

1 "Except as authorized in sections 6 and 7 of this Act,
2 there are authorized to be appropriated—

- 3 " (1) not to exceed \$25,000,000 for the fiscal year
4 ending September 30, 1977, and the fiscal year ending
5 September 30, 1978, not to exceed \$23,000,000 for the
6 fiscal year ending September 30, 1979, not to exceed
7 \$25,000,000 for the fiscal year ending September 30,
8 1980, and not to exceed \$27,000,000 for the fiscal year
9 ending September 30, 1981, to enable the Department
10 of the Interior to carry out such functions and responsi-
11 bilities as it may have been given under this Act; and
12 " (2) not to exceed \$5,000,000 for the fiscal year
13 ending September 30, 1977, and the fiscal year ending
14 September 30, 1978, not to exceed \$2,500,000 for the
15 fiscal year ending September 30, 1979, not to exceed
16 \$3,000,000 for the fiscal year ending September 30,
17 1980, and not to exceed \$3,500,000 for the fiscal year
18 ending September 30, 1981, to enable the Department
19 of Commerce to carry out such functions and responsi-
20 bilities as it may have been given under this Act."

Calendar No. 804

95TH CONGRESS }
2d Session }

SENATE

REPORT
No. 95-874

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

MAY 15 (legislative day, APRIL 24), 1978.—Ordered to be printed

Mr. CURVER, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2899]

The Committee on Environment and Public Works, to which was referred the bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such actions having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

GENERAL STATEMENT

The Endangered Species Act of 1973 is the first statute to authorize a comprehensive national program for the conservation of endangered or threatened species of fish, wildlife, and plants.

The regulatory mechanism provided to achieve this goal authorizes and directs the Secretary of the Interior and, for marine species, the Secretary of Commerce to list and to issue regulations for the protection of endangered or threatened species. The Secretary is required to enter into cooperative agreements with, and provide technical and financial assistance to, qualified States for species conservation programs.

Since protection of habitat is a key element in the protection of all species, the act authorizes the Secretary to acquire land for the conservation and propagation of affected species. Furthermore, in section 7 each Federal agency is directed to assure that its actions do not adversely affect listed species or the habitat which the Secretary determines to be critical to their existence. Similarly, section 9 prohibits the taking of, or interstate commerce in, endangered or threatened species except when such use is consistent with a permit or regulations issued by the Secretary to the appropriate State authority.

The authorization for the act, currently \$25 million annually for the Secretary of the Interior and \$5.5 million annually for the Secretary of Commerce, expires on September 30, 1978. S. 2689 extends the budget authority for the endangered species program through fiscal year 1981 at a level of \$75 million for the Secretary of the Interior and \$9 million for the Secretary of Commerce.

The bill also contains a provision which is intended to provide a mechanism for the resolution of conflicts which might arise between the Endangered Species Act's mandate to protect and manage endangered and threatened species and other legitimate national goals and priorities such as providing energy, economic development and other benefits to the American people. Some of these objectives have clashed in recent months as construction on certain major Federal projects has been slowed, and in one instance, stopped, since completion of the proposed Federal action would adversely impact endangered or threatened species or their critical habitats.

The Tellico Dam project on the Little Tennessee River has been the most visible case in which the Committee found a seemingly irresolvable conflict between project objectives and the requirements of section 7 of the Endangered Species Act. The dam was nearly 50 percent complete when the snail darter was discovered and 75 percent complete when its critical habitat was designated within the proposed impoundment area of the project. The Fish and Wildlife Service feels TVA should terminate the project because it endangers the snail darter. TVA, on the other hand, feels it has ambiguous congressional directives and that it is not at liberty to terminate the project at this time.

This case has also resulted in several conflicting court suits, including the January 31, 1977, decision of the U.S. Court of Appeals for the Sixth Circuit in *Hiram G. Hill, Jr. et al. v. Tennessee Valley Authority*. The appellate court held in this case that a lower court decision ruling that the Tellico Dam should be completed was in error and that TVA should be enjoined from completing the project. The appellate court stated that enforcement of section 7 of the act requires an injunction of all further actions by TVA which may detrimentally alter the critical habitat of the snail darter regardless of mitigating circumstances. This case was appealed to the U.S. Supreme Court where arguments were heard on April 18, 1978. A decision is pending.

While the committee found in its hearings that much controversy still surrounds the Tellico Dam case, the case is the type of Federal action which should be eligible for review by the Endangered Species Committee established by this bill and given appropriate consideration for an exemption under the new review process mandated in this legislation.

Testimony received by the committee indicates that a substantial number of Federal actions currently underway appear to have all the elements of an irresolvable conflict within the provisions of the act. This number may increase significantly in the future as the Fish and Wildlife Service continues to list additional species and critical habitats. For instance, 1,800 plants and over 100 animal species have been proposed for listing as threatened or endangered and designation of 40 new critical habitats is also under consideration. In addition, the

Service expects to undertake some 20,000 consultations with other Federal agencies during fiscal year 1979 concerning potential conflicts with species and critical habitats which have already been listed. This compares with 4,500 consultation since the act was enacted.

It has also been brought to the committee's attention that the General Accounting Office suspects, but has not confirmed, that the Fish and Wildlife Service has refrained from listing species which may pose a conflict with a Federal action, for fear of provoking the Congress into weakening the protective provisions of section 7.

The committee believes that these circumstances clearly illustrate the need for an amendment to the act which will provide flexibility in its administration, while maintaining protection for threatened and endangered species.

Some flexibility is needed in the act to allow consideration of those cases where a Federal action cannot be completed or its objectives cannot be met without directly conflicting with the requirements of section 7.

The bill does address these situations, and requires that when conflicts with the Endangered Species Act are known or should be known, an agency must consult immediately with the Fish and Wildlife Service and exhaust all reasonable avenues for eliminating the conflict. If this consultation process is unsuccessful in resolving the conflict, the bill provides a further review process in section 7(e) to address the conflict and resolve it.

The bill sets up a seven-member Endangered Species Committee composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of the Smithsonian Institution, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, and the Governor of the State in which the action is located.

When an agency believes it has encountered an irresolvable conflict with the act which cannot be resolved through consultation with the Fish and Wildlife Service or the National Marine Fisheries Service, that agency may petition the Endangered Species Committee for relief. The Fish and Wildlife Service—or when appropriate the Fish and Wildlife Service in consultation with the National Marine Fisheries Service—would have 30 days to respond to the agency's petition and give its views as to whether the consultation process required by section 7 had been fully conducted.

After reviewing the response of the Fish and Wildlife Service and other relevant information, the Endangered Species Committee would decide whether or not the action should be considered for an exemption. No action could be so considered unless the Endangered Species Committee determined: (1) That the requirements of the section 7 consultation process had been met; (2) that there had been a reasonable and responsible effort to resolve the conflicts and that the Federal agency requesting the exemption has made, subsequent to the initiation of consultation no irreversible or irretrievable commitment of resources which forecloses the consideration of modifications or alternatives to the action; and (3) that an irresolvable conflict does indeed exist. If the Endangered Species Committee makes positive deter-

minations on each of these matters it would then conduct hearings and receive public testimony on whether an exemption is warranted.

Within 180 days after the Endangered Species Committee first received the agency's petition and the Fish and Wildlife Services' response, the Endangered Species Committee must publish in the Federal Register its decision as to whether the action should be exempted, modified, or terminated. No action could be exempted, or exempted with modifications, unless the Endangered Species Committee determines that there is no reasonable and prudent alternative to such action, that the action is of regional or national significance, and that the benefits of the action clearly outweigh the benefits of alternative courses of action that are consistent with conserving the species or its critical habitat, and that the action is in the public interest.

In reviewing available alternatives to the action under review, the committee would be charged to examine the benefits of all available alternatives, not simply those which are within the agency's jurisdiction or are consistent with the original project objectives.

DISCUSSION OF MAJOR PROVISIONS

ENDANGERED SPECIES COMMITTEE

After deciding that some additional discretion to resolve conflicts was a necessary addition to the present provision of the Endangered Species Act, the committee considered a number of options on how to introduce this discretionary authority into the present law. Of these options an Endangered Species Committee was chosen as that one best suited to make the necessary balancing decisions regarding conflicts. This committee concept was employed because it seemed to offer the involvement of the broadest array of expertise and the greatest potential for a balancing of viewpoints concerning all the alternatives to be considered.

The Endangered Species Committee would be composed of cabinet-level officials and an elected representative of the State affected by the proposed action.

The Endangered Species Committee has the following members:

1. The Secretary of the Interior, or where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce.
2. The Secretary of the Army.
3. The Secretary of Agriculture.
4. The Secretary of the Smithsonian Institution.
5. The Administrator of the Environmental Protection Agency.
6. The Chairman of the Council on Environmental Quality.
7. The Governor of the State affected by the proposed action.

The Marine Mammal Protection Act gives responsibility for protecting certain endangered and threatened species to the Secretary of Commerce. For cases in which the conflict before the Endangered Species Committee involves such a species, the Secretary of Commerce is required to concur with the Secretary of the Interior before that vote is cast.

The bill was amended by the committee to add the Governor of the State affected by the proposed action as a voting member of the En-

dangered Species Committee. The purpose of this addition was twofold. First, it was considered important that an elected official be a member of the Endangered Species Committee. Second, there was a perceived need to have someone on the Endangered Species Committee who is in touch with and understands the needs and desires of those persons close to or dependent on the Federal activities which would be the subject of the exemption application. The State Governor met both of these requirements.

If a case should occur in which more than one State is affected by the proposed action and legitimately involved in the outcome of the review process, all appropriate Governors may take part in the Endangered Species Committee work and discussions. For purposes of the decision regarding an exemption, however, the several States shall have collectively only one vote. The Governors will therefore determine among themselves how the single State vote should be cast.

The Endangered Species Committee can carry on business only when all seven members or their designated representatives are present.

The members of the Endangered Species Committee have the responsibility for granting or denying an exemption from the requirements of subsection 7 (a) of this act, upon application by the head of the appropriate Federal agency.

In order to grant such an exemption at least five of the seven members must agree that the criteria listed in subsection (e) of this section are met, and vote in favor of such an exemption. A member may not delegate his or her vote to any other person; in the event one of the members is unable to be present at the time a vote is taken, he or she must transmit the vote in writing to the chairman of the Endangered Species Committee.

LICENSING AND PERMITTING

The committee hearings indicated that the requirements of section 7 might also conflict with a number of administrative processes, for example, Federal licensing and permitting of private activities. If a Federal agency, in carrying out an administrative function of this type, determines, after appropriate consultation with the Fish and Wildlife Service or the National Marine Fisheries Service, that a conflict with the act is irresolvable, the agency can petition for an exemption under the provisions of section 7 (e). This approach provides relief for both the party who applied for the license or permit and for the Federal agency who might, except for the requirements of the Endangered Species Act, be disposed to approve the license or permit request. This is a reasonable policy for responding to this type of Federal action which might occur on private or Federal lands.

CONSULTATION

The basic premise of S. 2899 is that the integrity of the interagency consultation process designated under section 7 of the act be preserved.

Many, if not most, conflicts between the Endangered Species Act and Federal actions can be resolved by full and good faith consultation between the project agency and the Fish and Wildlife Service or

the National Marine Fisheries Service, as appropriate. The committee intends that only in those instances where the consultation process has been exhausted and a conflict still exists should the Endangered Species Committee consider granting an exemption for a Federal action.

In order to assure this intent, S. 2899 sets up a two step process by which Federal actions can be considered for an exemption. In the first step, the Endangered Species Committee must decide if the application is ripe for review. Specifically, it would have to find first that the requirements of the consultation process described in section 7(a) had been met. These requirements are specifically set forth in regulations promulgated by the Fish and Wildlife Service and the National Marine Fisheries Service in CFR 50, chapter IV, part 402. Second, the Endangered Species Committee would have to determine that a reasonable and responsible effort had been made by both parties to resolve the conflict once it is known to exist and that, subsequent to the initiation of consultation, the project agency had made no irreversible or irretrievable commitment of resources which forecloses the consideration of those modifications or alternatives to such action which are consistent with preserving the species or its critical habitat.

Under the current section 7 regulations, Federal agencies have a responsibility to identify activities or programs which they undertake that may affect listed species or their critical habitat and to request consultation with the Services concerning those activities or programs. Thus, the consultation process must be initiated at that point in the implementation of the action where the Federal agency first recognizes that the activity may have a detrimental effect on a species or its critical habitat.

Finally, in the process of deciding whether to review fully an action for an exemption the Endangered Species Committee would be required to determine that an irresolvable conflict does indeed exist. The term irresolvable conflict is defined as an action authorized, funded or carried out by a Federal agency where, after consultation as required in section 7, completion of such action would jeopardize the continued existence of an endangered or threatened species or result in the adverse modification or destruction of its critical habitat. An irresolvable conflict cannot be found to exist unless the project agency had thoroughly reviewed all modifications and alternatives to the action that are within its jurisdiction and consistent with the objectives of the project, but has determined that even with the adoption of such modifications or alternatives the activity cannot be completed without adversely affecting a listed species or critical habitat.

CRITERIA

If the Endangered Species Committee determines that the initial criteria for review have been met by the Federal agency making the application, the Federal action in question is appropriate for further consideration. The review process must be accomplished within 180 days after the receipt of the petition for an exemption and response from the Fish and Wildlife Service. The final determination must be made on the record and thus must be accompanied by a formal hearing process.

In addition, the final decision to grant an exemption must be based on criteria set forth in section 7(e)(2) as follows:

1. There is no reasonable and prudent alternative to such action.
2. The action is of national or regional significance.
3. The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest.

The bill also requires that during the review process the Endangered Species Committee must address the benefits of all alternatives which might be available in lieu of the proposed action. This criterion makes it clear that the Endangered Species Committee must consider all options which might eliminate harm to the species, independent of the stage of project completion. As a project approaches completion certain alternatives to the proposed action may not be reasonably or prudently available as options. It is also clear that the earlier in the progress of a project a conflict is recognized, the easier it is to design an alternative consistent with the requirements of the act, or to abandon the proposed action. It may be feasible to utilize resources already expended or lands required for a proposed action to carry out alternatives, such as development of parks or wildlife refuges, which are unrelated to the initial project. These alternatives will also bring benefits to the public. The Endangered Species Committee should apply this standard of reasonableness in assessing the availability of alternatives to any action before them for review.

The criteria in section 7(e)(2) should not be viewed as a limitation on those factors the Endangered Species Committee might deem appropriate for use in making a final decision. It should, however, give some guidance as to those elements that the Congress believes are essential to a reasonable decision in cases of conflict, along with some idea of what emphasis should be given these elements in any decision. The committee can not foresee all the circumstances and factors which might be important in a decision regarding an exemption. It is particularly difficult to assess exactly what facts are or will be important when viewing a particular species within the subsection (e) process. Clearly such factors as the ecological, educational, genetic, recreational, aesthetic, historic and scientific values of the affected endangered or threatened species should be given weight in any final decision.

In the balancing process the Endangered Species Committee is not expected to balance simply the importance of a species against the value of a Federal action. The criteria expressly mandate that the balancing which is to take place is between the benefits of a proposed Federal action and the benefits of alternative courses of action which will not result in harm to the species or its critical habitat. The committee recognized the difficulty of simply comparing species value with a proposed Federal action. The balancing of the benefits of alternative courses of action mandated by the criteria will allow a more logical comparison of the available options.

Although the balancing process is difficult the Endangered Species Committee should note that the decision to allow the extinction of a species or destroy all or parts of its critical habitat should not be taken lightly and great care must be applied in trying to decide finally, in cases of conflict, what future course of action is in the public interest.

The bill provides authority for the Endangered Species Committee to issue subpoenas for the attendance of witnesses and the production of relevant papers, books, and documents. The authority should be used with restraint, when necessary to obtain information material to an exemption decision. If a private party withdraws from seeking a Federal action under consideration for an exemption under these amendments, the subpoena power would no longer need to apply to such private party.

OTHER PROVISIONS

RAPTORS

During the past 15 years biologists, conservationists, and falconers have been working to produce raptors through propagation in captivity. In this work an emphasis has been placed on raptors which are now listed as endangered under the authority of the Endangered Species Act. However, prohibitions contained in section 9 of the law against commerce in endangered species have impeded these breeding activities.

S. 2889 amends section 9 of the act to clarify the situation regarding domestic, captive-produced raptors. For the purpose of this amendment, raptor means any bird of prey.

Unless specified in other laws, raptors held prior to the enactment of the act on December 28, 1973 are exempted from the provisions and prohibitions of the act. It is the intent of the committee that the domestic captive-produced progeny of any raptor which was legally held prior to enactment will also be exempt from the provisions and prohibitions of the act, even if such progeny were produced after December 28, 1973.

In order to encourage breeding of raptors in captivity, the domestic captive-produced progeny of raptors considered to be endangered, but legally taken from the wild after December 28, 1973, shall be considered for legal purposes in a like manner as the progeny of raptors captured before 1973. The committee believes this will alleviate some of the human pressures on wild raptor populations, will increase genetic diversity in captive populations, and will further encourage captive production of raptors for conservation, scientific, and breeding purposes.

Further, it is the intent of the committee that where domestic captive-bred raptors have been intentionally released and returned to a wild state for conservation and reintroduction purposes, these raptors will be considered to be fully protected under the act.

The Secretary may require the owners of all exempted raptors to keep records and require bands or other permanent markings to distinguish them from wild birds. The records and inventories may be inspected by agents of the Secretary at reasonable times. These records, permanent markers and inventory procedures should not unnecessarily duplicate those now required annually under the Migratory Bird Treaty Act for special purpose permits and falconer permits.

In oversight hearings concerning the Endangered Species Act the committee also received testimony from organizations representing zoos. These witnesses were skeptical of the necessity for the stringent and burdensome process developed by the Fish and Wildlife Service for regulation of their captive bred endangered and threatened species. The committee advises the Service to reexamine these regulations and the rationale upon which they are based on light of this testimony, and to make every effort to ensure that only those regulations which result in real benefits for wild populations of endangered and threatened species are retained. In any event, every effort should be made by the Service to reduce the amount of paperwork and time involved in this regulatory process.

The committee notes favorably the Fish and Wildlife Service announcement in the April 14, 1978, Federal Register that they are examining the possibility of reclassifying captive endangered species to a less restrictive status under the Endangered Species Act. The committee agrees that some distinctions ought to be made between the regulatory processes relating to captive endangered species as opposed to wild populations of that same species. The committee recommends that the Service thoroughly examine the available alternatives and then reform the regulatory process concerning captive endangered species so that only those regulations that can be reasonably expected to enhance the protection of endangered species be retained.

The committee also received testimony on a related issue, the manner in which the Endangered Species Act affects scientific pursuits, particularly work carried on in museums. In discussions with members of the scientific communities the Fish and Wildlife Service has agreed to reexamine its present regulations. The permit procedures in this regard badly need to be streamlined.

Large amounts of time and money have been committed to compliance with these regulations, although little may be accomplished by control of museum specimens. There is little evidence that such controls have any appreciable effect on existing populations of endangered species.

The committee believes that a distinction should be made between regulation of legitimate scientific pursuits and commercial activities involving endangered species, and that regulations should be promulgated which do not unnecessarily impede or obstruct legitimate scientific inquiries.

The committee requests that the Fish and Wildlife Service study upgrading the efforts of the Customs Service activities and other alternatives for monitoring and protecting endangered species and report its findings back to the committee within a reasonable time.

CRITICAL HABITAT DESIGNATION AND PROTECTION

It has come to the committee's attention that under present regulations the Fish and Wildlife Service is now using the same criteria for

designating and protecting areas to extend the range of an endangered species as are being used in designation and protection of those areas which are truly critical to the continued existence of a species. The committee feels that the rationale for this policy ought to be re-examined by the Fish and Wildlife Service. There seems to be little or no reason to give exactly the same status to lands needed for population expansion as is given to those lands which are critical to a species continued survival.

The committee is particularly concerned about the implications of this policy when extremely large land areas are involved in a critical habitat designation. For example, as much as 10 million acres of Forest Service land is involved in the critical habitat being proposed for the grizzly bear in three Western States. Much of the land involved in this proposed designation is not habitat that is necessary for the continued survival of the bear. It instead is being designated so that the present population within the true critical habitat can expand. The goal of expanding existing populations of endangered species in order that they might be delisted is understandable. This process does, however, substantially increase the amount of area involved in critical habitat designation and therefore increases proportionately the area that is subject to the regulations and prohibitions which apply to critical habitats.

In many cases the Fish and Wildlife Service has been unable to explain fully or predict what the impacts of a critical habitat designation are going to be on activities which occur within a designated critical habitat. This is the case with the grizzly bear critical habitat. Certain adjustments must be made in planned activities, especially on habitat necessary for the continued survival of a species but identical adjustments may not be necessary on expansion lands.

The committee directs that the Fish and Wildlife Service examine this ambiguity in its regulatory process for critical habitat designations. Hopefully this review will be accomplished and a report delivered to this committee before a final decision is made on the grizzly bear designation.

ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were two rollcall votes during the committee's consideration of the bill. The results were announced at the time of the vote. The committee ordered the bill reported by unanimous voice vote.

EVALUATION OF REGULATORY IMPACTS

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill does not add to or reduce the regulatory authority provided by existing law.

The bill has no impact on the personal privacy of individuals.

The bill has an impact on paperwork to the extent that Federal agencies must submit information to the Endangered Species Committee concerning actions which they authorize, fund or carry out which are under consideration by the committee.

There is no specific economic impact of the bill.

The bill has an impact on recordkeeping requirements to the extent that individuals with captive produced raptors are required by the Secretary of the Interior to keep records in addition to those required by existing law.

ESTIMATES OF COST

Section 252(a) (1) of the Legislative Reorganization Act of 1970 requires publication in this report of the committee's estimate of the costs of the reported legislation, together with estimates prepared by any Federal agency. S. 2899 provides a total authorization of \$75 million for the Department of the Interior and \$9 million for the Department of Commerce, while an authorization of \$7.5 million is provided for the Endangered Species Committee. This compares to an estimate of \$17 million by the Department of the Interior and \$2.5 million by the Department of Commerce.

CONGRESSIONAL BUDGET OFFICE,

U.S. CONGRESS,

Washington, D.C., May 12, 1978.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, D.C.

Dear Mr. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2899, the Endangered Species Act Amendments of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

JAMES BRUM

(For Robert A. Levine, Deputy Director).

CONGRESSIONAL BUDGET OFFICE—Cost Estimate

MAY 12, 1978.

1. Bill number: S. 2899.
2. Bill title: Endangered Species Act Amendments of 1978.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 11, 1978.

4. Bill purpose: The bill authorizes appropriations to the U.S. Fish and Wildlife Service (USFWS) of \$23 million in fiscal year 1979, \$25 million in fiscal year 1980, and \$27 million in fiscal year 1981.

The bill also provides authorizations of \$2.5 million in each of the fiscal years 1979, 1980 and 1981 to the Department of the Interior for the Endangered Species Committee, which is established in this bill. The bill specifies that the committee would approve federal agency actions when it determines that the action does not jeopardize the continued existence of any endangered or threatened species or the action

does not result in the destruction of such species habitat. In certain instances when damage is likely to result from the action, the committee could approve the project by providing exemptions to existing standards. This review would only occur when agencies submit an application to the Endangered Species Committee. The committee's decision is likely to be supported by the courts if the proper procedural processes are followed by the committee.

In addition, authorization of \$2.5 million for fiscal year 1979, \$3.0 million for fiscal year 1980 and \$3.5 million for fiscal year 1981 is provided to the Department of Commerce for the National Oceanic and Atmospheric Administration (NOAA).

5. Cost estimate:

	<i>Millions</i>
Fiscal year 1979:	
Authorization level	28.0
Cost estimate	26.2
Fiscal year 1980:	
Authorization level	30.5
Cost estimate	30.3
Fiscal year 1981:	
Authorization level	33.0
Cost estimate	32.9
Fiscal year 1982:	
Authorization level	32.9
Cost estimate	32.9
Fiscal year 1983:	
Authorization level	2.1
Cost estimate	2.1

The costs of this bill fall within budget function 300.

6. Basis of estimate: The authorization levels are those stated in the bill and are assumed to be fully appropriated. Costs are estimated by applying a two-year outlay rate to the level of appropriation provided for NOAA, USFWS, and the Endangered Species Committee. Spend-out rates for NOAA and the USFWS were developed in consultation with agency staffs. The outlay rate for the Endangered Species Committee was estimated to be similar to the rate of the Council on Environmental Quality.

7. Estimate comparison: None.

8. Previous CBO estimate: A cost estimate was prepared on March 22, 1978 for H.R. 10883, as ordered reported by the House Committee on Merchant Marine and Fisheries. The House bill is similar to S. 2899, except it does not include the establishment of an Endangered Species Committee.

9. Estimate prepared by James V. Manaro (225-7760).

10. Estimate approved by:

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection (f) of rule XXXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

[From the Congressional Record, July 11, 1978]

SENATE CONSIDERATION AND PASSAGE OF S. 2899, WITH AMENDMENTS
ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. ROBERT C. BYRD, Mr. President, there seems to be nothing at this point that I can call up at the moment. I ask unanimous consent that the Senate proceed to consider the endangered species bill, with the understanding that once the title is read, I shall move to recess for a period.

The PRESIDING OFFICER. The clerk will state the bill by title. The legislative clerk read as follows:

A bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that act should be granted for such actions.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works with amendments as follows:

On page 1, line 6, strike "1536" and insert "1632";
On page 2, line 7, after "which," insert "after consultation as required in section 7 (a) of this Act";

On page 2, line 11, after "the" insert "adverse modification or";
On page 2, line 12, strike "and";

On page 2, beginning with line 13, insert the following:

"(9) For purposes of subsection 7(e) (2) (C) the term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction."; and

On page 2, line 19, strike "(18)" and insert "(19)";

On page 3, line 9, after "or" insert "adverse";

On page 3, line 10, after "Secretary" insert "after consultation";

On page 4, line 9, after "Interior" insert "and where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce";

On page 4, line 13, strike "Secretary of Transportation" and insert "Governor of the State which is affected by the action for which an exemption is sought (or in the case of an action affecting more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee as determined among such Governors)";

On page 5, line 3, strike "Except as provided in subparagraph (B) of this paragraph, he" and insert "Seven";

On page 5, line 4, after "Committee" insert "or their representatives";

On page 5, beginning with line 18, insert the following:
On page 5, beginning with line 18, insert the following:

"(E) All meetings and records of the Committee shall be open to the public.

On page 6, line 21, strike "Committee" and insert "Committee";
On page 7, beginning with line 15, strike through and including page 9, line 4, and insert in lieu thereof the following:

"(12) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(13) To the extent practicable within the time required for action under subsection (e) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under subsection (e) of this section shall be in accordance with sections 554, 555, and 556 of title 5, United States Code.

On page 10, line 20, after "Service insert "(or where appropriate the Director of the Fish and Wildlife Service in concurrence with the Director of the National Marine Fisheries Service)";