including derivatives thereof" to cover such derivatives as spermaceti which is used by pharmaceutical companies as an ingredient in lotions, cosmetics, and the like.

Second. The second amendment responds to a request by the General Services Administration that the validity of the contracts entered into by GSA with private companies for the disposal of the Nation's stockpile of sperm whale oil be made clear.

Third. The third amendment is to resolve any uncertainty regarding previous enforcement actions or ongoing investigations. The amendment simply states that nothing in S. 229 shall be construed to: First, exonerate any person for any act committed, prior to the dates of the enactment of S. 229, in violation of the provisions for which exemptions are being granted; or second, to immunize any person from prosecution for any such act. Each of these additional clarifying amendments are consistent with the intent of the House when it originally acted upon S. 229 back in February of this year.

9TH CONGRESS  
1ST SESSION

# S. 229

[Report No. 94-63]

## IN THE SENATE OF THE UNITED STATES

JANUARY 17, 1975

MR. KENNEDY (for himself and Mr. BURKE) introduced the following bill;  
which was read twice and referred to the Committee on Commerce

APRIL 4, 1975

Reported, under authority of the order of the Senate of March 26, 1975, by  
Mr. MAURIN, with amendments

(Strike out all after the enacting clause and insert the part printed in italics)

# A BILL

To amend the Endangered Species Act of 1973 to make it more  
consistent with the Marine Mammal Protection Act of 1972.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That section 10((1)) of the Endangered Species Act of 1973*
- 4 *(167 Stat. 809; 16 U.S.C. 1530) is amended by adding at*
- 5 *the end thereof a new subparagraph ((4)) to read as follows:*
- 6 *"(4) The Secretary of Commerce may grant, under*
- 7 *such terms and conditions as he may prescribe (including*
- 8 *but not limited to, registration of inventories, keeping of*

Because of the concerns of companies dealing in sperm whale oil and derivatives thereto, the Senate's first clarifying amendment adding "including derivatives thereto" helps define the scope of this bill. The second amendment by the Senate regarding the General Services Administration's contract concerning approximately 23,400,000 pounds of stockpiled sperm whale oil is necessary to assure that these contracts will be performed by the parties as contemplated.

And, finally, on account of several enforcement actions and ongoing investigations, we agree with the additional Senate language which clarifies the scope of limiting exemptions contained in S. 229. The House never intended in S. 229 to exonerate any person for any act committed prior to the enactment of S. 229 in violation of the provisions for which exemptions are being granted or to immunize any person from prosecution for any such act.

For these reasons, Mr. Speaker, I urge the House to concur in the Senate amendments to the House amendments on S. 229.

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

There was no objection.

A motion to reconsider was laid on the table.

1 complete sales records, provision for duly authorized agents  
 2 of the Secretary of Commerce to have the right to inspect  
 3 inventories and records, and filing of such reports as the  
 4 Secretary of Commerce may require; exemptions to the pro-  
 5 hibitions in clauses (B) and (F) of section 9(a)(1) of this  
 6 Act to persons for stocks or inventories of bone and teeth of  
 7 marine mammals of the order Cetacea, including parts or  
 8 products thereof, lawfully held within the United States on  
 9 December 31, 1973; subsequent purchases of bone and  
 10 teeth of marine mammals of the order Cetacea, including  
 11 parts or products thereof, originally sold by a person granted  
 12 an exemption pursuant to this paragraph shall be entitled to  
 13 the same exemption. In connection with any action brought  
 14 for a violation of the provisions of section 9(a) of the Act,  
 15 there shall be a rebuttable presumption that the exemption  
 16 provided for in this paragraph does not apply, and any  
 17 person claiming the benefit of any such exemption shall have  
 18 the burden of overcoming such presumption. Notwithstanding  
 19 the provisions of section 4(f)(2)(A), regulations pub-  
 20 lished by the Secretary of Commerce in connection with  
 21 this exemption shall be effective on the date of publication."  
 22 That this Act may be cited as the "Scriabin Act for Preserva-  
 23 tion Act of 1975".

1 Sec. 3. (a) The Congress finds and declares that—  
 2 (1) All forms of art and culture which reflect this  
 3 Nation's heritage should be preserved, as the United  
 4 States prepares for its bicentennial year.  
 5 (2) Scriabin is an art form which was developed  
 6 during the Nation's early years by New England whalers  
 7 and others; it has been practiced by skilled American  
 8 craftsmen and artisans ever since.  
 9 (3) The perpetuation of this part of the culture and  
 10 heritage of the United States is threatened by the prohibi-  
 11 tion enacted in 1973 against the marketing of whale bone  
 12 and teeth.  
 13 (b) It is the purpose of the Congress in this Act to exempt  
 14 scriabin and scriabin products from the prohibitions of  
 15 the Endangered Species Act of 1973 (16 U.S.C. 1531 et  
 16 seq.).  
 17 Sec. 3. Section 3 of the Endangered Species Act of 1973  
 18 (16 U.S.C. 1532) is amended by (1) redesignating para-  
 19 graphs "(10)" through "(16)" thereof as paragraphs "(11)"  
 20 through "(17)" thereof; and (2) by inserting therein the  
 21 following new paragraph:  
 22 "(10) The term 'scriabin' means an art form  
 23 which involves the etching or engraving of designs upon,

1 or the carrying of figures, patterns, or designs from, the  
 2 bones and teeth of marine mammals of the order  
 3 *Cetacea*."

4 *Sec. 4. Section 10(b) of the Endangered Species Act of*  
 5 *1973 (16 U.S.C. 1539(b)) is amended by adding at the end*  
 6 *thereof the following two new paragraphs:*

7 "(4)(A) The Secretary of Commerce may exempt per-  
 8 sons from the prohibitions contained in subparagraphs (E)  
 9 and (F) of section 9(a)(1) of this Act—

10 "(i) with respect to the wholesale movement or sale  
 11 of finished scrimshaw products, if such products or the  
 12 raw materials for such products were held lawfully with-  
 13 in the United States on December 31, 1973, except that  
 14 no such exemption shall be granted or remain in effect  
 15 more than two years after the date of enactment of this  
 16 provision; and

17 "(ii) with respect to the retail sale of finished scrim-  
 18 shaw products for personal use by the purchasers thereof,  
 19 except that no such exemption shall be granted or remain  
 20 in effect more than seven years after the date of enact-  
 21 ment of this provision.

22 Any such exemption may be granted by such Secretary upon  
 23 such terms and conditions as he shall prescribe, including, but  
 24 not limited to, requiring such persons to register inventories;  
 25 to maintain complete sales records; to permit duly authorized

agents of such Secretary to inspect any such inventories and  
 2 records; and to prepare and submit to such Secretary any re-  
 3 ports requested by him.

4 "(B) Any person who seeks an exemption pursuant to  
 5 any provision of subparagraph (A) of this paragraph shall—

6 "(i) submit to such Secretary, within one hundred  
 7 and twenty days after the date of enactment of this para-  
 8 graph, a complete and detailed inventory, in such form  
 9 and manner as such Secretary shall prescribe, of the  
 10 quantity of bone and teeth of marine mammals of the  
 11 order *Cetacea* and of parts of and products from such  
 12 bone and teeth, which are held or otherwise controlled by  
 13 such person. The Secretary of Commerce shall grant an  
 14 exemption pursuant to such subparagraph only for the  
 15 holdings reported in such inventories;

16 "(ii) apply to such Secretary for such exemption, in  
 17 such form and manner and with such submissions as such  
 18 Secretary shall prescribe; and

19 "(iii) submit to such Secretary sales records, reports,  
 20 and other documents and materials, to the extent necessary  
 21 to establish that the holdings with respect to which the  
 22 exemption is sought were acquired in accordance with the  
 23 subparagraph (A).

24 "(C) There shall be a rebuttable presumption, in any  
 25 action brought under this Act for a violation of a provision

1 of section 9(a) of this Act, that no exemption authorized by  
2 this paragraph is applicable. Any person who claims the bene-  
3 fit of any exemption granted pursuant to this paragraph shall  
4 have the burden of rebutting such presumption in such an  
5 action. Regulations promulgated by the Secretary of Com-  
6 merce with respect to exemptions pursuant to this paragraph  
7 shall be effective on the date of final publication, notwithstand-  
8 ing any other provision of this Act.

9 “(5) Within one hundred and twenty days after the  
10 date of enactment of this paragraph, the Secretary of the  
11 Interior, the Secretary of Commerce, and the Secretary of the  
12 Treasury shall establish an interagency task force to enforce  
13 the provisions of this Act applicable to the bone and teeth of  
14 marine mammals of the order Cetacea and parts of and prod-  
15 ucts from such bone and teeth. This task force shall act in addi-  
16 tion to, and not in lieu of, existing enforcement activities, and  
17 shall concentrate its activities in those regions and areas which  
18 are most susceptible to unlawful activity as a result of exemp-  
19 tions granted under paragraph (4) of this subsection. The  
20 Secretaries of the Interior, Commerce, and the Treasury shall  
21 report jointly to the Congress and the President, within twelve  
22 months after the date of enactment of this paragraph, on the  
23 extent to which the provisions of this Act have been violated  
24 with respect to the bone and teeth of such mammals and with

1 respect to the effectiveness of this task force in preventing such  
2 violations.”

Amend the title so as to read: “A bill to amend the  
Endangered Species Act of 1973 to assure the perpetuation of  
the art of scrimshaw, and for other purposes.”

94TH CONGRESS }  
1st Session } SENATE

REPORT  
No. 94-63

# Calendar No. 57

## SCRIMSHAW ART PRESERVATION ACT OF 1975

APRIL 4, 1975.—Ordered to be printed

Filed under authority of the order of the Senate of March 26, 1975

Mr. MAGNUSON, from the Committee on Commerce,  
submitted the following

### REPORT

[To accompany S. 229]

The Committee on Commerce, to which was referred the bill (S. 229) to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972, having considered the same, reports favorably thereon with a title amendment and an amendment in the nature of a substitute to the text of the bill and recommends that the bill as amended do pass.

#### PURPOSE

S. 229 is designed to preserve the art of scrimshaw, which originated during the nation's early years by New England whalers who etched designs in, and carved figures from whale bone and teeth as a means of passing the time during the long months spent away from home on whaling expeditions. As the nation grew and expanded westward, the popularity of scrimshaw grew as well, and today the art is practiced throughout the country, in areas such as the Pacific Northwest, the Southwest, Alaska and Hawaii. Today's artisans, in addition to practicing scrimshaw as it was originated in New England, have adapted the art and developed new innovations which reflect the heritage of other sections of the nation in addition to that of New England and which are not restricted to nautical motifs.

Due to the prohibitions of the Endangered Species Act of 1973, artisans are now prohibited from selling their finished scrimshaw products in interstate commerce. While other media, such as beef bone, could be legally utilized, most artisans have not had sufficient time to adapt their craft to other material. Thus, in order to assure the preservation of this art form, S. 229 permits the Secretary of Commerce, who administers the Endangered Species Act with respect to whales, to grant exemptions for a limited period of time for the sale

of finished scrimshaw products in interstate commerce. This legislation would permit scrimshanders sufficient time to both dispose of their present inventories and to adapt their art to a new medium, without encouraging an endless trade in products of endangered species.

#### BACKGROUND AND NEED

The Marine Mammal Protection Act, which was passed by the Congress on October 21, 1972, was designed to prevent the further slaughter and depletion of marine mammals throughout the world by removing the United States' market for the parts and products of endangered mammals. The Act prohibited the importation and sale in interstate and foreign commerce of such parts and products, although these prohibitions did not apply to marine mammals taken prior to December 21, 1972, the effective date of the Act.

In 1973 Congress passed the endangered Species Act of 1973, which strengthened its 1969 predecessor by prohibiting not only the importation, but also the sale, of endangered species and their parts and products in interstate and foreign commerce. Unlike the Marine Mammal Act, however, the Endangered Species Act contains no retroactive exemptions for the interstate sale of parts and products of endangered marine mammals which were legally held under the 1972 Act. This inconsistency has resulted in a great deal of confusion in the enforcement of the laws and has created financial hardship for scrimshanders and other artisans who deal in carved whale bone and teeth. These individuals possess substantial inventories of legally acquired whale bone and teeth used in their craft but are prohibited from marketing their finished products under the 1973 Act. Since exemptions for the sale of these art objects cannot be granted administratively, legislation is needed to rectify the situation.

#### LEGISLATIVE HISTORY

During the 93d Congress, S. 3751 was introduced in the Senate on July 11, 1974 by Senator Edward M. Kennedy (D-Mass.) and Senator Edward R. Brooke (R-Mass.) and was referred to the Senate Commerce Committee on July 19. A revised bill S. 4128 which was more limited in scope than S. 3751, was introduced by the same sponsors on October 10, 1974 and referred to the Senate Commerce Committee on October 19. No further action occurred with respect to either bill during the 93d Congress.

On January 17, 1975 Senators Kennedy and Brooke introduced S. 229, which was identical to S. 4128 of the 93d Congress. The bill was referred to the Senate Commerce Committee on January 17, 1975. After a comment period during which the public was asked to express its views on the bill, the Senate Commerce Committee reported an amendment to S. 229 in the form of a substitute bill. Following are the major new provisions in the amendment:

*Definition of Congressional Intent.*—The amended version of S. 229 sets forth more clearly the intent of Congress in enacting the legislation—that is, to preserve the native American art of scrimshaw, but not to promote or perpetuate the trade in products of endangered species. The Committee views this legislation as providing a transition period during which scrimshanders may sustain themselves through

the marketing of their finished products in interstate commerce, while at the same time adapt their art to other media which are legal for interstate sale.

*United Exemption Period.*—Under the amended version of the bill, the Secretary of Commerce may grant for two years after the effective date of the Act exemptions for the wholesale sale and shipment in interstate commerce of finished scrimshaw products and for a period of seven years after the effective date exemptions for retail sale for personal use of finished scrimshaw products. The designation of a time during which exemptions may be granted is preferable to the open ended provisions of the original bill which might have encouraged smuggling of endangered species in the future when a market for scrimshaw products would still exist, but legally acquired stocks would have been depleted.

*Reporting Procedures.*—The amendment reported by the Committee sets forth specific reporting procedures which must be met by any individual seeking such an exemption. Among those requirements are the submission to the Secretary of Commerce within 120 days of the effective date of the amendment of a complete and detailed inventory of all holdings of whale bone and teeth. The Secretary may grant exemptions only for holdings thus reported.

In addition, any individual applying for an exemption must submit to the Secretary all available sales records, reports and other documents to show that the holdings for which the exemption is being sought were legally acquired. While the bill itself contains no penalties for the submission of falsified records, it should be noted that federal law (18 USC 1001) prohibits the submission of falsified documents and data in any matter within the jurisdiction of any department or agency of the United States. Violation of such prohibition is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

It should also be made clear that in order for stocks of whale teeth and bone to have been legally acquired prior to December 21, 1972, it is not enough that these materials were purchased prior to that date. Rather, they must have been imported prior to the date when the subject whale was placed on the Endangered Species List pursuant to the Endangered Species Act of 1969.

*Special Task Force.*—In order to guard against violations of the Act, particularly with respect to smuggling, that may be encouraged by the granting of exemptions under this amendment, the Secretaries of Commerce, Interior and Treasury are directed to create a special task force to provide an intensive enforcement effort with respect to whale bone and teeth. The efforts of this task force are to be concentrated in those areas of the country which are most likely to be susceptible to violations of the Act as a result of the exemptions granted.

The Committee expects this task force to constitute a genuine effort on the part of the agencies involved to seek out and punish violators of the Act.

In their formal comments on the bill, the Departments of Commerce and Interior have recommended broadening the scope of the exemptions authorized under the Act. The Committee has taken no position on the merits of these proposals, but it feels that any additional exemptions should first be closely examined in public hearings and that

it would be inappropriate to include them in these amendments, until a complete record has been developed showing that the same or similar narrow purposes would be served by further exemptions.

TEXT OF S. 229, AS REPORTED: To amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

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

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this art of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Sec. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea."

Sec. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539(b)) is amended by adding at the end thereof the following two new paragraphs:

"(4) (A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a)(1) of this Act—

"(i) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(ii) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, except that no such exemption shall be

granted or remain in effect more than seven years after the date of enactment of this provision.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

“(B) Any persons who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

“(i) submit to such Secretary, within 120 days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order of Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

“(ii) apply to such Secretary for such exemption, in such form and manner and with such submissions as such Secretary shall prescribe; and

“(iii) submit to such Secretary sales records, reports, and other documents and materials, to the extent necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with subparagraph (A).

“(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be in effect on the date of final publication, notwithstanding any other provision of this Act.

“(5) Within 120 days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an inter-agency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under

paragraph (4) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within 12 months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations.”

#### SECTION BY SECTION ANALYSIS

##### Section 2.

This section declares the findings of Congress in enacting the legislation, namely, that in preparation for the Nation's bicentennial, every effort should be made to preserve all forms of art and cultures which reflect the nation's heritage. Among those art forms to be preserved is scrimshaw.

##### Section 3.

This section defines the term "scrimshaw".

##### Section 4.

This section amends section 10(b) of the Endangered Species Act of 1973 by adding two new paragraphs (4) and (5) at the end thereof. Subparagraph (4) (a) permits the Secretary of Commerce to grant, under such conditions as he may prescribe, exemptions to the Endangered Species Act of 1973 for the sale in interstate commerce of finished scrimshaw products. These exemptions may be granted for 2 years from the effective date of the bill for the wholesale sale and shipment of finished scrimshaw and for 7 years after the effective date for the retail sale for personal use of finished scrimshaw.

Subparagraph (B) sets down certain reporting requirements which must be met by any person seeking such an exemption.

Subparagraph (C) creates a rebuttable presumption that in connection with any action brought for violation of the Act, the exemption provided for in section 4 does not exist.

Paragraph (5) directs the Secretaries of Commerce, Interior, and Treasury to create a special task force for intensive enforcement of these amendments. The efforts of this task force are to be concentrated in those areas of the country which may be susceptible to violations of the Act as a result of the exemptions granted.

#### COST ESTIMATE

In accordance with Section 252 of the Legislative Reorganization Act of 1970, the committee estimates that there would be no significant additional cost to the Federal Government if the proposed legislation were enacted.

#### CHANGES IN EXISTING LAW

There would be no change in existing law if the legislation were enacted.

## AGENCY COMMENTS

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., March 24, 1976.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

Dear Mr. CHAIRMAN: Your Committee has requested the views of this Department on S. 229, a bill "To amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972."

S. 229 would authorize the Secretary of Commerce to grant exemptions from the prohibitions of section 9(a)(1)(E) and (F) of the Endangered Species Act of 1973 to persons who lawfully held inventories of bone, teeth, or other parts or products of marine mammals of the order Cetacea prior to the effective date of the Marine Mammal Act of 1972. Exemptions thus granted would run with the article and apply to subsequent purchasers. In every action brought for a violation of the Endangered Species Act of 1973, there would be a rebuttable presumption that the exemption does not apply. Any person claiming the exemption in such a proceeding would have to bear the burden of establishing his right to it. The Secretary of Commerce could prescribe terms and conditions for the granting of an exemption, and any regulations published by the Secretary in connection with the exemption would be effective on the date of publication.

While we agree in principle with the proposed amendment, there are a number of other problem areas which have developed in the administration of the Act by this Department. We testified before the 93d Congress in regard to these. The Fish and Wildlife Service is currently studying the need for amendments to the Act, which would address these other problems. Since the Secretary of Commerce is responsible for administering the Endangered Species Act insofar as it relates to marine mammals of the order Cetacea, we defer to the views of the Commerce Department as to the need and availability of this particular bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

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

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
Washington, D.C., March 20, 1975.

Hon. WARREN G. MAGNUSON,  
Chairman, Senate Commerce Committee,  
U.S. Senate, Washington, D.C.

Dear Mr. CHAIRMAN: This is in response to your request for the views of this Department with respect to S. 229, a bill to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972.

S. 229 would amend Section 10(b) of the Endangered Species Act

of 1973 (87 Stat. 896; 16 U.S.C. 1539) by adding a new subsection (4) to exempt from the prohibited acts identified in clauses (E) and (F) of Section 9(a)(1) of the Act stocks or inventories of bone and teeth of marine mammals of the order Cetacea, including parts or products thereof, lawfully held within the United States on December 21, 1972.

The "grandfather clause", section 9(b) of the Endangered Species Act, now prohibits certain commercial activities with respect to endangered species held in the course of a commercial activity on the effective date of the Act. This prohibition has resulted in the inability of certain businesses to utilize existing endangered species or parts thereof legally held at the time the Act became effective.

The Department recognizes the injustice of the present situation with respect to those businesses affected and supports the intent of this legislation. However, we feel that S. 229 will only partially correct the problem by reason of its limited scope. We suggest that the bill be expanded to include all parts and products of marine mammals of the order Cetacea to alleviate the hardship caused various businesses which are unable to trade in interstate commerce any endangered species, or parts thereof, which were legally acquired and being held at the time the Act became effective. The objective of the Endangered Species Act is to prevent the taking of endangered species of fish and wildlife and to restrict trade that would lead to the killing of additional animals. The Department feels the amendment we are suggesting would insure both our commitment to the moratorium on taking additional animals and also our concern for the businessman.

We would like to have S. 229 amended further to ease the administrative burden of proving that the parts or products were acquired prior to the effective date of the Act. With regard to this Department, we believe that the ability of the Secretary to adequately enforce the Act as amended by S. 229 would be enhanced by modifying subsection 9(d)(2) to read as follows (brackets deleted; italic language added):

"(2) Any person required to obtain permission under paragraph (1) of this subsection and any person who sells or offers for sale in interstate commerce any fish or wildlife listed pursuant to section 4 of this Act shall—

"(A) keep such records as will fully and correctly disclose each portation or [exportation] other acquisition of fish, wildlife, or plants made by him and the subsequent exportation, sale, or other disposition made by him with respect to such fish, wildlife, or plants;

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

"(C) file such reports as the Secretary may require."

We take no position with respect to any problems which this amendment may raise with respect to species under the jurisdiction of the Department of the Interior.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

*General Counsel.*

[From the Congressional Record, April 14, 1975]

SENATE CONSIDERATION AND PASSAGE S. 229, AS AMENDED

SCRIMSHAW ART PRESERVATION ACT OF 1975

Mr. Moss. Mr. President, I ask unanimous consent that we turn to Calendar No. 57, and proceed with that matter now, on which there is a unanimous-consent agreement.

Mr. WILLIAM L. SCOTT. Mr. President, reserving the right to object, has the distinguished Senator's request been cleared with this side of the aisle?

Mr. Moss. It has been cleared with both sides of the aisle. The Senator from Alaska—

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate had already agreed to proceed to the consideration of S. 229.

Mr. Moss. That's correct.

The ACTING PRESIDENT pro tempore. The bill will be stated by title. The legislative clerk read as follows:

A bill (S. 229) to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protective Act of 1972.

The ACTING PRESIDENT pro tempore. Time for debate on this bill is limited to 1 hour to be equally divided and controlled by the majority and minority leaders or their designees, with 30 minutes on any amendment, and 20 minutes on any debatable motions or appeals.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Scrimsnaw Art Preservation Act of 1975".

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

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimsnaw is an art form which was developed during the Nation's early years by New England whalers and others, it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of the part of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimsnaw and scrimsnaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Sec. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimsnaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or design from, the bones and teeth of marine mammals of the order Cetacea."

Sec. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (b)) is amended by adding at the end thereof the following two new paragraphs:

"(4) (A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a) (1) of this Act—

"(1) with respect to the wholesale movement or sale of finished scrimsnaw products, if such products or the raw materials for such products were lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(1) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, except that no such exemption shall be granted or remain in effect more than seven years after the date of enactment of this provision.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

"(B) Any person who wants an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(1) submit to such Secretary, within one hundred and twenty days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

"(1) apply to such Secretary for such exemption, in such form and manner and with such submissions as such Secretary shall prescribe; and

"(11) submit to such Secretary sales records, reports, and other documents and materials, to the extent necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with the subparagraph (A).

"(C) There shall be a rebuttal presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be effective on the date of final publication, notwithstanding any other provision of this Act.

"(5) Within one hundred and twenty days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an interagency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (4) of this section. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within twelve months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations."

Mr. Moss. Mr. President, I ask unanimous consent that the amendment to S. 229 of the Committee on Commerce be considered as original text for the purpose of further amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. Moss. Scrimshaw is a unique American artform which was developed during the Nation's early years by New England whalers, who during the long months at sea took up carving designs on whale bone and teeth. As the Nation grew, so did the popularity of scrimshaw, and today the art is practiced by scrimshanders throughout the country. Perhaps the country's most famous collection of scrimshaw pieces was owned by President John F. Kennedy.

In recent years, however, the whale has been placed on the endangered species list, and scrimshaw itself has become endangered. Due to the prohibitions of the Endangered Species Act of 1973, scrimshanders and small businessmen are prevented from sustaining themselves and their art through the marketing of their products in interstate commerce. Unlike the Marine Mammal Protection Act of 1972, which extends protection only to whales taken after its date of enactment, the Endangered Species Act of 1973 prohibits the sale or movement in interstate commerce of products made from whale bone and teeth, even if they were legally acquired prior to December 21, 1972, the effective date of the Marine Mammal Act. S. 229 would conform the Endangered Species Act to the Marine Mammal Protection Act to alleviate the hardship that has been placed on artisans and small businessmen. By permitting the Secretary of Commerce to grant limited exemptions for a period of 7 years for the sale and movement in interstate commerce of legally acquired scrimshaw products made from legally acquired whale bone and teeth, the inequities should be avoided.

In order to guard against increased smuggling or other violations of the act which may result from the granting of these exemptions, any person seeking an exemption must supply the Secretary with any documents needed to prove that the holdings in question were legally acquired. In addition, the Secretaries of Interior, Commerce, and the Treasury are instructed to create a special task force to guard against smuggling that may occur as a result of these exemptions. The efforts of the task force are to be supplemented to existing enforcement activities.

Mr. President, in my view S. 229 will help to ensure the survival of the art of scrimshaw by giving artisans sufficient time to dispose of their inventories of whale ivory while adapting their art to other media, such as beef bone, which is legal for trade. This goal will be achieved without encouraging an endless trade in the products of an endangered species or threatening the live whale population. For that reason, I support the act.

Mr. KENNEDY. Mr. President, I thank the Committee on Commerce and its distinguished chairman, the Senator from Washington (Mr. Magnuson) and the Subcommittee on Environment and its distinguished chairman, the Senator from Michigan (Mr. Philip A. Hart) for all the time and effort they gave to this legislation which I introduced with the Senator from Massachusetts (Mr. Brooke) to preserve the art of scrimshaw. I am particularly grateful to the staff members of the committee for the enormous amount of work which they put into this bill in refining it to insure that our absolute commitment to end the slaughter of whales was not in any way weakened.

S. 229 which Senator Brooke and I introduced on January 17 permits the sale and shipment in interstate commerce of finished scrimshaw products. An exemption period of 2 years is granted for interstate sale and shipment at the wholesale level and for a period of 7 years for retail sale and shipment interstate.

This legislation preserves the art of scrimshaw developed by American whalers during the period when this Nation was struggling to become independent and self-sufficient. It is particularly appropriate as we move toward the celebration of the Bicentennial that we preserve those art forms which reflect our heritage and our culture.

The distinguished author E. Norman Flayderman points out how scrimshaw art products reflect the spirit of an important time in our history:

American whaling days are gone forever. Although the era can never be relived, the intriguing artifacts that remain are highly significant reminders of a wonderful era of our past that succeeded in catching the spirit of a magnificent and departed period.

President Kennedy reflected that scrimshaw "tells us a very important part of our lives—our lives at sea." And it was President Kennedy's own collection of scrimshaw that reminded so many Americans of a courageous period in our history.

The legislation we act on today will allow our hundreds of scrimshaw artists sufficient time to learn their art on new materials. These artists are etching on beef bone and synthetic materials now in an effort to find a readily available material to continue their work. It will allow museums and collectors a chance to obtain scrimshaw products that are available in States other than their own prior to returning to the time when only sales within State borders will be allowed.

Two very important sections of this bill assure that this Nation's commitment to stop the killing of whales is in no way jeopardized or weakened. Any person seeking an exception must establish the whale's teeth or bone were taken legally. And the legislation sets up a special task force to insure compliance with these restrictions and end the smuggling of whale's teeth that continues even today.

We owe a special debt of gratitude to the environmental and animal protection groups, particularly representatives of the Fund for Animals who gave us so much of their time and their valuable suggestions to insure that this legislation did not weaken the Endangered Species Act of 1973 and who helped us strengthen the provisions to enforce compliance with the law to end activity in illegally taken teeth and whale bone. Without their help we would have been unable to develop the legislation we act on today reflecting both our commitment to end the killing of whales and our commitment to preserve scrimshaw as an American art form.

Any legislation which amends the Endangered Species Act, a law universally recognized as the strongest and most effective legislation in protecting animals threatened with extinction, must be very carefully and thoughtfully drawn to assure that the Congress' commitment to protecting endangered animals is not weakened. The amendment we consider today has been under consideration for 10 months, has been the subject of public hearings in the House, and has had the valuable input of the environmental and animal protection groups. And after all of that study and the enormous amount of work by the Commerce Committee and its staff, we were able to achieve an amendment which reaffirmed and strengthened the resolve of the Congress to protect the whales. For these reasons, I will oppose any amendment to this legislation to provide for other exceptions which have neither been studied nor considered and on which those most expert in protecting our endangered animals have had no opportunity to comment.

Again, I want to thank Senator Philip A. Hart, the Environment Subcommittee and the Commerce Committee for their report on this bill which means so much to the scrimshawers along our coasts.

Mr. Moss. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.  
The legislative clerk read as follows:

On page 4, strike line 18 and insert in lieu thereof "shaw products for personal use by the purchasers thereof, if such products were held lawfully within the United States on December 21, 1972."

On page 4, between lines 21 and 22, insert "As used in this paragraph, the term 'lawfully' refers to the laws of the United States and to laws of the several states and political subdivisions thereof."

On page 5, line 20, immediately following "extent", insert "reasonably".

Mr. Moss. Mr. President, I ask unanimous consent that the amendments be considered en bloc. They occur in three places and, basically, in the same package.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. Moss. Mr. President, the amendment is a minor conforming amendment which I have discussed with the Senator from Alaska and which I understand presents him with no problems.

The amendment insures that with respect to exemptions granted for the sale and movement in commerce of finished scrimshaw products for personal use, that the person wishing to sell those products must also demonstrate that they have been legally taken. This is an inadvertent omission from the bill and conforms it with the criteria for the exemption for wholesale movement or sale of finished scrimshaw products.

The insertions are simply to show that the scrimshaw was legally taken, legally acquired, and that the person, therefore, had a right to carry it in interstate commerce or dispose of it.

Does the Senator from Alaska understand that is the purpose of the amendment?

Mr. STEVENS. I am happy to state to my friend, the Senator from Utah, that this amendment is a clarifying amendment that we have examined, Mr. President, and it is acceptable.

I think it does clarify the intent and purpose of the bill as it was originally introduced and reported from our committee.

Mr. Moss. I am happy to yield back the remainder of my time. Does the Senator yield back any time on this amendment?

Mr. STEVENS. On this amendment, yes.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. STEVENS. Mr. President, yielding myself whatever time I need, this bill is a needed bill, and I do believe that it does clarify a problem with regard to the scrimshaw-type products.

I have introduced, and there is before the Senate, my amendment No. 338, which deals with a similar type problem. In all candor, we did not hold hearings on S. 229 because we felt that there was really no necessity to do so in view of the fact it was very limited, and an exemption with a purpose that no one had any objection to accomplishing.

My amendment deals with a similar type of situation with regard to any person who holds any fish or wildlife as a trophy if that trophy

was taken before the effective date of the Endangered Species Act, and the Marine Mammal Protective Act of 1972 amendment.

I find I do not believe there is any opposition to clarifying this problem for these people, because they have taken their trophies at a time when it was lawful to take them, and they were sort of caught in midstream, so to speak, with items that were either taken abroad or taken within this country, and they were not presented to the taxidermist, which is also a form of art, I am sure the Senator from Utah will agree, and yet they have not been able to preserve their trophies on a permanent basis.

As one who supported both of these acts, the Marine Mammal Act and the Endangered Species Act, I felt it was not our intention to make it retroactive, but to protect the mammals and endangered species that were still alive, and that we recognized prior to it that under the act a person could have lawfully taken some of the species that are now protected.

I had intended to offer this amendment at this time and, Mr. President, I ask that the amendment be printed in the Record at the conclusion of my remarks.

The Acting President pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. STEVENS. I do not intend to offer the amendment at this time because we have now ascertained that there are two dates that are operable as far as this amendment is concerned, one being the lawful acquisition of such a trophy prior to the date of the Endangered Species Act. Under the regulation that was then in force, there still could have been some of these species brought into this country under certain circumstances.

After the date of the amendment, the importation of some of those animals that were lawfully taken was still made unlawful by the new act.

It really, Mr. President, does not cover many people and it is a difficult thing to even hold hearings on this type of thing. Primarily, it applies to those people who are able to take a safari, able to go into our neighboring country of Mexico and participate in a hunt. After the lawful and successful conclusion of that hunt, they found they could not bring their trophies back into the United States, because of passage of the act and its retroactive interpretation.

However, I have discussed this matter with my good friend from Utah. Even though at the time this bill was reported from our full committee, on my motion I might add, I thought that we had an understanding that this amendment to protect these few people would be in order, because of the technicalities involved, and in discussing an amendment to make certain we are not reopening a door that we all intended to close, and at the same time in order that we might frame an amendment to these two laws to make certain this limited number of people is not discriminated against in terms of intent of the Congress at the time those two acts were passed, I have asked the Senator from Utah and understand our committee is prepared to hold a hearing on the subject and determine exactly what language would be appropriate in order to grant this very limited exemption to these people.

As I said, I feel they were caught in midstream, as we did pass the two very significant acts, as far as the future is concerned.

So if my colleague agrees, and I understand he does, that we will hold hearings on the amendment which I shall introduce in the form of a bill, and I do not intend to offer it today at this point—

Mr. Moss. Will the Senator yield?

Mr. STEVENS. I am happy to.

Mr. Moss. I would like to confirm what the Senator has said, that this matter has not been subject to hearings. This bill simply went through a 30-day comment period and no formal hearings were held. But I assure the Senator from Alaska that our committee will hold hearings early this year on the matter that he now has suggested in his amendment needs clarification.

I agree that it does need some clarification and we are anxious to hold a hearing so that we can frame the language properly to accomplish the purpose the Senator has indicated. I am happy to give him that assurance from the committee, that the hearings will be scheduled on this subject matter that he intends to introduce a bill shortly and we will dispose of this matter because it is of importance, even though it is limited in application to a relatively small number of people.

It is of considerable importance to them, and since we have passed these two acts that impinge on those people, we should clarify fully that we intended it to be prospective and not retroactive to a period of time that would be unfair to them.

Mr. STEVENS. I thank the Senator from Utah.

Mr. President, in the case of species that were legally taken before the enactment of the Marine Mammal Act or the Endangered Species Act—and it has been interpreted that those acts now prohibit the lawful use of the animal which was taken prior to the prohibition set down by those acts—I feel that it is only right and just that we make certain that it is not a retroactive application to prevent the utilization of those animals that were, as I said, lawfully taken.

We had no intention—at least I had no intention—of placing a burden on those who had lawfully conducted themselves before the date of the act, either act, and it seems to me only the sensible course—as we are in the case of the scrimshaw amendment—to recognize that prior lawful conduct should not be penalized through an interpretation of the law that actually imposes a penalty for having possession and trying to utilize an animal that was lawfully taken.

I think that the amendment I have proposed is a reasonable one. It would give 120 days for these people to come forward and to establish on a reasonable basis that they had complied with the law at the time and give the Secretary discretion to administer this limited exemption.

It would also give him a balance of a year after the passage of the amendment I suggest to take care of any people who may not have heard of this new exemption. Sort of an extraordinary discretionary period—which is not unlike the bill before us, it has a 7-year period, as a matter of fact—since there are people, it does take time for them to understand that Congress has changed the interpretation that makes it retroactive.

I feel that it is sort of a technical failure of our original intent.

I understand that this bill does have clearance of the major conservation organizations and I am hopeful that they will realize that what I am trying to do is to also clarify the retroactive application of these two laws and not open the door, so to speak, to any taking of animals that are now on the endangered species list or covered by the Marine Mammal Protection Act.

As I said, on that basis, I do not intend to offer this amendment. I do support the original bill. As a matter of fact, I believe I co-sponsored it, because scrimshaw is an art that is well known.

We have similar forms of art coming out of my State now even under the provisions of the Marine Mammal Act and I think it is something that we should recognize as being a legitimate object of clarifying legislation to pass S. 229.

I might say to my friend from Utah who is managing the bill, to my knowledge, there is no Member of the Senate on my side of the aisle who has objected to the bill. I have no intention to ask for a roll-call vote even if the manager of the bill does not desire one.

So I am happy to endorse this bill and I am very pleased to have the assurance of our Commerce Committee that we will proceed with some dispatch to take care of this limited number of people. I understand less than 100 people would be covered by my amendment. On the other hand, I believe they are entitled to justice, too.

#### EXHIBIT 1

On page 3, line 14, immediately after "products" insert "and certain fish or wildlife trophies".

On page 4, line 6, strike out "two".

On page 6, line 2, immediately after "paragraph" insert "or paragraph (5)".

On page 6, line 3, strike out "this" and insert "any such".

On page 6, line 6, strike out "this" and insert "any such".

On page 6, between lines 8 and 9, insert the following:

"(5) (A) The Secretary may grant, under such terms and conditions as he may prescribe, exemptions to the prohibition in clause (A) of section 9(a) (1) of this Act to any person holding any fish or wildlife as a trophy, if such fish or wildlife was lawfully held by such person on the date immediately preceding December 28, 1973.

"(B) Any person seeking an exemption under subparagraph (A) of this paragraph shall—

"(1) submit to the Secretary within one hundred and twenty days after the effective date of this paragraph a complete and detailed inventory of all such fish or wildlife held as trophies by such person;

"(2) apply to the Secretary in writing, in such form or manner as the Secretary may designate, for such exemption; and

"(3) supply the Secretary with such records, reports, and other documents to show that such holdings for which the exemption is being sought were legally acquired in accordance with the requirements of subparagraph (A) of this paragraph.

"(C) The Secretary shall grant an exemption pursuant to this paragraph only for the holdings reported in such inventory required under subparagraph (B) (1) of this paragraph, except that notwithstanding subparagraph (B) (1) of this paragraph, the Secretary may, for good cause shown, extend, on a case-by-case basis, the time for filing such inventory for such period as he may determine to be reasonable, but in no event for a period in excess of the twelve-month period following the date of the enactment of this subparagraph."

On page 6, line 9, strike out "(5)" and insert "(6)".

On page 6, line 15, immediately before the period insert a comma and the following: "and any trophy referred to in paragraph (5)".

On page 6, line 19, immediately after "(4)" insert "or (5)".

On page 6, line 24, immediately after "mammals" insert "and trophies under paragraph (5)".

Mr. BERTSEN. Mr. President, the Scrimshaw Art Preservation Act of 1975 is an important measure that will correct a serious oversight and injustice in the Endangered Species Act of 1973. S. 229 is designed to allow the many individuals who have large quantities of lawfully acquired carved whale bone and teeth to take their products to market. The Congress took a significant step toward meeting its responsibilities to preserve and protect the valuable and irreplaceable resource of marine life when it passed the Marine Mammal Protection Act of 1973. The act prohibited the importation and sale of parts and products of marine mammals in interstate and foreign commerce and clearly established legal protections to prevent the slaughter of such mammals as the whale and the dolphin. Significant in the Marine Mammal Protection Act is a provision that its prohibitions do not apply to marine mammals that were taken before the December 21, 1972 effective date of the act. The Endangered Species Act of 1973 added further protections by preventing the importation and sale of the parts and products of any animals placed on the endangered species list, but without respect to the time at which the animals were taken. The result has been that while products of marine mammals taken before December 21, 1972, were legally transported and sold under the 1972 protection act, dealers in products made from animals subsequently placed on the endangered species list, are now prevented from selling their products made from legally obtained materials. The whale is one of those animals that now appears on the endangered species list.

The art of scrimshaw carving in whalebone and teeth, is an ancient and respected art that is threatened by the oversight in the passage of the 1973 Endangered Species Act. The artisans and dealers of scrimshaw possess substantial inventories of legally acquired whalebone and teeth used in their craft, but they are prohibited from marketing the finished products. The Scrimshaw Art Preservation Act of 1975, S. 229, will allow the Secretary of Commerce to grant exemption for the sale and shipment of scrimshaw and scrimshaw products. This amendment to the Endangered Species Act will alleviate the substantial and unintended financial hardship currently experienced by scrimshaw artisans and dealers. The exemptions would not encourage continued slaughter of the whale, because they would apply only to finished products. S. 229 creates an elaborate reporting procedure that requires the Secretary of Commerce to determine positively that the raw materials were acquired legally before the effective date of the Marine Mammal Protection Act. S. 229 also places a firm time limitation on the extension of the allowed exemptions. Under the bill, the Secretary of Commerce may allow wholesale shipment and sale of finished scrimshaw products for a period of 2 years following passage of the act. The period for retail sale for the personal use of finished scrimshaw is 7 years. These time limitations make it clear that the purpose of this legislation is to allow scrimshaw dealers to move their presently held inventories of these products. The art of scrimshaw was developed in the early days of our Nation's history by New England whalers who carved figures from and designs in whalebone and teeth to pass the long months at sea away from home. The popularity of scrimshaw grew from a pastime on whaling expeditions as the Nation expanded to the West. Today the art is practiced in the Pacific Northwest, the Southwest, Alaska, and

Hawaii. The traditional skills have been adapted to new methods and reflections of the culture and heritage of other regions beyond the original New England nautical motifs.

While other raw materials may be used for the scrimshaw art, most artisans have not had enough time to adapt their skills and methods to other media such as beef bone. As an important craft in the culture of many areas in our country, the art of scrimshaw should be given the opportunity to survive. The bill, S. 229, grants this opportunity.

In view of the cultural importance of this art and the financial hardship created through legislative oversight, I urge my colleagues to vote in favor of the Scrimshaw Art Preservation Act.

Mr. BROOKER. Mr. President, this legislation is designed to allow trade in antique scrimshaw work to continue while assuring that no living whales will face any danger. When the 93d Congress enacted the Endangered Species Act a technical error prohibited interstate commerce in scrimshaw art. Many of our antique dealers were left with old and valuable pieces of scrimshaw art of which they could not dispose. These antiquarians are themselves firm environmentalists who would not for an instant tolerate any contemporary killing of the world's remaining whales; they deserve to be able to carry on their trade in examples of this art form which, under our new laws, is a thing of history.

Both Senator Kennedy and I worked hard for the passage of both the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973. Our commitment to the preservation of the whale is total and unswerving. This legislation admits no possibility of changing or violating the moratorium on whale killing which is in effect, I hope, indefinitely. Neither the Marine Mammal Protection Act nor the Endangered Species Act is in any way weakened or threatened by this proposal. In fact, it simply makes the 1973 act technically consistent with the Marine Mammal Protection Act by permitting the trade of antique scrimshaw pieces. There is no way in which this objective is in conflict with protection of living whales, nor would I tolerate any move which did in fact endanger this, or any other, species.

I trust my colleagues will enact this relief for our antique dealers without delay.

Mr. MOSS. Mr. President, I yield back the remainder of my time.

Mr. STEVENS. Mr. President, I yield back the remainder of my time.

Mr. MOSS. Mr. President, if there are no further amendments, I ask for third reading of the bill.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

AN ACT To amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

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

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this part of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea."

SEC. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following two new paragraphs:

(b) (1) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a) (1) of this Act—

(1) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

(2) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, if such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than seven years after the date of enactment of this provision. As used in this paragraph, the term 'lawfully' refers to the laws of the United States and to laws of the several States and political subdivisions thereof.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

(3) Any person who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

(1) submit to such Secretary, within one hundred and twenty days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of and bone and teeth of marine mammals of the order Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holding reported in such inventories;

(2) apply to such Secretary for such exemption, in such form and manner and with such submissions as such Secretary shall prescribe; and

(3) submit to such Secretary sales records, reports, and other documents and materials, to the extent reasonably necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with the subparagraph (A).

(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of

any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be effective on the date of final publication, notwithstanding any other provisions of this Act.

(5) Within one hundred and twenty days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an interagency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (a) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within twelve months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations.

The title was amended so as to read:

A bill to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw and for other purposes.

From the Congressional Record, June 24, 1976

SENATE CONCURRENCE IN HOUSE AMENDMENTS TO S. 229, WITH AMENDMENTS

SCRIMSHAW ART PRESERVATION ACT OF 1975

Mr. Ford. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 229.

The Acting President pro tempore (Mr. Proxmire) laid before the Senate the amendments of the House of Representatives to the bill (S. 229) to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes, as follows:

Strike out all after the enacting clause, and insert: That section 4 (1) (2) (B) (ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f) (2) (B) (ii)) is amended by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof "subsection (b) (1) (A)".

Sec. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

(f) (1) As used in this subsection—

- (A) The term 'pre-Act endangered species part' means—
(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or
(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.
(B) the term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

- (A) The prohibition on exportation from the United States set forth in section 9(a) (1) (A) of this Act.

(B) Any prohibition set forth in section 9(a) (1) (E) or (F) of this Act.
(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—
(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;
(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;
(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and
(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—
(A) any prohibition in section 9(a) of this Act which is exempted;
(B) the pre-Act endangered species parts to which the exemption applies;
(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and
(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—
(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and
(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f) (2) (A) (i) of this Act.

(6) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable.
Sec. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—
(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and
(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit."

Sec. 4. Section 11(e) (3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e) (3)) is amended—
(1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and
(2) by striking out the period at the end thereof and inserting in lieu thereof the following: "; but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such

property. It shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof: "Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations."

Amend the title so as to read: "An Act to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

Mr. Ford. Mr. President, I understand that these amendments have been agreed to on both sides and all those who are interested have agreed to them.

Mr. President, the Senate and the House have approved differing versions of S. 229, which would create exemptions from certain trade prohibitions contained in the Endangered Species Act of 1973. The House version is now at the desk. In further amending the bill slightly and sending it back to the House, we will expedite the ultimate enactment of the legislation and clarify some of its provisions.

The Endangered Species Act was enacted to prohibit the importation and sale in interstate and foreign commerce, of any endangered species of animal or plant, or their parts and products. Congress had earlier enacted the Marine Mammal Protection Act on October 21, 1972 which contained such prohibitions with respect to species of marine mammals only.

The Marine Mammal Protection Act expressly provides that the interstate trade prohibitions do not apply to marine mammals taken prior to December 31, 1972, the effective date of the act. However, the Endangered Species Act contains no such "grandfather" clause. This discrepancy has resulted in the application of the Endangered Species Act prohibitions to marine mammal parts and products otherwise legally held or taken under the Marine Mammal Protection Act.

To remedy this situation with respect to scrimshaw, an art form using whale bone and teeth, the Senate Committee on Commerce approved, and the Senate passed S. 229. This bill would authorize the Secretary of Commerce, who administers the Endangered Species Act with respect to whales, to grant exemptions for a limited period of time for the sale of finished scrimshaw products in interstate commerce. This would permit scrimshaw artisans, known as scrimshanders, sufficient time both to dispose of their present inventories and to adapt their art to a new medium, without encouraging endless trade in whale products.

In its deliberations on the Senate-passed bill, the House Merchant Marine and Fisheries Committee expanded S. 229 to include additional authority for issuing exemptions for legally held sperm whale oil. The exemption for sperm whale oil was deemed necessary to allow those who legally held this oil on December 31, 1972, to dispose of it. This includes the General Services Administration which holds approximately 23,400,000 pounds of sperm whale oil in the national stockpile as well as several private companies. The committee also made several other minor changes in the Endangered Species Act at the request of the Interior Department to improve administration and enforcement of the act.

During a recent oversight hearing on the Endangered Species Act held by the Senate Commerce Committee, three minor modifications to the House-passed bill were suggested. Rather than going to conference, however, we can expedite the entire process by sending the amended bill back to the House for its expected early approval. By taking this course we would also avoid any potential "scope of conference" problems that might be encountered in a conference with respect to the inclusion of the amendments.

The first amendment simply clarifies that the exemption for sperm whale oil applies to derivatives of this substance as well, including, for instance, spermaceti which is used by pharmaceutical companies as an ingredient in lotions, cosmetics, and the like. While this is the intent of the House version, it is desirable to make this absolutely clear.

The second amendment responds to a request by the General Services Administration that the validity of the contracts entered into by GSA with private companies for the disposal of the Nation's stockpile of sperm whale oil be made clear. This provision would not, however, legalize trade that took place in this material prior to enactment of S. 229.

The third amendment speaks to the effect which enactment of S. 229 would have on the enforcement of the existing Endangered Species Act prohibitions. The Department of Commerce has been enforcing these prohibitions, and sanctions have been applied in several cases. In addition, investigations are presently underway in connection with both civil and criminal violations of the act by persons dealing in scrimshaw and sperm whale oil. The purpose of this amendment is to resolve any uncertainty regarding previous enforcement actions or on-going investigations. The amendment simply states that nothing in S. 229 shall be construed to, first, exonerate any person for any act committed, prior to the date of enactment of S. 229, in violation of the provisions for which exemptions are being granted, or second, to immunize any person from prosecution for any such act.

The effect of S. 229 with these amendments will be to allow the interstate sale of legally held scrimshaw and sperm whale oil, but to preserve the right to prosecute persons who have violated existing provisions of the Endangered Species Act by trading in these whale products previous to these exemptions. The Commerce Committee is particularly concerned that persons who willfully ignored the act's provisions be subject to prosecution.

In its report on S. 229, the committee made clear that this would be a one-time exemption which would by no means encourage an endless trade in products of endangered species. I would like to reiterate that point at this time and assure my colleagues in the Senate that enactment of S. 229 and these amendments will in no way pose a threat to the living whale population.

With this assurance, I urge the adoption of the amendments. Mr. President, I move that the Senate concur in the House amendment with two amendments which I send to the desk.

The ACTING PRESIDENT pro tempore. The amendments will be stated. The assistant legislative clerk read as follows:

The Senator from Kentucky (Mr. Ford), for himself and Mr. Magnuson, proposes unprinted amendment No. 84:

Section 2 of the House amendment to the Senate bill is amended as follows: Amend subsection 10(f) (1) (A) (1) by inserting after the term "sperm whale oil" the term "including derivatives thereof".

Section 2 of the House amendment to the Senate bill is amended as follows: Amend subsection 10(f) by inserting at the end of paragraph (5) the following two new paragraphs:

"(6) (A) Any contract for the sale of pre-Act Endangered Species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973 shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under subsection 9(a) (1) (F).

"(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exonerate any person from any act committed in violation of paragraphs (1) (A), (1) (E), or (1) (F) of section 9(a) prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act."

Mr. KENNEDY. Mr. President, I wish to thank the Commerce Committee Subcommittee on Environment and its most distinguished chairman, Senator Phil Hart, for the time and effort they have given to consideration of this legislation which I introduced to preserve the art of scrimshaw. I am particularly grateful to the staff members of the subcommittee, specially Kathi Korpon, for their work in refining this legislation to insure that our absolute commitment to end the slaughter of whales is in no way weakened by this amendment to the Endangered Species Act.

The legislation we act on today will permit the sale and shipment in interstate commerce of scrimshaw products for a limited period of time, 3 years, and under conditions which guarantee that no illegally obtained whale products are introduced into commercial activity.

It is particularly appropriate as we celebrate the Bicentennial that we preserve those art forms which reflect our unique heritage and culture. The noted author and scrimshaw expert E. Norman Flydderman points out:

American whaling days are gone forever. Although the era can never be relived, the intriguing artifacts that remain are highly significant reminders of a wonderful era of our past that succeed in catching the spirit of a magnificent and departed period.

President Kennedy reflected that scrimshaw "tells us a very important part of our lives—our lives at sea." And it was President Kennedy's own collection of scrimshaw that reminded so many Americans of an exciting and courageous period in our history.

This legislation will allow our hundreds of scrimshaw artists sufficient time to learn their art on new materials. These artists are etching on beef bone and synthetic materials now in an effort to find a readily available material for their work. It will allow museums and collectors an opportunity to obtain scrimshaw products for their collections that are only available in states other than their own.

Most importantly, this bill will assure that this Nation's commitment to stop the killing of whales is in no way jeopardized. Any person seeking an exemption must establish that the whale products were taken legally. These inventories of legally held products will assist the Department of Commerce in their efforts to enforce provisions of the

Endangered Species Act to end the smuggling of illegally taken products.

We owe a special debt of gratitude to the environmental and animal protection groups, particularly representatives of the Fund for Animals who gave us so much of their time and their valuable suggestions to insure that this legislation did not weaken the Endangered Species Act and who helped us strengthen provisions to enforce compliance with the law to end activity in illegally taken teeth and whale bone. Without their help we would not have been able to develop the legislation we act on today reflecting both our commitment to end the killing of whales and our commitment to preserve scrimshaw as an American art form.

Any legislation which amends the Endangered Species Act, a law universally recognized as the strongest and most effective legislation in protecting animals in danger of extinction, must be carefully and thoughtfully drawn to assure that the Congress commitment to the protection of endangered animals is not diminished. The amendment we approve today has been under consideration for a year and a half, has been the subject of public hearings, and has had the most valuable input of the animal protection groups. As a result we were able to draft this amendment to the Endangered Species Act which reaffirmed and strengthened the resolve of the Congress to protect the whale.

Mr. President, I share with my colleagues in the Senate a deep sense of regret that the slaughter of the sperm whale continues in record numbers even today. The largest quota permitted for the world's whaling nations is for the killing of the sperm whale. The United States is absolutely committed to end the whale slaughter and we renew our efforts to encourage other nations to follow our lead.

We are all too familiar with the pattern which recognizes the danger to our marine mammals and wildlife only after it is too late. I again assure all those citizens who have worked so hard to end the killing of the sperm whale that they have my strongest support. And I am hopeful that we in the Congress, working together with these citizens, can be successful in protecting the sperm whale for generations to come.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion to concur in the House amendment with the Senate amendments.

The motion was agreed to.

[From the Congressional Record, July 1, 1976]

S. 299 PRESENTED TO THE PRESIDENT

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, July 1, 1976, he presented to the President of the United States the following enrolled bills:

S. 299. An act to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

## S. 229 SIGNED INTO LAW (PUBLIC LAW 94-359)

## APPROVAL OF BILLS AND JOINT RESOLUTIONS

A message from the President of the United States announced that he has approved and signed the following bills and joint resolutions:

\* \* \* \* \*

On July 12, 1976:  
S. 229. An act to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

\* \* \* \* \*

## ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Fish and Wildlife Misc., Part 5, 1974. Washington, U.S. Print Off., 1974. 228 p. "Serial no. 93-46."

Continuation of hearings on miscellaneous fish and wildlife conservation proposals, including briefing on implementation of Endangered Species Act of 1973. Includes correspondence throughout.

Hearing on Nov. 22, 1974 includes testimony from L. A. Greenwalt (FWS), J. W. Gehring (NMF).

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Whaling, Whale Oil, and Scrimshaw. Hearings, 94th Congress, 1st session, May 13, 14, June 9, 10, 13, 1975. Washington, U.S. Govt. Print. Off., 1975 p. "Serial No. 94-7."

Hearings on legislation relating to the protection of whales. June 9, 10 hearings consider the following bills to provide exemptions to the Endangered Species Act of 1973:

H.R. 3465, authorizing disposal of sperm oil from the national stockpile.

H.R. 2057, to exempt stocks and inventories of whale bones and teeth acquired prior to 1973 from prohibitions under the Endangered Species Act of 1973. Also considers similar S. 229.

Includes submitted statements, correspondence, reports, and "Economic Impact of Suggested Options for Import Sanctions Against Countries Disregarding the Conservation Measures of the International Convention for the Regulation of Whaling" by CRS.

June 9 witnesses include: C. A. Mosher (Rep. Ohio), T. M. Thawley (GSA), A. S. Bistricky (Scandinavian Oil Co., W. Meekes (Werner G. Smith Co.).

June 10 witnesses include: A. Wickham, (Friends of the Earth). C. Stevens (Society for Animal Protection Legislation) C. E. Koury (Fund for Animals), M. M. Kaufman (Let Live, Inc.), J. Risk (Animal Protection Inst), M. A. Lipman (New Bedford, Mass., Area Scrimshanders), E. U. C. Bohlen (FWS), J. W. Gehring (NMFS).

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Endangered Species Oversight. Hearings, 94th Congress, 1st session, Oct. 1, 2, 6, 1975. Washington, U.S. Govt. Print. Off., 1975. 367 p. Implementation and Administration of the Endangered Species Act and its amendments, and to review the problems and issues encountered. Serial No. 94-17.

Hearings on implementation of Endangered Species Act of 1973 provisions prohibiting interstate or foreign commerce in endangered animals of destruction of their critical habitats and of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1975.

Oct. 2 and Oct. 6 hearings include informal sessions with participation by members of the audience. Earl Baysinger (FWS) participates in discussions; George Steele (Zoological Actions Committee), Bruce MacBride, Peter Kelsey (Solicitor, Interior Dept.), Ruby Compton (Natural Resource Defense Council), and Gerard Bertrand (CEQ) participate in questioning of Federal agency witnesses during the Oct. 6 hearings.

Supplementary material includes submitted statements, articles, correspondence, and a list of faunal and floral taxa which Interior Dept. has been petitioned to add to endangered or threatened species list.

Hearing on October 1 includes testimony from L. A. Greenwalt (FWS), K. M. Schreiner (Dept. of Interior), C. R. Bavin (Dept. of Interior), J. W. Gehring (NMFS), L. M. Talbot (CEQ).

Hearing on October 2 includes testimony from R. K. Yancey (La. Wildlife and Fisheries Commission), J. E. Poser (Amer. Fur Merchants Assn.), K. L. Newman (Archer-Daniels-Midland Co.).

Hearing on October 3 includes testimony from R. Bitley (Intl. Assn. of Game, Fish and Conservation Comms.), T. D. Jarvis (Natl. Parks and Conservation Assn.).

Hearing on October 6 includes testimony from: L. A. Greenwalt (FWS).

Testimony from wildlife conservation groups includes: J. W. Grandy (Defenders of Wildlife, Sierra Club, N.Y. Zoological Soc. and Animal Protection Inst.), C. Stevens (Society for Animal Protective Legislation), L. Regenstein (Fund for Animals), D. A. Poole (WMI), M. M. Kaufmann (Monitor, Inc., Let Live, Inc.).

Testimony from captive animal owners includes: J. T. Wilds (Natl. Congress of Animal Trainers and Breeders), L. D. Harris (Circus Fans Assn.), G. E. Steele (Zoological Actions Committee), G. S. Lentz (Busch Gardens), K. J. Field (Ringling Bros.-Barnum and Bailey Combined Shows), R. Thrun (general counsel), P. Quinn (Lion Country Safari), U. Seal (Minn. Zoological Garden and Amer. Assn. of Zoological Parks and Aquariums), R. O. Wagner (Amer. Assn. of Zoological Parks and Aquariums), W. P. Braker (Shedd Aquarium), C. I. Bieler (San Diego Zoo), T. Hunt (Zoological Animal Suppliers), F. S. Todd (Sea World, Inc.).